



Intersectional discrimination in Europe:

relevance, challenges
and ways forward

A report by the Center for Intersectional Justice (CIJ)
commissioned by the European Network Against Racism (ENAR)

Published by the European Network Against Racism (ENAR) in Brussels, in December 2019, with the support of the Rights, Equality and Citizenship Programme of the European Union, the Open Society Foundations, the Joseph Rowntree Charitable Trust, the Sigrid Rausing Trust and the ENAR foundation.



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Acknowledgements

The Center for Intersectional Justice (CIJ) acknowledges the contributions of Dr Emilia Zenzile Roig (CIJ Founder and Executive Director), Miriam Aced (Former CIJ Assistant Director), Aida Bekele (CIJ Associated Expert) and Henrike Scholz (Former CIJ Intern) to the research and writing of this report.

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FOREWORD

Intersectionality has gained much attention in Europe over the past ten years, both in academic spheres and increasingly in the policy field. The concept gives policy makers, lawyers and sociologists the opportunity to not only approach discrimination and social inequalities from a systemic and structural perspective, but also to capture discrimination patterns which tend to be invisibilised or overlooked in the current legal and policy frameworks for anti-discrimination.

Instead of relying solely on single-axis frameworks, which focus on one dimension of discrimination at a time (e.g. gender or ethnicity or disability), an intersectional approach caters to the multidimensionality of people's experiences and identities. For instance, Muslim women wearing the hijab, women with disabilities, LGBTQI+ refugees can experience discrimination in qualitatively different ways as their male, white and non-disabled counterparts. Such variations in the ways in which discrimination manifests for different people based on the combination of various identities is not only (mostly) not captured by the available statistical data, but also rarely addressed by anti-discrimination legislation in EU member states.

At the individual level, this may lead to a violation of individuals' right to equal treatment. At the structural level, the failure of anti-discrimination laws to cater to intersectional forms of discrimination may reinforce discrimination within legally protected categories. For example, within the category "woman", migrant women, women with disabilities, or Roma women may be at a higher risk of systemic discrimination and tend to be excluded from gender equality policies focusing solely on "gender" as the main dimension leading to gender inequalities. Another major obstacle to the implementation of an intersectional approach in individual member states is the reluctance to address discrimination in racial terms.

Beyond the recommendations and advocacy goals fleshed out at the end, this report aims to shift the understanding of discrimination from a largely individual to a more structural level. Only when discrimination is addressed in all its dimensions – individual, institutional, structural and historical – can the full potential of intersectionality be deployed.

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**INTERSECTIONALITY
IN EUROPE**

1.1 Overview

Intersectionality examines the intersections of the three most important global systems of domination: racism/colonialism, capitalism and patriarchy; and their by-products: classism, homo- and transphobia, cis- and heterosexism and all other forms of racism. Intersectionality looks at the ways in which various social categories such as gender, class, race, sexuality, disability, religion and other identity axes are interwoven on multiple and simultaneous levels. The discrimination resulting from these mutually reinforcing identities leads to systemic injustice and social inequality. The concept of intersectionality is grounded in decades of activism that battled the challenges of racism and sexism throughout the 20th century.

Feminists of colour in the United States were at the forefront of social movements that highlighted the interconnectedness of race, class, gender and sexuality.¹ In the late 1980s, Kimberlé Crenshaw introduced "intersectionality" as a legal concept in reaction to the exclusion of the interests and experiences of women of colour from the mainstream (white) feminist movement. Crenshaw's seminal work, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color",² institutionalised the concept as a critical form of inquiry that interrogated single-axis anti-discrimination work. In her article, Crenshaw refers to the legal case of *DeGraffenreid v. General Motors (1976)*, in which five black women's claims of discrimination against their employer on the basis of sex discrimination and racial discrimination simultaneously were dismissed with the reasoning that such a binding together of axes was unworkable. In the *DeGraffenreid* case, neither race-based nor sex-based discrimination taken separately corresponded to the reality of the black women claimants, and the court's decision exposed the severe inadequacy of legal statutes in addressing the multiple axes on which discrimination can function simultaneously.

Although Crenshaw was the first to coin the term "intersectionality", an awareness of multiple, overlapping oppressions and identities emerged as early as the 19th century, when slaves working to abolish slavery in the United States recognised their doubly-marginalised position as women and Black/slaves. As early as 1851, in a speech delivered at a women's conference in Ohio, Sojourner Truth pointed to the exclusion of slaves and black women in common representations of femininity. Other writers, along with Crenshaw, also criticised the way in which the experience of women of colour was pushed into the periphery in popular feminist discourses, as well as an understanding of multiple discrimination and overlapping oppression.

Over the last 20 years, intersectionality has evolved from a legal theory in the United States into a cross-disciplinary and international discourse that deconstructs narratives on race, gender and sexuality. However, the mobilisation of intersectionality across continental Europe remains challenging in a context that overemphasises colour-blindness and post-racialism. **While colour-blindness refers to a legal principle which considers race as irrelevant in laws, policies and in society at large, post-racialism is a discourse and ideology which dictates that the category "race" has been transcended and that it no longer constitutes an organising principle of society.**³ The omission of race in the discourse about discrimination has distorted the discursive context surrounding intersectionality. Further, the absence of robust data relevant to race has exacerbated the challenges of bringing race to the forefront of intersectionality work in Europe. For example, census data on race in France and Germany can only be collected through proxies such as "migration background" or "geographical location", which are only partially capturing race. The collection of equality data is a contentious topic in Europe, given the ways in which such data have been (mis)used in the past. Current political developments cannot guarantee that such data would not be instrumentalised for racist ends.

At the same time, the refusal to recognise the role of race and speak to its relevance in Europe unleashed new scholarship and activism. Scholars and activists have sought to deconstruct available theoretical models, historical accounts and sociological frameworks to substantiate how race was and is woven into European systems of domination. Understanding race and racism in Europe is foundational to recognising the different ways in which it is embedded in capitalist and patriarchal structures of the past and present. **In the absence of race, intersectionality only reinforces a status quo that denies the existence of people and systems that intersectionality was intended to reveal.**

This critical process of deconstruction also creates space and opportunity for an authentic framework of intersectionality to take place. This process has revealed that the many dimensions of intersectionality have been manifested through different phases in Europe, including unspeakability, erasure and depoliticisation. At the same time, these phases reveal that there are numerous and equally legitimate ways to platform and deploy intersectionality to tackle resistance in Europe.

1.2 Intersectionality without race

1.2.1. The unspeakability of race in Europe

One challenge to a true and effective mobilisation of intersectionality throughout Europe is the widespread reluctance to face the significance of race and the reality of racism in Europe. European countries have a tradition of blindly opposing colour or race, in particular in the legal arena where race is deemed irrelevant in the field of law, politics and society.

Especially in Germany and France, this mentality of colour-blindness prompted a post-racialist discourse based on the conviction that the category of "race" no longer constitutes an organising principle of society. Such ideology is extremely problematic, as any manifestation of racism in the past continues to affect the power, privileges, positions and prejudices of the white-dominated populations of Europe. Racial discourse varies across countries in Europe, although it tends to fall into two main lines of reasoning that are more deeply understood by examining the French and German contexts.

In **France**, discussions of race are highly influenced by the founding principles of French republicanism – a system rooted in universalism and borne out of Enlightenment. The principles of *liberté, égalité, fraternité* (liberty, equality, fraternity) are ideally intended to reflect a solidarity that promises equal treatment of the people. However, in reality, this system legitimises the erasure of minorities, especially racial minorities, in France. Language intended to promote the ideals of republicanism and universalism entrench the erasure of minorities and render their needs invisible and irrelevant. For example, statements such as "*I don't see race*" or "*we are all human*" are weaponised against minorities to diminish their claims and demands. This erasure is the bedrock of colour-blindness, which restricts much-needed legal and policy measures to address racial discrimination on a systemic level. **Colour-blindness embraces universalism, thereby rejecting the idea that laws and policies are needed to address the systemic consequences of both privilege and disadvantage in society. Moreover, colour-blind contexts such as France disregard the historical and contemporary role that race plays in society.**

The discourse around race is also reflected in France's laws and policies. A judgment of the *Conseil Constitutionnel* in 2007 ruled that the use of ethnic and racial data for purposes of surveys or studies on diversity of origins, discrimination and integration issues is unconstitutional. Currently, the government is not permitted to collect data on citizens' race or religion. Then in June 2018, the French National Assembly removed the word "race" from the French constitution after a ten-year long campaign driven by the Left. While the principle of republicanism underlying the French nation means that equality is considered an undeniable right attached to citizenship, it also means that French citizens who belong to racial or ethnic minority groups are rendered invisible. French minorities lack proper channels to overcome inequality when they experience racial discrimination. Instead, French racial minorities are only able to access remedy measures designed to confront class inequality, which are not tailored to their specific needs and interests. **Not only does colour-blindness ignore the impact of colonial laws and policies that continue to have destructive consequences for racial minorities, but it fails to acknowledge the fact that race is a unique physical marker that cannot be unseen or erased.** Accordingly, France and other countries in Europe that use colour-blindness to justify the absence of anti-discrimination laws and policies have weaponised their legal and political systems against racial minorities.

The discourse surrounding race in **Germany** is equally problematic but for different historical reasons. Germany exhibits a deep commitment to the ideas of post-racialism and German exceptionalism. As a discourse, post-racialism embraces the idea that a specific event marks the end of an era where race is relevant in society and race-based policies should be applied.⁴ In Germany, the end of the Holocaust/Porajmos⁵ is identified as the event that marked the beginning of post-racialism in Germany. In other words, racism was perceived after 1945 to have been conquered and relegated to the annals of history. As in France, there have been initiatives on the legal and policy level in Germany to facilitate the erasure of race, which hinder the fight against systemic inequality. The German leftist party *Die Linke* submitted a draft law in 2010 to replace "Rasse" (race) by "*ethnische Herkunft*" (ethnicity) in German legislation and in international documents. The tendency to erase race relies on the flawed belief that Nazism was an incidental aberration. This flawed approach fails to recognise the historical roots and legacy of this political system, and how its underlying ideologies continue to shape political, economic and cultural institutions.⁶

A key implication of post-racialism in Germany is the reluctance to use the word *Rassismus* (racism) to describe post-Holocaust/Porajmos acts of racial discrimination. Instead, until recently the discourse in post-racial Germany relied on words such as *Xenophobie* (xenophobia), *Ausländerfeindlichkeit* (hostility towards foreigners), *Fremdenfeindlichkeit* (hostility towards strangers) to characterise racial discrimination. None of these terms acknowledge the relevance of race in shaping prejudice and discrimination, and their use disproportionately focuses on intentional acts whose blame lies with individual behaviours, opinions and prejudices. This obscures the fact that racism is a systemic phenomenon shaped by structural factors. Only recently, the word *Rassismus* has started to re-enter the racial discourse in Germany through activism and anti-discrimination efforts. Explicit conversations about race are a new phenomenon in Germany.

Although France and Germany reflect two key models of racial discourse across Europe, it is worth highlighting several other approaches to racial discourse. Continental Europe is marked by a colour-blind tradition – e.g. France, Belgium, Netherlands, Spain – and by its derived post-racialism – e.g. Germany, Italy. There are some distinctions across systems in Europe that are worth highlighting briefly. Like France, the legacy of colonialism has strongly shaped Portugal's demographics, resulting in long-standing minority communities with roots in Mozambique, Angola and Brazil, which has given rise to a similar discourse of colour-blindness. Despite a shared colonial past, the racial discourse in the Netherlands and Belgium is aligned with the French system for different reasons. Primarily, both these countries strongly embrace the ideals of republicanism and universalism that restrict legal and policy measures to address discrimination. Italy has taken a post-racialist approach that is similar to Germany's, which grew out of the nation's stance in World War II



For feminists in some parts of Europe to seemingly uncritically reproduce the position that race is unutterable and without analytic utility in the contemporary European context can be experienced as an act of epistemological and social erasure – erasure both of contemporary realities of intersectional subjects and of the history of racial categories and racializing processes across the whole of Europe⁷ ■

Gail Lewis

and the Holocaust/Porajmos. Spain has undergone steady immigration from Latin America and has strong connections with Arabic cultures. However, a discourse on race in Spain is distinctly absent. The United Kingdom stands as quite an exception to much of continental Europe because race-related issues are explicitly discussed and equality data based on race are collected. However, considerable work is still needed to address discrimination against minority communities effectively due to lack of targeted measures.

The unspeakability of race in Europe also implies a “loss” and “erasure” in intersectionality theory as it travels from the United States. This erasure of race underscores the resistance that exists to understanding and tackling structural, institutional and intersectional discrimination.

The unspeakability of race participates in a wider strategy at play: silencing and delegitimising people and movements who attempt to address the racial oppression deeply rooted in colonial history which informs European discourses, institutions and politics. In that sense, the word race itself becomes a rhetorical device, undeniable proof of that oppression. On the whole, the tendency to erase “race” perpetuates the myth that European countries are egalitarian and enlightened societies, while suppressing anti-racist discourses and policies.

The recognition of race as a category is critical in addressing structural, historical, and institutional inequalities. Further, the ability to collect data on race, in combination with other categories such as gender, class, sexual orientation and disability is a fundamental step towards exposing structural privilege and disadvantage. The collection of equality data is one of the key barriers to making race visible and tackling inequality.⁸ The invisibilisation of race silences the discourse across Europe about addressing structural and historically-rooted racial inequalities and discrimination. Instead, categories such as ethnicity, culture and religion, which are less historically loaded, are used as proxies to avoid the topic of race. Such proxies obscure the historical roots and legacy of racism and colonialism, and ignore how power, privilege and prejudices have historically benefitted white populations in Europe.

1.2.2. The effects of a depoliticised intersectionality

The unspeakability and erasure of race has also shaped a process of marginalisation and depoliticisation as intersectionality has been embraced and adapted by academia and mainstream feminist movements in Europe.

While the reach of intersectionality theory in Europe is unprecedented, the experiences of Black women and other women of colour no longer occupy a critical space in discussions on intersectionality. Depoliticisation is gradually and steadily erasing the origins of the concept. Intersectionality has not only travelled from North America to Europe, but also from the *margins*



There is a sense that efforts to repackage intersectionality for universal consumption require a re-marginalizing of black women ■

Kimberlé Crenshaw

to the *centre*. Arriving in the centre is not without implications, however, for the visibility, subversive nature and original aspirations behind the concept.

As Kimberlé Crenshaw pointedly states: “There is a sense that efforts to repackage intersectionality for universal consumption require a re-marginalizing of black women”. Yet there is no need to re-marginalise Black women in Europe, it suffices to maintain the status quo. Black women and women of colour thus continued until recently to be viewed and treated as objects of

research and as tokens,⁹ but not as experts. The physical absence of Black women and women of colour from most mainstream academic spaces¹⁰ should not imply that their knowledge, expertise and experience does not permeate the walls of universities. In fact, racialised women greatly enrich the academic discourse. Black women and women of colour may themselves experience erasure and exclusion from academic institutions, but their ideas and viewpoints continue to fuel academic scholarship and work.

Many disciplinary fields – sociology, cultural studies, ethnology, history, law, philosophy, psychology, migration studies, public policy and of course, gender studies – have been touched by intersectionality. Whether approached as a theory, heuristic device, method or conceptual tool, intersectionality has been acclaimed as one of the most powerful contributions to feminist scholarship by a number of authors. Numerous feminist scholars are currently working on intersectionality and the concept has been adopted as a new paradigm in feminist studies, but “[s]imilar to other ‘traveling theories’ [...], intersectionality falls prey to widespread misrepresentation, tokenization, displacement, and disarticulation”.¹¹ Underexamination reflects the damaging process of depoliticisation in Europe that harms the discourse and legacy of intersectionality.

Core aspects of intersectionality have also been lost in translation by a distorted focus on individual dimensions of discrimination at the expense of the systemic and historical dimensions. Instead of confronting all dimensions of racism, the discourse in Europe focuses on racism as an exceptional phenomenon, refusing to address its historical, structural and institutional dimensions. Criticism towards the introduction of “race” into political and academic debates overlooks the institutional, structural and historical racism on which European countries’ economic, political and cultural institutions are built.

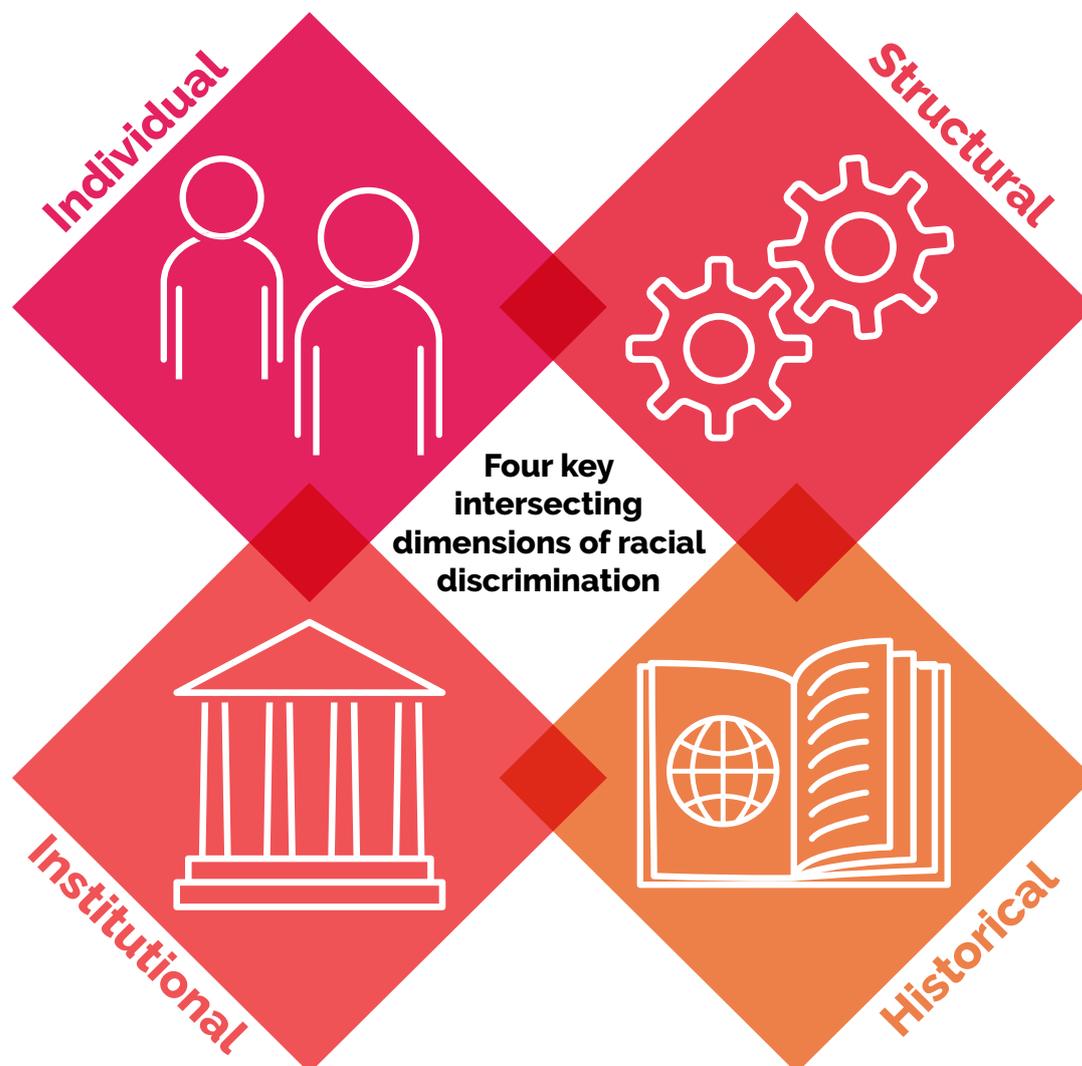


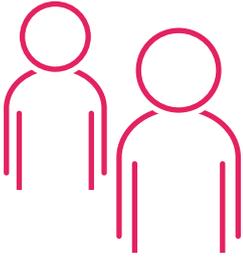
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**ANTI-DISCRIMINATION
AND INTERSECTIONALITY
IN EUROPE: LEGAL AND
POLICY FRAMEWORK**

2.1 The four dimensions of racial discrimination

Before we can effectively combat discrimination, we first need to understand the scale and complexity of the concept. There are four key dimensions of discrimination: individual, structural, institutional and historical. The current European anti-discrimination framework overly emphasises the individual dimension of discrimination, which is primarily characterised by individual discriminatory practices, including deliberate behaviour, discriminatory expressions of opinions as well as actions and decisions which lead to indirect discrimination. This approach overlooks the broader context of discrimination, such as the role played by institutions through unintended actions, or, to some extent, the hidden effects of seemingly neutral laws and policies. Additionally, it disregards the historical legacy of power and racism that continues to influence our current political systems, norms and values. In this section, we outline the four key dimensions of discrimination.





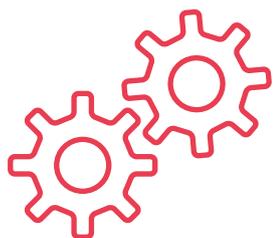
2.1.1. Individual dimension

Individual discrimination is the most well-known and familiar form of discrimination. In most European countries, racism is primarily treated as a phenomenon rooted in individual behaviour as opposed to systemic patterns shaped by structural factors.¹²

However, cases of individual discrimination represent merely the tip of the iceberg in terms of the role, effect and impact of discrimination in society. While individual discrimination may occur intentionally or unintentionally, the mainstream understanding conceptualises individual discrimination as an intentional act perpetrated by one prejudiced individual against another person or group of people based on race, skin colour, gender or any other axis of discrimination. Examples of individual discrimination include hate speech, denying access or rights, acts of prejudice, stereotyping, and verbal and/or physical acts of assault. **The blame associated with individual discrimination is ascribed and limited to the person conducting the individual acts and not extended to a societal system that may be favourable to such behaviour.** Moreover, the argument of reverse discrimination (or reverse racism) is often used to claim that white people are exposed to racism, ignoring the critical dynamic of power that is a precondition to oppression. Reverse discrimination is a discursive tool used to distract attention, resources and remedies from those victimised and excluded by racism in society.

Key measures to combat individual discrimination:

- 1. Criminal and civil law measures prohibiting discrimination (e.g. laws against hate crime and discriminatory behaviour).** Such measures are usually accompanied by public moralising statements such as "discrimination will not be tolerated", which tend to be highly inefficient as they enforce the idea that discrimination can best be combated by targeting specific "racist" individuals. However, such statements can help create societal norms which cast discriminatory behaviour as unacceptable.
- 2. Awareness-raising campaigns** on the subtle ways in which discrimination occurs, including through unintended, unconscious behaviour (e.g. implicit bias).
- 3.** More generally, the **public discourse on discrimination** should focus more largely on understanding how European social, historical and political systems reproduce and perpetuate racism, and how all of us are unknowingly complicit in this process – unless we confront them and are willing to address our implicit biases.



2.1.2. Structural dimension

Structural discrimination describes the statistical representation of discrimination through the aggregation of individual cases of discrimination. It represents the social manifestation of structural inequalities and provides a contextual analysis for these inequalities.

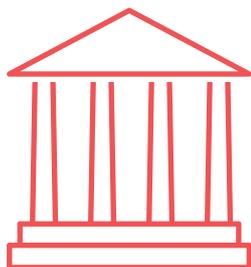
The demographics of certain societal sectors – i.e. the overrepresentation or underrepresentation of certain groups of people – can help us uncover structural discrimination patterns. For example, ENAR's Toolkit on Women of Colour in the Workplace highlights that "women of colour (and migrant women in particular) are likely to be overrepresented in precarious, low-paid employment in sectors that present a higher risk of exploitation and abuse".¹³ The perpetrator/victim frame that is so prevalent in the individual dimension of discrimination cannot be applied, since structural discrimination does not necessarily manifest through individuals, but most often through entire institutions. These statistics on women of colour represent aggregate counts of discrimination and materialise the hidden effects of certain laws and policies, but also of certain unintended and unconscious actions by individuals in positions of power in state and private institutions (e.g. implicit bias towards women of colour, which projects lack of professionalism onto them, or teachers tending to allocate girls to the care sector premised on the belief that they are naturally competent for such tasks).

Structural discrimination is based on deep-seated social hierarchies that are reflected in all societal institutions such as the school system, the labour market, the housing market, the banking system, the health system, the media and politics. Individuals are placed somewhere on the spectrum of this (invisible) hierarchy based on their unique identities made up of their gender, race, disability, sexual orientation, etc., thereby either gaining privileges that reproduce their positions of power and superiority or creating structural disadvantages that block their access to power and resources. Systemic inequalities arise both from negative stereotypes attached to certain identities, or through positive stereotypes leading to implicit preferences. They result in people from dominant groups receiving privileges based on their identity (e.g. white people, men, people without disabilities, heterosexual and cis-gender people), even though they may not be aware of these privileges.

Key measures to combat structural discrimination:

- 1. Social and political measures that specifically counteract the systematic disadvantage of certain social groups due to *implicit preferences* for the dominant group.** Positive action measures (e.g. quotas for women, for people with disabilities, for racial minorities) serve to combat implicit prejudices and preferences and enable professional environments to reflect the diversity of society. Affirmative action can also be framed as a measure meant to put a stop to the set of preferences afforded to dominant groups (e.g. white people, men, heterosexual and cis-gendered people and people without disabilities). However, it should be noted that quotas alone are not sufficient to address structural discrimination in a holistic way.
- 2. Screening laws to ensure that seemingly neutral laws and policies do not adversely affect one group in particular.** Such screenings can prevent the occurrence of indirect discrimination⁴ through gender-neutral and race-neutral laws and policies. For example, most religious dress restrictions in the European Union are indirectly discriminating against Muslim women wearing the headscarf, even though they are framed in gender- and race-neutral terms.
- 3. Promoting research on the sociological explanations of the over- and underrepresentation of certain groups in specific sectors.** For instance, the overrepresentation of white men in top management or in politics can be interpreted as their inherent superior competences and aptitudes, based on the prevalent meritocratic discourse. Similarly, the overrepresentation of men of colour in correctional facilities can be interpreted as their genetic propensity to commit crimes. Both explanations are overlooking the structural, historical and systemic factors that explain this statistical makeup and promote racist and sexist narratives about success and failure.
- 4. Implicit bias trainings within institutions which tend to generate the over- or underrepresentation of certain groups from specific sectors.** If police officers, judges, teachers, health personnel and other civil servants are made aware of some of the positive and negative implicit biases they harbour against people, they are given the possibility to gradually change their behaviour.
- 5. Awareness-raising campaigns** that aim at desegregating sectors segregated by race and gender, for instance encouraging boys and men to take predominantly female career paths, and vice versa.
- 6. Dismantling structures within certain sectors which drive structural discrimination,** such as school systems which allocate children to different paths at an early age (e.g. the German three-tier school system) or labour market restrictions for certain types of migrants and asylum seekers which are not justifiable from an economic and political standpoint.

2.1.3. Institutional dimension



Institutional discrimination is very similar to structural discrimination as it describes discrimination patterns originated by institutions and laws. However, they differ in their focus. While structural discrimination focuses on the outcomes of societal structures and hierarchies, institutional discrimination focuses on the “input”, on the actions, behaviours, decisions of people in positions of power within institutions.

As such, institutional discrimination is also manifested through seemingly neutral laws and policies. Actors holding positions of power in institutions tend to reproduce and reaffirm different forms of discrimination through their implicit biases. **Individuals who make decisions and exert power on a daily basis (e.g. police officers, judges, teachers, etc.) have the ability to enforce their prejudices and stereotypes.** Their actions and decisions may be unintentional but the consequences of institutional discrimination can be far-reaching. For example, a schoolteacher might encourage their female students to pursue care-work professions while male students might be encouraged to seek out jobs with higher status and pay. Another example is the case of *D.H. and Others vs. the Czech Republic*,¹⁵ where examinations were used to assess the intellectual capabilities of students and whether they should be placed into schools for children with special educational needs. The European Court of Human Rights (ECtHR) determined that there was a significant concern that the tests were biased against Roma children and made a ruling of indirect discrimination. Specifically, the Court found that Roma students were more likely to perform poorly on the tests because their educational and language backgrounds were not given adequate consideration. Consequently, between 50% and 90% of Roma children were not placed in regular schools. Since this landmark decision, the European Commission has launched infringement proceedings against three EU Member States, the Czech Republic (2014), Slovakia (2015) and Hungary (2016), for failure to correctly implement the Racial Equality Directive (2000/43/EC), due to different situations of systemic discrimination and segregation of Roma children in schools.

There are many examples of institutional discrimination across Europe, including discriminatory institutional practices related to migration and asylum, or cases induced by racial profiling. For example, the General Law for the Protection of Public Security and Order (ASOG) was introduced in Berlin in 1992. This law permits identity checks in so-called “dangerous places” and constructs the legal basis for police to carry out identity checks below the intervention threshold of a concrete danger. Ultimately, laws like ASOG disproportionately affect communities living in such areas, most of which are so-called “poor migrant neighbourhoods” and reinforce negative stereotypes associating them with criminal activity. The European Network Against Racism (ENAR) points to figures highlighting that people of African descent in Europe are more likely to be stopped and searched by police than white people – in England and Wales for instance, black people are more than nine times more likely to be stopped and searched by the police, according to 2018 Home Office figures.¹⁶

Key measures to combat institutional discrimination:

- 1. Implicit bias tests and anti-discrimination trainings** can be used to make people employed in state and private institutions aware of the prejudices they unknowingly harbour. Subsequently, relevant training can be introduced to mitigate the effects of implicit biases on decisions, actions and interactions.
- 2. Introducing more vertical diversity – at all hierarchical levels – in public and private institutions to ensure that all social groups are proportionately represented.** Homogenous groups tend to represent similar views and harbour similar prejudices. They also tend to implicitly favour their in-group.¹⁷
- 3. Screen laws and policies against indirect discrimination.**
- 4. Run public awareness-raising campaigns to counter the most prevalent prejudices among the general population,** as they tend to excuse discriminatory behaviour by law enforcement and other forms of institutional power (e.g. stereotypes facing Roma and Sinti, representation of Black and Muslim men as dangerous, women wearing the headscarf as oppressed, etc.).



Image credits: "Stop and search - Ibrahim" and "Stop and search - Henny" by EYE DJ are licensed under CC BY-NC-ND 2.0

2.1.4. Historical dimension



The historical dimension of discrimination is the foundation of the three other dimensions of discrimination, and yet the most overlooked in contemporary discourses of discrimination and social inequality. This dimension represents the historical roots and legacy of ideologies, past systems and events which continue to shape contemporary attitudes, events, media representations, social inequalities and hierarchies.

For example, the enslavement of the African peoples, colonialism and the Holocaust/Porajmos were not isolated and incidental events that began and ended in isolation. In other words, the destructive effects of racism (including antisemitism) did not begin or end with the abolition of slavery or the end of the Holocaust/Porajmos. In stark contrast, the impact of such historical events continues to inform how people are positioned in the global hierarchy of power and privilege in modern society. Understanding historical discrimination is key to recognising and decoding the dynamics of discrimination across our European societies on an individual, structural, and institutional level. **The historical dimension of discrimination helps us expose the fallacy of a meritocratic framing of success and failure. In this sense, contemporary analyses of social inequalities require historical contextualisation in order to develop counter-measures that adequately address the fundamental drivers of discrimination.** For example, the discrimination of Roma in European education and health systems cannot be fully analysed and addressed effectively without looking at the historical roots of this specific type of discrimination. Similarly, the uprising in the French *banlieues* and the widespread disenfranchisement of descendants of colonised people of North Africa cannot be understood without an in-depth analysis of France's colonial past and present.

Key measures to address the historical dimension of discrimination:

- 1. The politics of memorialisation should be adopted when non-existent, and critically assessed and reviewed when already in place in order to include the perspective of minoritised groups.** This can be done through museums, text books, research and archives. For example, Germany is often praised as an example in this regard. However, this praise is only partially true. It is a hardly known fact that Germany committed the first genocide of the 20th century against the Nama and Herero between 1904 and 1908 (today's Namibia), and that the genocide of the Third Reich was modelled on this genocide. To this day, no commemoration or reparations were paid to the descendants of the victims.
- 2. Promoting a historical analysis of current social inequalities** to enable policies and laws geared towards more equality and justice to include this perspective.

This section outlining the various dimensions of discrimination is essential to understand the ways in which discrimination materialises at all societal levels. **A limited understanding of discrimination as an individual phenomenon will transfer this simplicity onto intersectionality. Intersectional discrimination will tend to be represented as the addition of two or more forms of discrimination (multiple discrimination), following an additive model. Such a representation overlooks the other ways in which intersectional discrimination unfolds at a structural, institutional and historical level.** The measures proposed to combat intersectional discrimination should include these other dimensions to ensure that we move beyond the individual level.

2.2 Is there a framework for intersectionality in Europe?

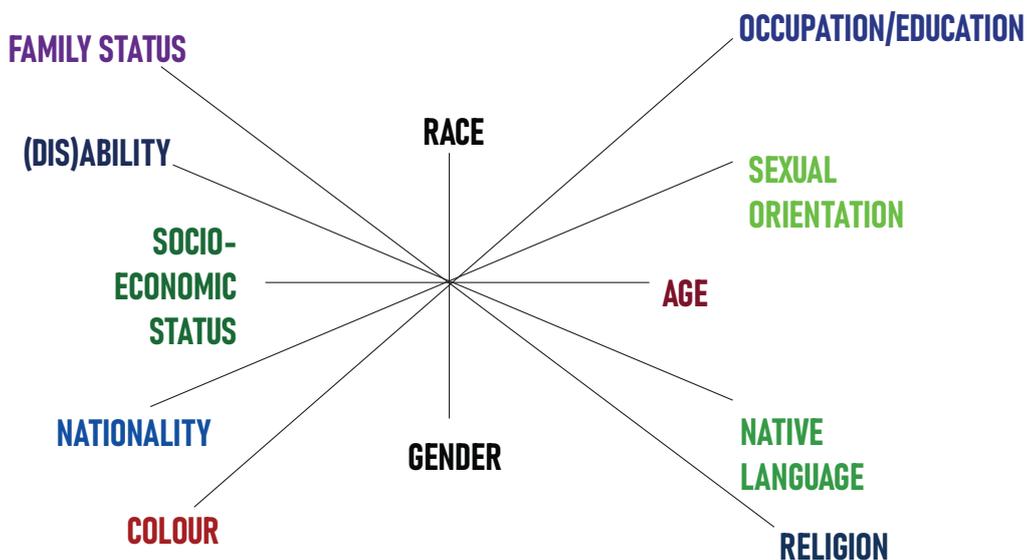
2.2.1. Intersectional discrimination at European Union level

International and European legal and policy frameworks have traditionally relied on addressing discrimination through a single-axis angle. Current interpretations of anti-discrimination law in Europe lack explicit standards for cases involving intersectional discrimination patterns. Similarly, international human rights instruments and enforcement mechanisms relied on by European bodies conceptualise discrimination on a single, discrete ground that might involve race, gender, sexuality, or religion. This limited and fragmented arsenal of approaches reflects how European legal bodies are currently underequipped to address cases of intersectional discrimination.

The fact that intersectional discrimination tends to be misunderstood is negatively impacting the legal discourse surrounding intersectionality. For example, the terms multiple discrimination and intersectional discrimination are often and incorrectly used interchangeably. While they are related concepts, multiple discrimination and intersectionality are not identical.

Multiple discrimination refers to separate simultaneous identity-based cases of discrimination targeted at an individual. For example, an LGBTQ person with disabilities might be discriminated against in the workplace when an employer fails to make proper allowance for access to all parts of the office for wheelchair users. In addition, this individual might be a target of homophobic slurs in the same office. In cases like this, the legal framework exists to address multiple, separate claims of discrimination.

Intersectional discrimination takes place when an individual or a group of individuals are discriminated against based on grounds that are intertwined in such a way that they produce a unique and new type of discrimination. In such cases, one would not make several claims of separate cases of discrimination, but rather one case of intersectional discrimination.



Source: The Winters Group Inc

An example of intersectional discrimination in the European context concerns Muslim women wearing the headscarf. If only approached from the axis of gender or from the axis of religion/race/ethnicity, discrimination cannot be uncovered, because in the same situation, a woman without a headscarf and a Muslim man would not be subjected to the same type of discrimination ■

Discrimination without an intersectional lens is often made invisible as was the case in the landmark case *DeGraffenreid v General Motors*, which served as a basis for the coining of the term intersectionality by Kimberlé Crenshaw. In that case, the court did not acknowledge the particular discrimination that Black women faced. Although General Motors had only terminated Black women's employment, the courts denied discrimination based on gender because white women had not been terminated, and denied discrimination based on race because Black men had not been terminated. The burden of proof in this case was the fact that only this specific group, Black women, was terminated. In contrast to multiple discrimination, intersectional claims of discrimination are not explicitly covered by laws or frameworks. This is partly due to a lack of

understanding of intersectionality and intersectional discrimination. Most cases of intersectional discrimination do not have clear cut evidence as was the case in *DeGraffenreid*. The lack of evidence coupled with a lack of understanding of intersectionality makes it very difficult for the administration of justice to take place in intersectional discrimination cases.

Across Europe, there are several illustrations of how claims of multiple and intersectional discrimination may be asserted. Intersectional and multiple discrimination are mentioned and partly addressed in several instances, mainly when they involve white gay men or men with disabilities, which clearly shows that the ways in which the concept of intersectionality addresses notions of power and privilege are grossly misunderstood or simply overlooked.

2.2.2. Council of Europe

The Council of Europe is an intergovernmental organisation founded in 1949, whose stated aim is to uphold human rights, democracy and the rule of law in Europe. The **European Convention on Human Rights** is the Council of Europe's first convention and the cornerstone of its work. **The European Court of Human Rights (ECtHR)** oversees the implementation of the Convention in the 47 Council of Europe member states. Individuals may bring cases before the ECtHR once they have exhausted their remedies in their respective member states.

Under the European Convention on Human Rights (ECHR), there are no explicit references to multiple or intersectional discrimination. However, there are several places that leave space for claims to be made.



Article 14 is the key non-discrimination provision of the ECHR and prohibits discrimination on any grounds such as "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

While Article 14 only extends protection for rights explicitly mentioned in the Convention, the catchall phrase of "other status" has the potential to be applied in cases of multiple or intersectional discrimination. Additionally, Protocol¹⁸ No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms¹⁹ provides general protection against discrimination as long as the right is protected under national law, i.e. protection against discrimination applies to provisions of national laws even if they are not explicitly mentioned in the ECHR. **Accordingly, although the Convention lacks explicit reference to multiple or intersectional discrimination, the ECtHR is not precluded from making findings of discrimination based on those grounds.**

There are several examples of where the ECtHR ruled in favour of plaintiffs in cases where intersectional discrimination occurred, despite the court's refusal to explicitly acknowledge the claim of intersectional discrimination.²⁰ In *N.B. v Slovakia*, the ECtHR found that the forced sterilisation of a Roma woman violated articles 3 (the prohibition of torture) and 8 (the right to respect for private and family life) of the ECHR.²¹ Specifically, the court stated, "the practice of sterilisation of women without their prior informed consent affected vulnerable individuals from various ethnic groups" but stopped short of identifying the concept of intersectionality. In 2012 the European Court of Human Rights decided the case *B.S. v Spain*, finding a violation of articles 3 and 14 of the European Convention on Human Rights, reflecting that the domestic courts in Spain failed to take into account the applicant's vulnerabilities as an African woman working as a sex worker. By recognising the particular vulnerability of the applicant due to her race, gender and employment status, the European Court of Human Rights introduced for the first time in its jurisprudence an intersectional interpretation of discrimination. In this case, a woman sex worker of Nigerian origin, and a legal resident of Spain, alleged that the Spanish police mistreated her physically and verbally on the basis of race, gender and profession. Two third-party interveners asked the ECtHR to recognise intersectional discrimination.

The ECtHR has also chosen to ignore the impact of intersectionality in some cases of discrimination. For example, the case of *S.A.S v France* addresses a ban on wearing a religious face covering in public. Several third-party interveners highlighted the risk of intersectional discrimination against Muslim women. In its intervention, the Human Rights Centre of Ghent University claimed:

als the empirical research shows, women wearing the face veil who are confronted with a ban on face covering, feel harmed both as believers and as women. The difference in treatment they experience cannot be reduced to either religion or gender, but is the result of a mix of both grounds. The (indirect yet rather explicit, cf. supra) target of the law is not 'all women manifesting their religion in ways that are perceived as extreme or that limit their freedom' – but rather the Islamic sub-category of that group. Indeed, women who join monastic life, even in monasteries that are closed to the outside world, are not the subject of any legal intervention. Nor is the target of the law 'Muslims showing in public a choice for a radically religious lifestyle through the way they look', but only the female subcategory of that group. Indeed, the wearing of Islamic dress and beards by men is not the subject of any criminal law. The discrimination takes place at the crossroads of religion and gender.²²

The ECtHR explicitly acknowledged that the impact of the ban specifically aggrieved Muslim women who chose to wear the full-face veil in public for religious reasons. However, the ECtHR ruled that this consideration did not outweigh the court's view that the ban had an objective and reasonable justification, i.e. the ban would "further women's rights, safety in the public sphere, and social cohesion" and that this objective outweighs the plaintiff's right to private life, freedom of religion, freedom of expression and her right not to be discriminated against.

2.2.3. EU law

Another critical framework for making claims of intersectional discrimination is EU law, administered by the [Court of Justice of the European Union](#) (CJEU). Article 21 of the [EU Charter of Fundamental Rights](#), the instrument that dictates the political, social and economic rights EU citizens and residents have under EU law, is the key provision applying to non-discrimination and explicitly states:

"discrimination based on "sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited".

In addition to the key EU Charter, there are also secondary laws such as directives that prohibit specific forms of discrimination.²³ For example, the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC) both state that implementation should "aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination" in accordance with Article 3(2) of the EC Treaty.



The **Racial Equality Directive** (2000/43/EC) is a critical piece of legislation underlining the relevance of race as a ground of discrimination, that cannot be entirely subsumed by proxies such as ethnicity or skin colour. The Race Equality Directive explicitly prohibits discrimination on the grounds of race and ethnic origin in the context of employment, but also in accessing the welfare system and social security, as well as public goods and services. The directive, which was unanimously adopted by all EU member states in 2000, was a significant expansion of the scope of non-discrimination law at the EU level through the recognition that equal access to areas like education, housing and health are



Recognizing intersectional discrimination as a category of EU anti-discrimination law improves the quality of this body of law and enables the EU's judiciary to confront new forms of intersectional discrimination on grounds of the so-called race and sex suffered by Muslim women²⁵ ■

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important precursors to guaranteeing individuals' access to the employment market. The **Employment Equality Directive**, which was also adopted in 2000, prohibits discrimination on the basis of sexual orientation, religion/belief, age and disability in the area of employment. This directive was an important step in acknowledging categories beyond race and ethnicity as valid grounds for discrimination, and proposals to extend protections to areas beyond employment – as the Race Equality Directive did – are currently being discussed in EU institutions.²⁴

The exclusion of women wearing the headscarf from the labour market is a prominent example of intersectional discrimination on the combined grounds of religion, gender and race and ethnicity. Unfortunately, the Court of Justice of the European Union refuses to extend protection against

discrimination on grounds that are considered “new” categories of discrimination, such as claims asserted by Black or Muslim women that reflect claims involving a combination of several grounds. To date, the CJEU has not invoked Articles 20 (equality before the law) or 21 (non-discrimination) of the EU Charter to provide protection for multiple or intersectional discrimination claims.

2.2.4. International law

At the international level, the complexity of discrimination seems to be increasingly addressed. For example, the UN Committee on the Elimination of Discrimination against Women, a body of experts on women's rights that monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, has stated that increasing awareness

must be given to prohibiting “intersecting forms of discrimination and their compounded negative impact on the women concerned”. In addition, Article 26 of the International Covenant on Civil and Political Rights 1966 (ICCPR) and Article 2 of the International Covenant on Economic, Social and Cultural Rights 1966 (ICESR) use open-ended definitions of discrimination that state:

“the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground ... or other status”.



This catchall language makes space for claims of intersectional discrimination. Similarly, the UN Convention on the Rights of the Child 1989 (CRC) provides the same type of language that opens the door for intersectional claims. Article 23 of the CRC explicitly recognises the problems of children with disabilities but does not refer to further examples. In contrast, the UN Convention on the Rights of Persons with Disabilities 2006 addresses the diversity of people with disabilities, but lacks adequate language to address intersectional discrimination.

The **UN Committee on the Elimination of Racial Discrimination (CERD)** explicitly mentions intersectionality but uses it as a synonym for multiple or double discrimination, which refers to a partial understanding of intersectionality. Paragraph 7 of CERD's General Recommendation No. 32 (2009) reads:

The 'grounds' of discrimination are extended in practice by the notion of 'intersectionality' whereby the Committee addresses situations of double or multiple discrimination – such as discrimination on grounds of gender or religion – when discrimination on such a ground appears to exist in combination with a ground or grounds listed in Article 1 of the Convention.

CERD pays special attention to cases where such multiple forms of discrimination are involved. In its General Recommendation No. 25 (2000), the Committee noted that racial discrimination does not always affect women and men equally or in the same way, and certain forms of racial discrimination directly affect women (e.g. racially motivated rape or forced sterilisation of Roma women). **In an effort to address intersectional forms of discrimination, the Committee has been integrating a gender perspective into its work and also recommending that States parties provide disaggregated data by gender.**²⁶

The importance of framing discrimination in terms of "race" is particularly important with regards to the application of the International Convention on the Elimination of Racial Discrimination (ICERD). "Religion" is not included in the five grounds of discrimination set out in Article 1 of ICERD. Accordingly, CERD observes that discrimination based solely on religious grounds does not fall in the scope of ICERD.²⁷ However, drawing a clear line between ethnic/national origin and religion is not always a simple task. In this regard, CERD has expressed its view that the Committee "would be competent to consider a claim of 'double' discrimination on the basis of religion and another ground specifically provided for in Article 1 of the Convention, including national or ethnic origin".²⁸ At the same time, under ICERD 5(d), State parties have the obligation to ensure that all persons enjoy their right to freedom of thought, conscience and religion, without any discrimination based on race, colour, descent, national or ethnic origin.²⁹ Muslim women wearing the headscarf who are discriminated on the grounds of religion and gender (vs. race and gender) cannot be protected by ICERD. However, the fact that Islam has undergone a racialisation process since the 1980s explains why this type of discrimination cannot be solely attributed to religion.

Encouragingly, some other platforms and declarations of the United Nations also acknowledge the multiple barriers that victims often face. For example, the United Nations' Fourth World Conference on Women (1995), and the UN General Assembly Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerances Concluding Declaration No. 2 (2001),³⁰ explicitly identify how victims can suffer from multiple or aggravated forms of discrimination. While much work still needs to be done, it is clear that the complexity of discrimination, such as multiple claims of discrimination, has now entered the scope of the UN's main bodies.



3

**OVERCOMING GAPS
AND OBSTACLES**

3.1 Equality data on race

A key challenge to operationalising intersectionality is the absence of race-based equality data. Equality data is a necessary tool to understand and combat all types and dimensions of discrimination, especially structural and institutional discrimination.

Data on the demographic makeup of specific sectors help expose discrimination patterns and provide information on the groups in society which are most vulnerable to discrimination and exclusion – and also the most privileged groups. The European Network Against Racism (ENAR) has published several factsheets³¹ highlighting the critical importance of reliable and comparable equality data for developing effective legislation and policies that combat discrimination and ensure equality. However, the staggering reality is that European-wide data are not available to analyse how many people experience discriminatory treatment based on their ethnic or racial origin. In fact, the United Kingdom is the only country in Europe that collects comprehensive equality data about ethnic minorities.³²

Equality data must be compiled to operationalise intersectionality in Europe. To tackle structural inequality holistically, equality data are needed to provide information on race and other categories that may intersect with race. In the absence of robust equality data, identifying and addressing the inequalities that exist becomes difficult. For example, **if equality data substantiates that specific groups of people and/or communities are underrepresented in certain sectors, institutions, or organisations, then it provides a framework to forging a plan to create more inclusive structures and processes.**

A key methodological limitation towards a more intersectional approach is the lack of disaggregated data. For example, there is some evidence that gender mainstreaming programmes and equality measures have been helpful to achieve equal access to higher positions and opportunities for a certain type of women. However, without disaggregated data, it makes it difficult to see what women benefit more than others. Furthermore, national and European institutions do not offer disaggregated data by gender about acts of discrimination and/or violence.³³ For example, discrimination and violence against Muslim women is an acute problem that remains difficult to quantify because hate crime data is not systematically disaggregated across Europe.³⁴ **In the absence of a consistent approach to disaggregated data collection, equality measures are difficult to design reliably. Consequently, taking an intersectional approach in a legal and policy context remains challenging.**³⁵

Despite the tremendous need for equality data, there are many objections to collecting data on race, ethnicity and religion. A common critique is that the process itself is discriminatory because it forces people into static categories that lack flexibility. But above all, the reluctance to collect such data has its roots in Europe's difficult past and experience with the collection of such information. Nazi Germany divided citizens into socially constructed categories in order to alienate them from wider society, denationalise them, and ultimately commit genocide against them. As a result, the discourse about data collection on race is a highly sensitive topic in Europe.

However, such skepticism is based on a fundamental misunderstanding about the process of data collection. **Equality data not only focus on how people self-identify, but also on which categories people are discriminated against.** For example, an individual may not identify as a Muslim but can still be a target of anti-Muslim racism. Accordingly, a certain level of flexibility can be applied to the categories used for equality data collection.

Another misunderstanding surrounding the collection of equality data is that the practice is illegal. This is not the case. Both EU law and national laws in EU member states allow equality data collection as long as the collection is voluntary and conducted according to data protection standards.³⁶ Other civil society organisations, such as Neue Deutsche Organisationen (NDO) and Vielfalt Entscheidet have also provided key principles to collecting anti-discrimination and equality data.³⁷

3.2 Racial equality and justice policies

Bold and swift action is required if we are to address racism in Europe, to ensure that structural oppression of minorities is tackled at a much wider scale. Positive action measures, as foreseen under the EU Race Equality Directive, are necessary to correct structural disadvantages particularly affecting racialised minorities. They can take the form of specific policies aimed at addressing structural inequalities of the most marginalised – especially those at the intersections of different grounds of discrimination – and advance towards substantive equality.

Intersectionality provides an analytical approach, a legal and policy tool, and a theoretical framework to underpin these policies and ensure they are connected with existing protections and frameworks. It is important to consider the design, implementation and impact of policies from an intersectional lens to ensure they benefit all, including racialised groups, and that they do not have a detrimental impact on them and contribute to further racial inequalities. To this end, existing policies and legislation can be routinely screened and reviewed from an equality and intersectional perspective, and measures and practices that disproportionately impact racialised groups should be prohibited and systematically removed from existing policy frameworks (e.g. racial profiling). Meaningful participation of racialised groups at all policy levels is therefore crucial.

Furthermore, an intersectional analysis would strengthen policies that are meant to support marginalised groups. Analysis of policies, such as gender equality policies, show how the specific situation of women at the intersections of race, religion, sexual orientation and gender identity, social class, disability and immigration status, are often overlooked. For example, discrimination, social exclusion, vulnerability due to intersectional discrimination leads to many women of colour being overrepresented in unemployment and precarious, low paid work, carrying with it higher risk of exploitation and abuse. Policies designed to facilitate entry of women into the workforce have increased demand for workers in the domestic care, cleaning and informal sectors, who are often working class women of colour.

3.3 Intersectional discrimination: case studies

Recognising limitations in the conventional anti-discrimination discourse is critical to ensure that laws and policies protect everyone, including minorities within minorities. A key blind spot is that some groups of people are made invisible through one-dimensional laws and policies that rely on explicit and/or intentional acts of discrimination towards a specific group. However, as we have seen earlier, discrimination may take different forms. For example, groups that are victimised by indirect discrimination, especially those whose identities reflect multiple minority groups, are often erased in conventional anti-discrimination frameworks. Because these groups suffer from unequal treatment by laws or policies which are not discriminatory on the surface, they lack meaningful legal or political recourse.

To illustrate the implications of policies and laws that create indirect discrimination, several examples are worth highlighting. It would be impossible to provide an exhaustive list of all types of intersectional discrimination, but a few groups of people particularly prone to intersectional discrimination should nevertheless be briefly mentioned: Black women and Women of Colour,

including migrant women; Muslim, migrant people and people with disabilities in the LGBTQI+ community; women, migrants and People of Colour with disabilities. Socio-economic status (social class) can be treated as a transversal category, alongside race/ethnicity and gender.

The scope of this report does not allow for a comprehensive overview of relevant cases, but three cases illustrate the legal and socio-political aspects of intersectional discrimination particularly well: 1) religious dress bans that disproportionately affect Muslim women wearing headscarves; 2) methods that determine intelligence and/or mental capabilities in education systems, resulting in Roma children being disproportionately diagnosed with special needs and learning disabilities; 3) how the intersection of gender, disability and migration status impacts the lives of migrant women with a disability.

Case study 1: Religious dress restrictions

Across Europe, women who wear headscarves experience discrimination. According to a study conducted in 2016 by ENAR, Muslim women were disproportionately affected by anti-Muslim racism and discrimination.³⁸ This racism is not only expressed on a personal, individual level, but is also legally and politically legitimised.

Religious dress restrictions across Europe are a good example of how structural – direct or indirect – discrimination work to disadvantage Muslim women. According to a report released by the Open Society Justice Initiative in 2018, religious dress restrictions are legally enforced in nine EU states, seven of which have national bans.³⁹ Most often, these restrictions are framed as efforts to maintain the “neutrality” and secularism of the state – *laïcité* in France. The bans are written without reference to any particular community of faith. However, the Muslim headscarf is implicitly targeted by such bans. This almost exclusive focus on Muslim women is rooted in a femo-nationalist⁴⁰ narrative that represents Islam as inherently patriarchal and misogynist and constructs Muslim women as needing redemption. As a result, religious dress restrictions are disproportionately affecting women who wear the headscarf, barring them from employment opportunities and public spaces. **Such an effect is a perfect example of how indirect discrimination operates to disenfranchise minority communities despite the alleged neutrality of the law and an absence of explicit bias against Muslim women.** Furthermore, indirect discrimination against Muslim women has a powerful spillover effect that normalises discrimination in the labour market, thereby extending the application of the law beyond its original scope. For instance, ordinary people on the street or police enforcement take such laws as a pretext to harass women wearing the headscarf.

Recommendations:

- (1) Expose the indirect intersectional discrimination caused by religious dress restrictions through fact-finding studies and surveys. This would be an important step towards ending legally protected forms of discrimination against minority groups such as Muslim women.
- (2) Increase diversity in political decision making and law making bodies, as well as law enforcement and the judiciary to decrease the effect of implicit bias.
- (3) Promote public awareness campaigns which promote alternative narratives about Muslim women and the headscarf, and more broadly on how patriarchal oppression can be addressed beyond the veil.
- (4) Reframe and expand the concept of “neutrality” through an intersectional lens – inclusive and exclusive neutrality – to incorporate a broad range of identities and beliefs. Highlighting the underlying motives and narrative behind *laïcité*, the secular state and neutrality would help understand the discriminatory aspect of these concepts.
- (5) Ensure that the discrimination of Muslim women wearing the headscarf is discrimination on racial grounds, as opposed to religious grounds only. This can be done by highlighting the racialisation process that Islam and Muslim communities have been undergoing in Europe for the past two decades.

Case study 2: Roma children in the education system

The treatment of Roma children in schools across Europe is another example of intersectional discrimination, combining aspects of race/ethnicity, socio-economic status/background and disability. The term "Roma" is an umbrella term for a range of diverse groups and communities that share origins from the Indian subcontinent and who migrated to Europe several centuries ago. The Roma people are currently one of Europe's largest ethnic minorities,⁴¹ despite the tremendous losses suffered by Roma communities during the Genocide of World War II. Roma communities have been subjected to persecution, discrimination, oppression, prejudice and state violence for as long as they have been in Europe. **One specific aspect that makes the discrimination faced by Roma so distinct is the social work angle from which their situation is approached. Roma issues are rarely framed as discrimination, but instead as social issues.** The Roma are represented as a people who need to be educated through social inclusion measures, integrated and assimilated to the dominant culture. Roma people have been subjected to aggressive integration strategies that involved the forced removal of Roma children from their families or assimilation policies delivered through the schooling system for at least two centuries in Europe. In the 20th century, anti-Roma pogroms existed across Eastern Europe, and Roma and Sinti populations were murdered by the National Socialist government during World War II.

The consequences of historical discrimination against Roma people is evident and widespread across modern Europe, but is particularly blatant in the school system. A 1998 report by the European Roma Rights Centre (ERRC) showed that Roma children were routinely subjected to physical, verbal and emotional abuse at the hands of peers and teachers, leading to absences from school that are subject to punishment,⁴² and ultimately drop-out. Moreover, Roma children suffer from institutionalised segregation materialised by their overrepresentation in schools originally designed for children with mental disabilities. "Roma are so fabulously over-represented in such schools that many suspect that, as before, the Romani ethnicity is viewed by schooling authorities as synonymous with social and educational disability".⁴³

Across Europe, little action on a legal or policy level has been taken to counter the entrenched discrimination against Roma people, with the exception of infringement procedures by the European Commission. While the European Court of Human Rights has issued judgments against governments (see *D.H. and Others v. the Czech Republic*, 2007; *Horváth and Kiss v. Hungary*, 2013), these judgments have not been followed by adequate reforms.⁴⁴ Moreover, many countries in the region continue to lack proper implementation of anti-discrimination legislation or the political will to tackle discrimination against Roma people.⁴⁵

Recommendations:

- (1) Train educators, teachers and school personnel on the history of the Roma and on the devastating effects of false and negative stereotypes projected onto young Roma people, to prevent the systematic exclusion of Roma children from conventional schools. The assessment of a child's mental capacity should not be informed by harmful prejudices based on their minority or migrant status. Educators must also be trained to discern that a lack of local language skills and/or the absence of conventional educational and testing backgrounds are not markers of special needs.
- (2) Review, assess and reform educational tests and the diagnosis process used to decide whether children should be admitted to schools for children with special needs from an anti-discriminatory perspective. The placement of children who do not need special measures is detrimental to them, but also to the children who actually need special teaching, as the programme ultimately shifts and no longer caters to the needs of children with mental disabilities.
- (3) Shift the focus of governmental measures towards Roma from social work measures, integration and assimilation to anti-discrimination measures. Anti-discrimination programmes should be applied to Roma people without deviating to integration and assimilation measures. This way, the systemic, institutional and structural roots of their discrimination can be addressed.

Case study 3: Migrant women with disabilities

Migrant women with disabilities experience multiple discrimination because of their gender, race/ethnicity, migration status and disability, which affects different aspects of their lives, particularly in the areas of healthcare, employment, access to information and parenthood. Women with disabilities are more likely to experience violence than women without disabilities. For example, sexualised violence in childhood and adolescence is experienced two to three times more often by women with disabilities.⁴⁶ Also, women who live in institutions and/or whose disabilities require personal hygiene assistance are most acutely affected by such violence. Racial stereotypes and language barriers tend to exacerbate their discrimination and structural exclusion. Women with disabilities tend to be socialised in a way that they will remain permanently dependent on care, limiting their potential and agency.⁴⁷ Such an assumption tends to be reinforced by the restrictions put on people with precarious migration status. In addition to this, patriarchal bias which creates the assumption that a man is there to financially support women, coupled with negative bias towards people with disabilities as less apt and competent as well as negative stereotypes about migrant women lead to limited opportunities for migrant women with disabilities to join the labour market and become self-sufficient.⁴⁸

Moreover, the accessibility of workspaces is an additional barrier for people with disabilities in general, not to mention the racial and sexist prejudices and the administrative restrictions migrant women with disabilities might face. Many employers might say that they are open to employing people with disabilities without realising that the workspace is not accessible to them. The employment rate in Germany in 2013 substantiates this phenomenon: only 40% of women with severe disabilities are employed compared to 43% of men with severe disabilities and 70% of women without disabilities.⁴⁹ As women with disabilities are not given enough opportunities to be financially independent, they often have to rely on other sources of support, be it from the state or from their spouses, whose income is evaluated to determine benefits payments,⁵⁰ or other family members. The lack of intersectional approach to disability rights renders the voice of migrant women and other minorities with disabilities unheard and their specific needs unmet.

Recommendations:

- (1) Introduce gender mainstreaming at all levels of policy making related to people with disabilities to ensure that women are not (re)marginalised by such policies.
- (2) Increase the representation of migrant women with disabilities at all societal levels and in the labour market – including vertical diversity.
- (3) Review and assess migration policies, social policies, family policies and fiscal policies to ensure that the financial dependency of migrant women with disabilities is not exacerbated by policies which rely on traditional patriarchal models.
- (4) Encourage the visibility of migrant women with disabilities in the media to promote inclusion and combat the stigmatisation, negative stereotyping and false representation of people, and in particular women, with disabilities as inherently less competent.
- (5) Make the accessibility of workspaces a top priority in wider efforts meant to increase diversity in the workplace.
- (6) Implement prevention measures to ensure that women and girls with disabilities are protected from abuse. This includes awareness-raising measures among educators, medical staff and families to highlight the particular vulnerabilities of women with disabilities.

3.4 Advocacy goals & policy recommendations

As we have seen throughout this report, the concept of intersectionality can help the fight against discrimination in tremendous ways. First, it broadens the scope and definition of discrimination to include groups of people who tend to be invisibilised in conventional anti-discrimination frameworks. Second, an intersectional approach focuses not only on the individual, but also on the institutional and structural dimensions of discrimination, which widens the range of measures that can be implemented to counter all dimensions of discrimination. Third, it enables us to conceive of discrimination, identities and systems of oppression in intertwined, interconnected ways.

The following recommendations and advocacy goals outline some of the steps that can be taken to bring an intersectional perspective forward in anti-discrimination efforts in Europe and should be considered as parallel solutions to be implemented holistically.

- 1 In order to uncover racial discrimination patterns and to identify the groups that are most disadvantaged/privileged in specific societal sectors and institutions, **equality data on race should be collected** by member states, respecting key principles in line with data protection and fundamental rights standards.⁵¹ Proxies such as religion, migration background, nationality or residency status are not sufficient to capture the full scope of racial discrimination in European countries. Member states should be obliged to collect comparable and reliable equality data disaggregated by race/ethnicity/religion and gender. Intersectionality should be taken into account in equality data collection and analysis.
- 2 The **legal category "race"** must be recognised as an overarching category in all EU member states. The wider anti-race project meant to erase the word "race" from European constitutions should be defeated, as without this legal category, anti-racism efforts will be largely hampered, rendering the application of race-based anti-discrimination legislation difficult when proxies such as religion are used (e.g. International Convention on the Elimination of All Forms of Racial Discrimination). The recourse to "race" as a category also helps counter the effects of false compartmentalisation leading to hierarchies within the wider group of people affected by racial discrimination.
- 3 Advocate for the adoption of the **EU Equal Treatment Directive** proposed in 2008. The proposed directive would expand protection throughout the EU against discrimination on the grounds of age, disability, religion or belief and sexual orientation, to the areas of social protection, healthcare, education, housing and access to goods and services. At present, these four grounds are only covered when it comes to employment and vocational training. This would extend protections set out in the Employment Equality Directive 2000/78/EC to areas beyond employment and vocational training. Intersectional discrimination should be explicitly addressed, ensuring that the combined effects of various grounds of discrimination are taken into account in the wording and scope of the new directive.
- 4 Develop EU standards for **official recording methods for individual forms of discrimination**, including the possibility to list more than one ground of discrimination concurrently. This will enable gender-specific racist discrimination to be captured (e.g. racial profiling towards non-white men or hate crimes against Muslim women wearing the headscarf).

- 5 To counter the **systemic discrimination faced by Muslim women wearing the headscarf** in many EU member states, the European Commission should **initiate infringement proceedings based on the Employment Directive** (2000/78/EC). The grounds of discrimination should be extended to race and ethnicity, in addition to religion and belief due to the process of racialisation undergone by Muslim communities in Europe for the past decades. Infringement proceedings could thus be launched under the Gender Equality Directives and under the Race Equality Directive (2000/43/EC), addressing simultaneously both grounds of discrimination. Notions of “neutrality” underlying principles of secularism and *laïcité* should be critically assessed and reviewed from an anti-discriminatory perspective.
- 6 **Cooperation and common strategies** should be developed between local, national and EU legislative and political bodies and civil society actors working with communities at particular risk of experiencing intersecting forms of discrimination. Consultation mechanisms should be increased at all levels of the law and policymaking process.
- 7 Considering the violence and persecution faced by Roma people in EU member states, including by law enforcement, **policy and legal implementation to protect Roma populations should be strengthened** under the heading of “anti-discrimination” and “anti-racism” instead of “integration”, taking an intersectional approach. Problems facing the Roma have more to do with systemic, structural exclusion with deep historical roots than integration issues inherent to the would-be incompatibility of lifestyles and cultures. Young Roma and Roma women are particularly vulnerable to state violence and systematic exclusion from the conventional school systems and the labour market.
- 8 Ensure that the **EU Framework Decision on combating racism and xenophobia** (2008/913/JHA) is correctly transposed and consistently implemented by member states. Should they fail in this regard, the European Commission should launch infringement proceedings against them, including on failure to investigate racist motivation, particularly against women and other minorities within racialised groups.
- 9 Evidence-based **human rights assessments of public sector regulations enforcing concepts of neutrality**, secularism and *laïcité* should be conducted to uncover indirect discrimination patterns and address the specific forms of intersectional discrimination resulting from such regulations.
- 10 **Intersectional discrimination should be enshrined in the EU legislative framework for anti-discrimination and for gender equality**. Policy measures in these fields should include targeted measures and provisions on intersectional discrimination, acknowledging the combined effects of discrimination on combined and multiple grounds (e.g. gender equality policies and national action plans against racism).
- 11 Combating structural and institutional discrimination without the **introduction of positive action** (*affirmative action*) is not realistic. Advocacy efforts should focus on engaging a constructive debate at EU level about the necessity of quotas. This could include a campaign meant to debunk the myths attached to positive action measures in the European context.



4

CONCLUSION

Increasing interest and recognition of the relevance of intersectionality for anti-discrimination efforts in Europe has led to the emergence of multiple policy responses at national and EU levels. The language adopted in the policy field has preferred the term “multiple discrimination” over “intersectional discrimination”, but the measures brought forward have also increased awareness around the concept of intersectionality. However, the proliferation of panels, studies and programmes around multiple discrimination has not been accompanied by the necessary paradigmatic shift in the wider discourse and policy response to discrimination and systemic inequalities. **The framing of multiple discrimination as discrimination on the basis of multiple, additive grounds was aligned to the implicit focus on individual forms of discrimination. As a result, measures meant to combat multiple discrimination have rarely moved beyond this focus, overlooking major aspects of intersectional discrimination.** In other words, such measures tended to address the tip of the iceberg while failing to tackle the systemic roots of discrimination, mostly materialised by structural and institutional factors.

While recognising the importance of intersectionality is essential, it is also important to refine and broaden our understanding of discrimination. **Moving beyond the victim/perpetrator frame is a prerequisite to operate this change and to understand systemic inequalities as an outcome of discrimination. So far, there has been a relative disconnect between anti-discrimination measures and measures meant to promote equality.** This gap is more prevalent for racial minorities and discrimination on the basis of race than for women and gender equality policies.

Intersectionality can be fully deployed and unleash its full potential when all forms of social inequalities are treated in similar ways and hierarchies between various forms of discrimination are not perpetuated by the measures implemented to combat them.

Discrimination and social inequalities on the basis of gender tend to be addressed primarily by measures which tackle the structural and institutional roots of the problem, namely through gender mainstreaming, gender equality policies and other types of measures that go beyond the victim/perpetrator frame. However, the legal and policy framework on gender equality is

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colour-blind, which means that the specific ways in which Black women and Women of Colour, including migrant women, are affected by gender discrimination and inequality is overlooked. When it comes to discrimination and social inequalities on the basis of race/ethnicity/religion, measures tend to focus on the individual aspect of such discrimination and largely fail to address the structural institutional roots. This is not to suggest that patriarchy and racism work in identical ways and that the responses should be replicated one on one. Rather, we aim to suggest that intersectional discrimination can only be fully understood and effectively addressed if the systemic

dimension of racial discrimination is recentered in policies and laws. In this sense, and as ENAR's factsheet on *The legal implications of multiple discrimination* pointedly notes: “Historically, different approaches to different grounds have developed in an ad hoc way in response to a variety of single focus campaigns without the consistency and coherence that would ideally underpin an effective equality law”.⁵²

With the will to overcome rigid legal and policy structures and space to invoke the need for a more flexible and progressive interpretation of the law, implementing an intersectional approach in anti-discrimination efforts becomes less daunting and more feasible.

ENDNOTES

1. Hill Collins, Patricia & Sirma, Bilge. 2016. *Intersectionality (Key Concepts)*. Polity; Auflage: 1, p. 71.
2. Crenshaw, K. 1991. 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color'. *Stanford Law Review*, 43(6): 1241–1299.
3. Cho, S. 2009. 'Post-Racialism'. *Iowa Law Review*, 94(5): 1589–1650.
4. Cho, S. 2009. 'Post-Racialism'. *Iowa Law Review*, 94(5): 1589–1650.
5. The Romani genocide or the Romani Holocaust – also known as the Porajmos (meaning "the Devouring"), the Pharrajimos ("Cutting up", "Fragmentation", "Destruction"), and the Samudaripen ("Mass killing") – was the effort by Nazi Germany and its World War II allies to commit genocide against Europe's Roma and Sinti people.
6. Césaire, A. 1955. *Discours sur le colonialisme*. Paris: Présence Africaine.
7. Lewis, G. 2013. 'Unsafe Travel: Experiencing Intersectionality and Feminist Displacements'. *Signs: Journal of Women in Culture and Society*, 38(4), p. 880.
8. The report *Ethnic Origin and Disability Data Collection in Europe: Measuring Inequality—Combating Discrimination* is published within the framework of the Equality Data Initiative, a project launched by the Open Society Foundations in collaboration with the Migration Policy Group and the European Network Against Racism to increase awareness within the European Union for the need to collect reliable data for groups at risk of discrimination. Available at: https://www.opensocietyfoundations.org/publications/ethnic-origin-and-disability-data-collection-europe-measuring-inequality-combating#publications_download.
9. Tokenism is the practice of including members of minority groups (on committees, panels; in positions of power etc.) who serve a symbolic purpose to give the outward appearance of inclusiveness and diversity, while the racist status quo within the organisation/institution in question is preserved.
10. In the UK in 2018, of 4,735 professors, over 4,000 are white, black women make up 0.1% of all professors, there are 25 altogether. The tentative guess – due to the lack of equality data – in Germany is that there are 13 black female professors out of 45,000 in total and out of 11,442 women.
11. Bilge, S. 2013. 'Intersectionality Undone: Saving Intersectionality from Feminist Intersectionality Studies'. *Du Bois Review*, 10(2), p. 410.
12. Systemic factors are increasingly taken into account at EU level, as shown by the landmark decision in *D.H. and others v Czech Republic* delivered by the European Court of Human Rights in 2007, deciding that the placement of Roma children in special classes and schools adapted for children with intellectual disabilities based on culturally biased tests amounted to discrimination on the ground of ethnic origin, in violation of the Convention. Since then, the European Commission has launched infringement proceedings against three EU Member States, the Czech Republic (2014), Slovakia (2015) and Hungary (2016), for failure to correctly implement the Racial Equality Directive (2000/43/EC), due to different situations of systemic discrimination and segregation of Roma children in schools.
13. European Network Against Racism. 2017. *Toolkit on Women of Colour in the Workplace*. Available at: <https://www.enar-eu.org/Toolkit-Women-of-colour-in-the-workplace>, p. 6.
14. European Union Agency for Fundamental Rights and Council of Europe. 2018. *Handbook on European Non-discrimination Law*. Luxembourg: Publications Office of the European Union, p.53.
15. European Court of Human Rights. *D.H. and Others v. the Czech Republic* [GC], No. 57325/00, 13 November 2007.
16. European Network Against Racism. 2019. *Data-driven Policing: the Hardwiring of Discriminatory Policing Practices across Europe*. Available at: <https://www.enar-eu.org/IMG/pdf/data-driven-profiling-web-final.pdf>.
17. However, research has shown that people from disadvantaged groups also tend to harbour negative prejudices against their in-group. For example, a black police officer may have negative prejudices against black people and a female teacher may consider that women and girls have lower intellectual aptitudes than men and boys.

18. A Council of Europe protocol is a treaty amending the European Convention of Human Rights.
19. Available at: https://www.echr.coe.int/Documents/Library_Collection_P12_ETS177E_ENG.pdf.
20. See for example, the case *Carvalho Pinto de Sousa Morais v. Portugal* on the basis of age and gender.
21. Article 3 of the ECHR concerns the prohibition of torture, while Article 8 consecrates the right to respect for private and family life.
22. European Court of Human Rights. *S.A.S. v. France*, Application no. 43835/11. Written submission by the Human Rights Centre of Ghent University, p. 7.
23. Secondary EU laws refer to regulations, directives, decisions, recommendations and opinions that are drafted based on the principles and objectives of the EU treaty.
24. European Union Agency for Fundamental Rights and Council of Europe. 2018. *Handbook on European Non-discrimination Law*. Luxembourg: Publications Office of the European Union, p.22.
25. Schiek, Dagmar. 2018. 'On Uses, Mis-uses and Non-uses of Intersectionality before the Court of Justice (EU). *International Journal of Discrimination and the Law*, p. 3.
26. For example, CERD General Recommendations No. 25, paras. 3, 4, 5, 6; No. 29, paras. 11, 12, 13; No. 30, para. 8; No. 32, para. 7.
27. CERD. 2009. Concluding Observations on Colombia. CERD/C/COL/CO/14, para. 18
28. For example, CERD General Recommendations No. 25, paras. 3, 4, 5, 6; No. 29, paras. 11, 12, 13; No. 30, para. 8; No. 32, para. 7
29. See Shirane, Daisuke. 2011. *ICERD and CERD, A Guide for Civil Society Actors*. The International Movement Against All Forms of Discrimination and Racism (IMADR).
30. Available at: https://www.oas.org/dil/afrodescendants_Durban_Declaration.pdf.
31. European Network Against Racism. 2015. Equality Data Collection: Facts and Principles. Available at: https://www.enar-eu.org/IMG/pdf/edc-general_factsheet_final.pdf and European Network Against Racism. 2015. *Combating Inequality and Discrimination in Employment*. Available at: https://www.enar-eu.org/IMG/pdf/edc-business_factsheet_final.pdf.
32. European Network Against Racism. 2015. Equality Data Collection: Facts and Principles. Available at: https://www.enar-eu.org/IMG/pdf/edc-general_factsheet_final.pdf.
33. Šeta, Đermana. 2016. *Forgotten Women: The impact of Islamophobia on Muslim Women*. Brussels: European Network Against Racism (ENAR). Available at: <https://www.enar-eu.org/Forgotten-Women-the-impact-of-Islamophobia-on-Muslim-women>.
34. Ibid.
35. Ibid.
36. European Network Against Racism. 2015. *Equality Data Collection: Facts and Principles*. Available at: https://www.enar-eu.org/IMG/pdf/edc-general_factsheet_final.pdf.
37. The Neue Deutsche Organisationen identify seven key principles to collecting anti-discrimination and equality data: (1) Self-identification of respondents - This means that respondents can choose themselves how they identify instead of being categorised by third-parties or the interviewer. (2) Voluntary participation. (3) Explaining why this data is being collected. (4) Anonymity of the data collection - All data must be collected and analysed anonymously so that the results cannot be traced back to a particular individual. (5) Participation of representatives of groups and communities that will be questioned in data collection, analysis and dissemination - Those communities affected by discrimination are included in the development of categories and questions, e.g. relating to the identification with a disability or an ascribed ethnic group. (6) The possibility to choose several and intersectional identities, grounds of discrimination and externally ascribed identities - These should be analysed intersectionally. (7) Do no harm - Do no harm should be respected in all aspects of equality data collection, analysis, dissemination, etc. One has to make sure that the data collected is being collected solely in order to protect groups and individuals from structural discrimination and that the results will not be exploited.

38. Šeta, Đermana. 2016. *Forgotten Women: The impact of Islamophobia on Muslim Women*. Brussels: European Network Against Racism (ENAR). Available at: <https://www.enar-eu.org/Forgotten-Women-the-impact-of-Islamophobia-on-Muslim-women>.
39. Open Society Justice Initiative. 2018. *Restrictions on Muslim Women's Dress in the 28 EU Member States: Current Law, Recent Legal Developments, and the State of Play*. New York: Open Society Foundations
40. Academic Sara Farris describes femonationalism as the 'instrumentalisation' of migrant women in Europe by right-wing nationalists – and neoliberals. she examines how right-wing nationalists, neoliberals, and some feminists and women's equality agencies, all invoke women's rights to stigmatise Muslim men and advance their own political objectives. She argues that there is an important political-economic dimension to this seemingly paradoxical intersection. See Farris, S. 2017. *In the Name of Women's Rights. The Rise of Femonationalism*. Durham, NC: Duke University Press.
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44. Rorke, Bernard. 2017. *#BetterTogether: Europe must finally call time on school segregation*. European Roma Rights Centre. Available at: <http://www.errc.org/news/bettertogether-europe-must-finally-call-time-on-school-segregation>
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46. Bundesministerium für Familie, Senioren, Frauen und Jugend. 2012. *Lebenssituation und Belastungen von Frauen mit Beeinträchtigungen und Behinderungen in Deutschland*. Bielefeld, Frankfurt, Berlin, Köln: BMFSFJ.
47. Silvia Paierl. 2009. *Gender und Behinderung: Benachteiligungskonstellationen von Frauen mit Behinderung am Arbeitsmarkt*. Graz: Institut für Arbeitsmarktbetreuung und -forschung.
48. Ibid.
49. Bundesarbeitsgemeinschaft der Integrationsämter und Hauptfürsorgestellen. 2018. *Fachlexikon: Frauen, behinderte*. Available at: <https://www.integrationsaemter.de/Fachlexikon/77c39521p/index.html>.
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51. See six principles for the collection of equality data in: European Network Against Racism. 2015. *Equality Data Collection: Facts and Principles*. Available at: https://www.enar-eu.org/IMG/pdf/edc-general_factsheet_final.pdf.
52. European Network Against Racism. 2011. *Factsheet: The Legal Implications of Multiple Discrimination*. p. 13.





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relevance, challenges
and ways forward

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the European Network Against Racism (ENAR)