Standards to Eliminate Compounded Discrimination: The Case of the Intersectionality of ‘Minorities within Minorities’ Or, why Universal Legal Standards Must Engage with the Concept of Culture

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1. Introduction

Human and minority rights law is facing a new challenge with regard to minority standards. The focus this time is on disadvantaged members of minorities, or ‘minorities within minorities’ who are discriminated against not only on the basis of their membership of an identity group but also as a result of being structurally weak and/or vulnerable individuals. The circumstances forcing the human rights discourse to take on discrimination suffered

1 Duerta, European Centre for Minority Issues, Flensburg, Germany.
2 This phrase was coined by Leslie Green, ‘Internal Minorities and their Rights’, in: J. Baker (ed.) Group Rights, Toronto: University of Toronto Press 1994, p. 101–117 and has since been adopted by liberal theorists and philosophers debating illiberal practices within cultural minority groups that oppress minorities within minorities. Expanding the scope of the phrase to include also compounded discrimination against minority members of minorities poses some analytical problems which I will seek to address in this essay.
3 According to Iris Marion Young, structural inequality refers to ‘relative constraints some people encounter in their freedom and material well-being as the cumulative effect of the possibilities of their social position.’ See Young, Inclusion and Democracy, Oxford: Oxford University Press 2000, p. 98. Structure is generally agreed to be one of the most elusive concepts of the social sciences. Most typically it is seen as designating the actual arrangement of individuals and groups into larger entities, i.e. the social facts of society.
4 According to some sociologists, it is furthermore important to differentiate between the concept of weak and the concept of vulnerable. Weak implies lack of resources to cope with sudden, extensive or dramatic changes to the worse of his/her life situation, whereas vulnerable is a person who is in a situation where he/she is in risk of being the object of changes. The person who is resource-weak is thus also vulnerable, whereas the individual who is vulnerable need not necessary be resource weak. See the discussion of Antoinette Hetzler’s theory in: T. H. Malloy and M. Gazzola, The Aspect of Culture in the Social Inclusion of Ethnic Minorities, ECMI Report, No. 60, Flensburg: European Centre for Minority Issues 2006, p. 27–28.
by these individuals include among other the escalation of human rights violations during armed and frozen conflicts as well as in failed states, the increased socio-economic inequality throughout the world, and the allegedly failed multiculturalism policies. Minority members within minorities are identified as women, minors, disabled and gays/lesbians.\(^5\) According to the discourse articulations, minorities within minorities are disadvantaged first as being members of an identity group, such as racial,\(^6\) ethnic, national, religious or linguistic minorities and indigenous groups, and second they are vulnerable due to their social situation, such as gender, being a minor, or having a disability as well as due to sexual orientation. Moreover, minorities within minorities may also experience a third structural disadvantage in terms of poor living conditions, such as being in war zones, refugee camps, rural areas or ghettos. Hence, attention is not only on discrimination with regard to membership of identity groups and social circumstances, but also as a result of structural conditions. This compounded discrimination causes what has been termed ‘triple disadvantage’,\(^7\) or the notion that certain members of minorities suffer discrimination on multiple fronts, such as identity, socio-culture and structure.

This paper seeks to shed light on the complex relation between the human condition causing compounded discrimination and international human and minority rights law. It is particularly concerned with the issue of culture in this relationship. First, I offer a brief overview of some of the theoretical issues related to understanding, regulating and adjudicating compounded discrimination. Next, I give a brief overview of the current international approach to eliminate compound discrimination followed by a discussion of the problems facing universal legal standard-setting in terms of substantive rights of

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5 Includes transsexuals and intersexuals. See Christine Goodwin v. the United Kingdom, 11.7.02, ECHR, No. 28957/95.

6 It is problematic to define racial groups. International law has always mandated a broad definition of the term race so as to encompass all discriminatory acts that the documents aim to proscribe. This is demonstrated in various international documents which address the issue of racial discrimination by referring solely to discrimination on account of ‘race’, without mention of ‘ethnicity’ See, e.g., the United Nations Charter (1945); Art. 2 of the United Nations Universal Declaration of Human Rights (1948); the International Covenant on Civil and Political Rights, (ICCPR) (1966), Art. 2(1) as well as Art. 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

7 Sia Spiliopoulou Åkermark following Delyth Morris defines triple disadvantage as the disadvantages that women suffer firstly by virtue of their gender, secondly by virtue of their membership in a minority, and thirdly by living in peripheral areas, being handicapped or forced into a refugee or migrant status. See Åkermark, Human Rights of Minority Women. A Manual of International Law, Mariehamn: The Åland Islands Peace Institute 2000, p. 12.