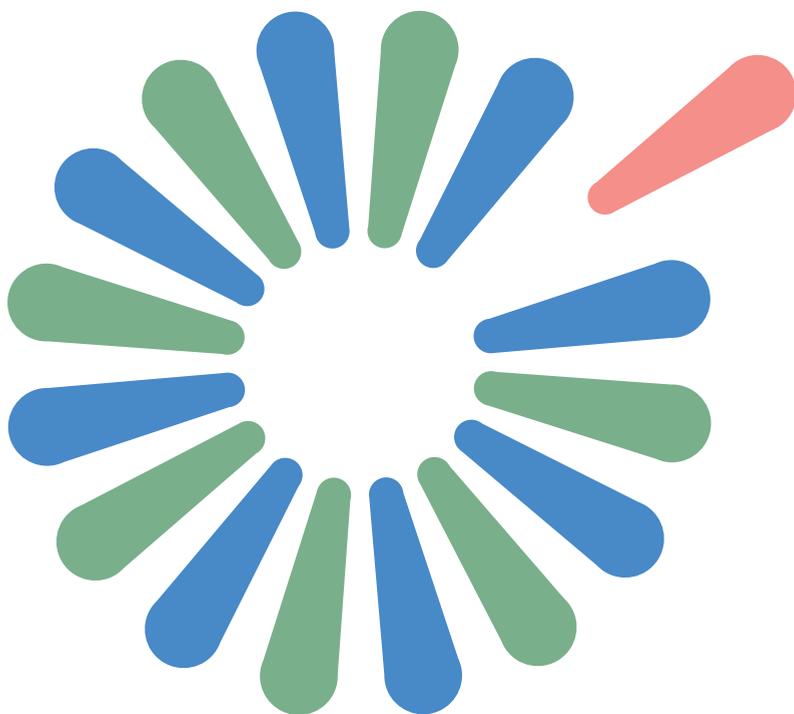


# **GUIDE ON INTERSECTIONAL DISCRIMINATION**

**THE CASE OF ROMA WOMEN**



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With the collaboration of the Roma Women's Group at the  
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# Índex

<b>Introduction</b>	<b>4</b>
<b>Intersectionality and Intersectional Discrimination</b>	<b>6</b>
1. Origins of the concept	6
2. Incorporation of Intersectionality in the Social Sciences	9
3. Intersectional Discrimination	13
4. Is Multiple Discrimination the same as Intersectional Discrimination?	16
<b>Intersectionality in the Right to Equality and Non-discrimination</b>	<b>17</b>
1. Universal, European and Inter-American Systems for the Protection of Human Rights and the European Union	17
2. Main Case Law and Recommendations	21
<b>Intersectional Discrimination against Roma Women</b>	<b>25</b>
1. Naming Intersectional Discrimination against Roma Women	26
2. What if she would have been a Roma Man or a non-Roma Woman?	27
3. Cases of Intersectional Discrimination against Roma Women	28
i. Case “La Nena”	28
ii. Access to Goods and Services: Supermarket	30
<b>Final Reflections and Recommendations</b>	<b>31</b>
<b>Conclusions</b>	<b>32</b>
<b>Bibliography</b>	<b>33</b>
<b>Legal References, Reports, Case Law, Views</b>	<b>40</b>
<b>Decisions of Forced Sterilization against Roma Women</b>	<b>43</b>
<b>Gender Stereotyping</b>	<b>43</b>

# 01

## Introduction

A key element of the defence of human rights is the fight against discrimination. At the Fundación Secretariado Gitano (FSG) we have been working for more than 14 years in the defence of the basic right to equality across Spain, through various lines of action: assisting victims of discrimination and reporting cases of discrimination against Roma people (being a coordinating body for the Service to assist and advise victims of racial and ethnic discrimination<sup>1</sup> since 2015); strategic litigation; training of key professionals; social awareness-raising; cooperative work with other bodies and organisations involved in this area; and monitoring legislation and national and European policies on this issue.

To combat discrimination, we believe it is vital to work for the rights of Roma women to equality and non-discrimination. We therefore offer direct, face-to-face services with trained staff in 28 locations across the country, thanks to the Calí Programme for the Equality of Roma Women<sup>2</sup>, in which 28 equality officers work to promote gender equality and equal opportunities for Roma women and to tackle the discrimination they face. In addition, the FSG has a Roma Women's

Group, acting in a consultative role in the area of gender equality and Roma women, composed of female Roma professionals working for the organisation in various regions.

At the same time, the FSG fights for equality mainly, although not exclusively, through the advancement of Roma women and the prevention of gender-based violence, using the following lines of action: awareness-raising; advice and information services offered both internally and externally; co-responsibility and/or the balancing of personal, work and family life; gender mainstreaming; health promotion; formal education and personal development; social participation; and careers orientation and guidance.

In the area of assistance to victims of discrimination, we highlight cases of everyday discrimination affecting the Roma community, as for example in the 13 annual reports, which the FSG has published to date<sup>3</sup>.

As part of this work, we have documented the discrimination that Roma women suffer. In the Report Discrimination and the Roma Community 2016, out of a total of 154 cases, 149 Roma women were identified as

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1. See: [www.asistenciavictimasdiscriminacion.org](http://www.asistenciavictimasdiscriminacion.org)

2. See: [www.gitanos.org/que-hacemos/areas/equal\\_treatment/cali.html](http://www.gitanos.org/que-hacemos/areas/equal_treatment/cali.html)

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3. The annual reports on *Discriminación y Comunidad Gitana* can be consulted at: [www.gitanos.org/que-hacemos/areas/equal\\_treatment/annual\\_report.html](http://www.gitanos.org/que-hacemos/areas/equal_treatment/annual_report.html)

victims of racial or ethnic discrimination. This information, along with further information given by FSG staff and the experience of Roma women who have approached the FSG, **shows the importance of analysing how interrelated forms of discrimination such as discrimination on the basis of gender and racial or ethnic discrimination operate together, in order to work towards eradicating discrimination against Roma people**<sup>4</sup>.

Among the situations of discrimination that we detect habitually towards Roma women, many cases can be distinguished by a particular and different situation that of Roma men and non-Roma women, placing them in a special situation of vulnerability. **This type of discrimination is known as “intersectional discrimination”.**

We believe that the battle against “the many heads of oppression”, in a sexist anti-Roma society which discriminates against Roma women in a particular way, requires tools which allow us to improve our understanding of the concept of intersectional discrimination, and to identify this type of discrimi-

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4. See: Fundación Secretariado Gitano. 2012. *Guía de intervención social con población gitana desde la perspectiva de género (Guide to Social Action in the Roma Community from a Gender Perspective)*; [www.gitanos.org/upload/80/53/Guia\\_Interv\\_Genero.pdf](http://www.gitanos.org/upload/80/53/Guia_Interv_Genero.pdf)

ination when it operates specifically against Roma women<sup>5</sup>.

To this purpose, within the framework of the FSG project “Identificación, sensibilización y denuncia de la discriminación múltiple” (“Identification, Awareness-raising and Reporting of Multiple Discrimination”), we have held meetings with female Roma professionals from the FSG to share ideas and experiences of this form of discrimination<sup>6</sup>. As a result, we have produced a guide in Spanish named “Guía sobre discriminación interseccional. El caso de las mujeres gitanas” (2017)<sup>7</sup> that we now translate into English as Guide on Intersectional Discrimination. The Case of Roma Women, written from a legal standpoint and with a gender perspective, in order to understand this form of discrimination.

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5. We have taken the idea of the many heads of oppression from the work of Gloria Anzaldúa: “[...] we are especially vulnerable to the many-headed demon of oppression. We are the women on the bottom. Few oppressions pass over us”. Cherríe Moraga and Gloria Anzaldúa (Ed.). 1981 (2002). *This bridge Called my Back. Writing by Radical Women of Color*. United States: Third Woman Press, p. 217.

6. Although the project that gives rise to this guide is entitled “Identification, Awareness-raising and Reporting of Multiple Discrimination”, due to some issues that we address in the section “Is Multiple Discrimination the same as Intersectional Discrimination?”, we prefer to use intersectional discrimination.

7. Available at: [www.gitanos.org/upload/53/27/GUIA\\_DISCRIMINACION\\_INTERSECCIONAL\\_VERSION\\_FINAL.pdf](http://www.gitanos.org/upload/53/27/GUIA_DISCRIMINACION_INTERSECCIONAL_VERSION_FINAL.pdf)

**Although we will see below a detailed description of this concept, we can define intersectional discrimination as a specific type of discrimination, in which different types of discrimination intersect and interact (the intersection of gender and ethnic discrimination, for example). It is not a matter of adding discriminations, but of understanding how the intersection of these discriminations is something specific that requires a particular approach that recognizes these various factors.**

# Intersectionality and Intersectional Discrimination

## 1. Origins of the concept

To be able to understand intersectional discrimination in general and intersectional discrimination against Roma women in particular, we need to look at the origins of the concept of intersectionality. It was the United States of America lawyer Kimberlé Crenshaw who brought the concept of intersectionality into the social sciences from legal studies and black feminism in 1989. However, we can see traces of the idea of intersectionality under the name of multiple or simultaneous oppressions, in earlier claims given by Afro-American women, Chicana women, and additional groups of women considered the “others”.

This group of women reports feeling a double discomfort. On one hand they face racism and class prejudice within the women’s rights movement, while on the other hand they encounter sexism in the civil rights, national and anti-colonial movements. On many occasions they are asked to cease their demands for women and their reports of gender-based violence “for the good” of the group, and in order not to reinforce negative stereotypes of men of their communities. As a result, their experiences are not taken into account, as in the women’s rights

movement has prevailed the experience of women identified as white and the civil rights, national and anti-colonial movements have placed the experience of men at the centre.

This discomfort is eloquently described by Kate Rushin in “The Bridge Poem”, in which she explains how many women struggling for social change become “the bridge” between their families, communities and struggles<sup>8</sup>.

Similarly, some female academics have started to question the way in which the production of knowledge, under the guise of “universality” or “objectivity”, represents women who do not belong to the privileged group as women who need to be saved, depriving them of their capacity for ac-

8. Kate Rushin’s poem begins as follows: “I’ve had enough, I’m sick of seeing and touching Both sides of things Sick of being the damn bridge for everybody Nobody Can talk to anybody Without me Right? I explain my mother to my father my father to my little sister My little sister to my brother my brother to the white feminists The white feminists to the Black church folks the Black church folks To the Ex-hippies the ex-hippies to the Black separatists the Black separatists to the artists the artists to my friends’ parents...” Kate Rushin. n/d. “The Bridge Poem”. In Cherríe Moraga and Ana Castillo (eds.). 1981 (1983). *This Bridge Called My Back. Writings by Radical Women of Color*. New York: Kitchen Table: Women of Color Press.

tion, when there has always existed resistance<sup>9</sup>.

Of some of the claims we have a record and of others we do not. For example, we have the records that in 1831 Maria Stewart publicly pointed out racism and sexism in the USA at a conference, being considered the first woman of African descent to do so publicly<sup>10</sup>. We also know that in 1851, the abolitionist and women's rights activist Sojourner Truth, freed after 40 years as a slave in the USA, gave the speech "Ain't I a Woman?" at the Women's Rights Convention held in Akron, Ohio<sup>11</sup>. In her power-

9. For example: "Bajo los ojos de Occidente: academia feminista y discursos coloniales" ("Under Western Eyes: Feminist Scholarship and Colonial Discourses"). Lilitiana Suárez Navaz and Rosalva Aída Hernández (eds.). *Descolonizando el Feminismo*. Madrid:

10. Ochy Curiel. 2007. "Crítica poscolonial desde las prácticas políticas del feminismo antirracista" ("Postcolonial Criticism from the Political Practices of Anti-racist Feminism"). *Nómadas*, 26, p. 95.

11. For information in Spanish about Sojourner Truth see: Mercedes Jabardo (ed.) 2012. *Feminismos negros. Una antología (Black Feminisms. An Anthology)*. Translation into Spanish by Mijo Miguel, Ana Méndez, Marta García de Lucío, Sergio Ojeda and Esperanza Mojica. Madrid: Traficantes de Sueños, pp. 57-69.

ful speech, she argued that black slave women were not included under the concept of "woman", making it clear that women who were not white were not considered "real" women."<sup>12</sup>

Thus, women from different backgrounds and at different times "had a shared awareness of how their sexual identity combined with their racial identity to make their whole life situation and the focus of their political struggles unique"<sup>13</sup>. We can find the idea of multiple oppressions that have simultaneous impacts in non-hegemonic feminisms. In the 1974 article by the Chicana feminist Anna Nieto-Gómez, entitled "La feminista"<sup>14</sup> ("The feminist"), she stated:

12. bell hooks. (1981) 2015. *Ain't i a woman. Black women and feminism*. New York: Routledge, p. 159.

13. Combahee River Collective. (1977) 2014. "A Black Feminist Statement". *Women's Studies Quarterly* 42 (3/4), p. 271.

14. Maylei Blackwell. (2003) 2008. "Las Hijas de Cuauhtémoc: feminismo chicano y prensa cultural, 1968-1973" ("Cuauhtémoc's Daughters: Chicano Feminism and Cultural Press, 1968-1973"). In Lilitiana Suárez Navaz and Rosalva Aída Hernández (eds.). *Descolonizando el Feminismo*. Madrid: Ediciones Cátedra, p. 355.

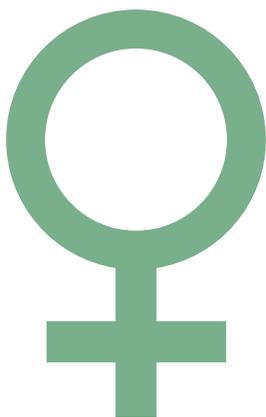


**The Chicana feminist has been calling attention to her socioeconomic oppression as a Chicano and as a woman since 1968. The Chicana feminist has called attention to how racism, sexism, and sexist racism are used to maintain the Chicana woman's social and economic oppression. However, it can be truthfully said that she has been ignored. The Chicana feminist has had to struggle to develop and maintain her identity in spite of the paternal and material tendencies of two social movements to absorb her into their general movements as their own rank and file<sup>15</sup>.**



15. Extract from Anna NietoGómez. 1974. "La feminista" ("The feminist"), *Encuentro Femenil*, cited in Maylei Blackwell. (2003) 2008. "Las Hijas de Cuauhtémoc...", *op. cit.*, p. 355.

In 1977, a Boston-based feminist group called the Combahee River Collective produced “A Black Feminist Statement”. In this important statement they highlight, among other critical issues, how they are especially committed to “those struggles in which race, sex and class are simultaneous factors in oppression”. Similarly, in 1979 in the United Kingdom the Southall Black Sisters organisation emerged to fight for the rights of Black (Asian and African-Caribbean) women in the UK, seeking a life without fear of violence, in which their rights to justice, equality and freedom would be respected<sup>17</sup>.



as a response to the abandonment felt by so many women of color and was conceived by Gloria Anzaldúa. It includes contributions from women who represent a small cross-section of women of color in the USA, including Norma Alarcón, Gloria Anzaldúa, Barbara Smith, Cheryl Clarke, Aurora Levins Morales, Audre Lorde, Pat Parker, Nellie Wong and Mitsuye Yamada.

We can also find the idea of intersectionality in the important work of Angela Davis, bell hooks, Gloria T. Hull, Patricia Bell Scott, Kum-Kum Bhavnani and Margaret Coulson, among other significant writers and activists, before its appearance in the social sciences under the name of “intersectionality”<sup>19</sup>.

Previously, we have traced the idea of intersectionality mainly in work produced in USA. This does not mean that we would not find the same idea in other societies, since there

In 1981 came the book *This Bridge Called My Back: Writings by Radical Women of Color*, edited by the Chicana feminists Cherríe Moraga and Gloria Anzaldúa, and later (in 1988) published in Spanish under the title *Esta Puente, mi espalda. Voces de mujeres tercermundistas en los Estados Unidos*, edited by Cherríe Moraga and Ana Castillo<sup>18</sup>. This book came

17. Southall Black Sisters: [www.southallblacksisters.org.uk/about/about-us](http://www.southallblacksisters.org.uk/about/about-us)

18. Cherríe Moraga and Gloria Anzaldúa (eds.). 1981 (1983). *This Bridge Called My Back: Writings by Radical Women of Color*. New York: Kitchen Table: Women of Color Press; and Cherríe Moraga and Ana Castillo (eds.). 1988. *Esta puente, mi espalda. Voces de mujeres tercermundistas en los Estados Unidos*. San Francisco: Ism Press. As a continuation of this anthology, Gloria Anzaldúa is the editor of the book *Making Face, Making Soul. Haciendo Caras. Creative and Critical Perspectives by Feminists of Color* published in 1990, prompted by the urgent need to allow more voices to be heard after the great impact of *This Bridge Called My Back: Writings by Radical Women of Color*, Gloria Anzaldúa (ed.). 1990. *Making Face, Making Soul. Haciendo Caras. Creative and Critical Perspectives by Feminists of Color*. San Francisco: Aunt Lute Books.

19. See: Angela Davis. 1981. *Women, Race and Class*. New York: Random House; bell hooks. (1981) 2015. *ain't I a woman... op. cit.*; bell hooks. (1984). 2004. “Mujeres negras. Dar forma a la teoría feminista” (“Black Women. Shaping Feminist Theory”). In *Otras inapropiables. Feminismos desde las fronteras*. Translated into Spanish by Rocío Macho Ronco, Hugo Romero Fernández Sancho, Álvaro Salcedo Rufo and María Serrano Giménez. Madrid: Traficantes de Sueños, pp. 33-50; Gloria T. Hull, Patricia Bell Scott and Barbara Smith (eds.). 1982. *All the Women Are White, All the Blacks Are Men, But Some of Us Are Brave. Black Women's Studies*. New York: The Feminist Press; and Kum-Kum Bhavnani and Margaret Coulson. (1986) 2004. “Transformar el feminismo socialista. El reto del racismo” (“Transforming Socialist Feminism. The Challenge of Racism”). In *Otras inapropiables. Feminismos desde las fronteras*. Translation into Spanish by Rocío Macho Ronco, Hugo Romero Fernández Sancho, Álvaro Salcedo Rufo and María Serrano Giménez. Madrid: Traficantes de Sueños, pp. 51-61.

has always been resistance among women who have been considered as “the others”. In different parts of the world and at different times there has always been resistance and questioning of the established social order composed of more than one system of oppression, or rather, of a system with several oppressions that interact and intersect. The idea of intersectionality can also be found in the claims and thoughts of women in India, Indigenous women, Roma women, Latin American women and women of African descent, as well as in the critiques some women have offered regarding the intersection of gender with class.

## 2. Incorporation of Intersectionality in the Social Sciences

In 1989, Kimberlé Crenshaw introduced the concept of “intersectionality” with her work “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics”<sup>20</sup>. In this article, Crenshaw analyses the tendency to consider only one framework in antidiscrimination doctrine, a tendency that is reflected in feminist theory and in antiracist politics.

Crenshaw studies a number of discrimination cases where either gender discrimination or racial discrimination is prosecuted, but never both. This leads to Black women’s experiences being marginalized and left out, given that when speaking of women, it means women identified as whites, and when speaking of Blacks, it means men. This results in only gender discrimination or racial discrimination being seen, with the consequences this has for Black women. Black women often face discrimination that is not the sum, but the intersection, which leads them to be discriminated against not as women or Blacks, but particularly as Black women.



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20. Kimberlé Crenshaw. 1989. “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics”. *University of Chicago Legal Forum*, pp. 139-168.

For Crenshaw, the experience of intersectionality is more than the sum of racism and sexism. This implies that the problem of exclusion cannot be solved simply by including Black women within an existing analytical framework or structure; rather, the whole framework needs to be rethought. For this reason, Crenshaw argues it will be necessary to focus the discourse of discrimination at the intersection.

In 1991, in her article “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color”<sup>21</sup>, Crenshaw indicated that her starting point was an exploration of the intersection between gender and “race”, but that **the concept of intersectionality not only could, but should, be extended to include other factors such as class, sexual orientation, age and color.**

Patricia Hill Collins has also worked within the paradigm of the intersection of oppressions in order to study the experience of Black women, publishing in 1990, just one year after Crenshaw, her book *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment*<sup>22</sup>. For Hill Collins, intersectionality refers to particular forms of intersecting oppressions, and intersectional paradigms remind us that oppression cannot be reduced to one fundamental type: oppressions work together in producing injustice. This author introduces the concept of “matrix

of domination”, which refers to how these intersecting oppressions are actually organized. Each matrix of domination will have a particular arrangement of intersecting systems of oppression, and a particular organization of its domains of power, e.g. disciplinary, structural, interpersonal and hegemonic<sup>23</sup>.

In 2013, the journal *Signs* brought out a special edition entitled “Intersectionality: Theorizing Power, Empowering Theory”, edited by Sumi Cho, Kimberlé Crenshaw and Leslie McCall<sup>24</sup>. The editors explain that what makes an analysis intersectional “is not its use of the term ‘intersectionality’, nor its being situated in a familiar genealogy, nor its drawing on lists of standard citations. Rather, what makes an analysis intersectional –whatever terms it deploys, whatever its iteration, whatever its field or discipline– is its adoption of an intersectional way of thinking about the problem of same-

21. Kimberlé Crenshaw. 1991. “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color”. *Stanford Law Review*, 43 (6), pp. 1241-1299.

22. See: Patricia Hill Collins. 2009. *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment*. New York and London: Routledge Classics. For information in Spanish on Patricia Hill Collins, see: Mercedes Jabardo (ed.) 2012. *Feminismos negros...*, op. cit., pp. 97-131.

23. Patricia Hill Collins. 2009. *Black Feminist Thought...*, op. cit., pp. xii, 21, 139, 218 y 320.

24. Sumi Cho, Kimberlé Crenshaw and Leslie McCall (eds). 2013. “Intersectionality: Theorizing Power, Empowering Theory. *Signs: Journal of Women in Culture and Society*”, 38 (4). This edition of *Signs* brings together work from various disciplines, geographical locations and theoretical perspectives on intersectional studies. Many of the articles included originate from presentations given at the conference on “Intersectionality: Challenging Theory, Reframing Politics, and Transforming Movements” held in Los Angeles in 2010.

ness and difference and its relation to power”<sup>25</sup>.

**The introduction of the concept of intersectionality into the social sciences has had a significant impact on various disciplines, and since its introduction it has been developed by a number of different authors, activists and lawyers in different parts of the world. The concept of intersectionality is a contribution of the non-hegemonic feminisms. This concept is presented as crucial for the defence of women’s human rights, in particular, to fight for equality and non-discrimination for all women.**

In Spain, in 1999 Ruth Mestre I. Mestre was already writing about intersectionality, in an article entitled “Por qué las inmigrantes no trabajan. Breve crítica feminista al derecho de extranjería” (“Why Immigrant Women Don’t Work. Brief Feminist Critique of Immigration Law”):

“Intersectionality goes beyond simply adding together factors which generate social exclusion. In the same way that introducing gender into social analyses implies a change in our way of thinking and analysing relationships, analysing situations in which more than one ‘exclusogen’ appears involves something more than ‘adding together disadvantages’: it has a distinctive dimension because it reveals a particular type of subordination”<sup>26</sup>.

25. Sumi Cho, Kimberlé Crenshaw y Leslie McCall. 2013. “Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis”. *Signs: Journal of Women in Culture and Society*, 38 (4), p. 807.

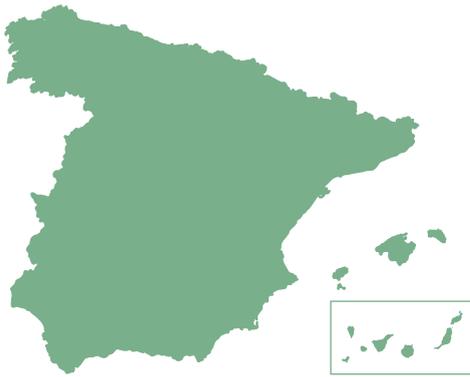
26. Ruth Mestre I. Mestre. 1999. “Por qué las inmigrantes no trabajan. Breve crítica feminista al derecho de

In a pioneering study, Fernando Rey also analysed the concept of intersectional discrimination, referring to it as multiple discrimination. In his 2008 article entitled “La discriminación múltiple, una realidad antigua, un concepto nuevo” (“Multiple Discrimination, an Ancient Reality, a New Concept”), he notes that:

Clearly, the idea that some victims of discrimination suffer that discrimination because of several different characteristics associated with negative stereotypes which are deeply rooted in our society, is not new. On one hand, this makes the wound to their dignity even more profound, while on the other hand, it changes the nature of the injury. This has previously been observed in the area of gender discrimination, which is the more developed in Europe and in Spain. However, the verification had hardly gone further, and the consequences had not been reached yet. In International as well as national law, the approach to the prohibition of discrimination is almost invariably based on the analysis of a single factor of discrimination (race, gender, disability, etc.) and rarely on the basis of a combination of factors. The factors are generally treated as parallel lines that always keep the same distance and never get cut. [...] This approach is changing”<sup>27</sup>.

extranjería”. (“Why Immigrant Women Don’t Work. Brief Feminist Critique of Immigration Law”), *Jueces para la democracia*, 36, p. 23.

27. Fernando Rey Martínez. 2008. “La discriminación múltiple, una realidad antigua, un concepto nuevo”. *Revista Española de Derecho Constitucional*, 84, p. 254.



In Spain, among others, the work of Traficantes de Sueños – Nociones Comunes stands out. This work includes their courses and publications, such as the course entitled “En las fronteras del feminismo. Medio siglo de rupturas” (“On the Borders of Feminism. Half a Century of Ruptures”) and the books *Otras inapropiables. Feminismos desde las fronteras* (Inalienable Others: Feminisms from the Borders) from 2004 and *Feminismos Negros. Una antología* (Black Feminisms. An Anthology) from 2012<sup>28</sup>. In addition, in 2008 the significant work *Descolonizando el Feminismo* (Decolonising Feminism) was published, edited by Liliana Suárez Navaz and Rosalva Aída Hernández Castillo<sup>29</sup>. In 2012 was published the highly relevant *Intersecciones: cuerpos y sexualidades en la encrucijada* (Intersections: Bodies and Sexualities at the Crossroads), bringing together articles selected by Lucas Platero<sup>30</sup>. This book, as Marisa Ruiz Trejo states, proposes “intersectionality and queer critical analysis as methodological tools for approaching non-normative sexualities. The singu-

larity of this approach is that it is conceived as a common thread between academia and activism”<sup>31</sup>. As for journals, in Spain Pikara Magazine excels, which has published various articles which employ intersectional analysis by different authors<sup>32</sup>. Pursuant of the foregoing, it could be said that in Spain, as in other countries, intersectionality and the intersectional analysis of discrimination are on the national agenda and increasingly so, as well on the international and European agendas, as we set out below<sup>33</sup>.

31. Marisa Ruiz Trejo. 2015. “Reseña del libro *Intersecciones: Cuerpos y sexualidades en la encrucijada*”, by R. L. Platero. Universitas Humanística, 79, p. 258.

32. Among others, see: Alexander Ceciliaasson. 2016. “La trampa de la inclusión y el camino de la alianza” (“The Trap of Inclusion and the Path of Alliance”). *Pikara Magazine*, published 31 October 2016. Retrieved 15 December 2017, from [www.pikaramagazine.com/2016/10/la-trampa-de-la-inclusion-y-el-camino-de-la-alianza/](http://www.pikaramagazine.com/2016/10/la-trampa-de-la-inclusion-y-el-camino-de-la-alianza/); Andrea Olea. 2016. “Afrofeministas: ‘Sabemos emanciparnos solas’” (“Afrofeminists: ‘We Know how to Emancipate Ourselves’”). *Pikara Magazine*, published 6 October 2016. Retrieved 15 December 2017, from <https://www.pikaramagazine.com/2016/10/afrofeministas-sabemos-emanciparnos-solas/>; Brigitte Vasallo. 2016. “La islamofobia de género como violencia machista” (“Gender Islamophobia as Machista Violence”). *Pikara Magazine*, published 8 March 2016. Retrieved 15 December 2017, from [www.pikaramagazine.com/2016/03/la-islamofobia-de-genero-corno-violencia-machista/](http://www.pikaramagazine.com/2016/03/la-islamofobia-de-genero-corno-violencia-machista/); Lucas Platero. 2013. “El lesbianismo frente los retos de la interseccionalidad y los cambios neoliberales” (“Lesbianism Facing the Challenges of Intersectionality and Neoliberal Changes”). *Pikara Magazine*, published 18 June 2013. Retrieved 15 December 2017, from [www.pikaramagazine.com/2013/06/el-concepto-lesbiana-y-el-enfoque-interseccional/](http://www.pikaramagazine.com/2013/06/el-concepto-lesbiana-y-el-enfoque-interseccional/)

33. Other works in which we can find the idea of intersectionality or which mention intersectionality in Spain are: Carmen Expósito Molina. 2012. “¿Qué es eso de la interseccionalidad? Aproximación al tratamiento de la diversidad desde la perspectiva de género en España” (“What is this about Intersectionality? Approach to the Treatment of Diversity from a Gender Perspective in Spain”). *Investigaciones Feministas*, 3, pp. 203-222; Alejandra de Lama Aymá. 2013. “Discriminación Múltiple” (“Multiple Discrimination”). *ADC*, vol LXVI, part. I, pp. 271-320; Pilar Cucalón Tirado (ed.). 2014. *Etnografía de la escuela y la interseccionalidad* (*School Ethnography and Intersectionality*). Madrid: Traficantes de Sueños; Marta Cruells López and María Caterina La Barbera. 2016. “¿Qué factores favorecen la incorporación de la interseccionalidad en la praxis jurídica?” (“What Factors favour the Incorporation of Intersectionality into Legal Practice?”) In Marta Cruells López and María Caterina La Barbera (coords.). *Igualdad de género y no discriminación en España: evolución, problemas y perspectivas* (*Gender Equality and Non-Discrimination in Spain*).

28. *Otras inapropiables...*, *op. cit.* and Mercedes Jabardo (ed.) 2012. *Feminismos negros...*, *op. cit.*

29. Liliana Suárez Navaz and Rosalva Aída Hernández (eds.). 2008. *Descolonizando el Feminismo*. Madrid: Ediciones Cátedra.

30. Lucas R. Platero Méndez (ed.). 2012. *Intersecciones. Cuerpos y sexualidades en la encrucijada*. Barcelona: Bellaterra.

### 3. Intersectional Discrimination

The prohibition of discrimination is enshrined in the Universal System for the Protection of Human Rights (United Nations) and in the Regional Systems (European, Inter-American, etc.) in which there exist protected grounds. It is important to highlight that the differential treatment of people in similar situations is only permitted if there is a reasonable and objective justification (positive action). One of the most important international instruments to guarantee women's rights is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Article 1 of CEDAW stipulates that:

**For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field<sup>34</sup>.**

Madrid: Centro de Estudios Políticos y Constitucionales, pp. 529-553; and Miguel S. Valles Martínez, M<sup>a</sup> Angeles Cea D'Ancona and Gloria Domínguez Alegría. 2017. "Discriminación múltiple e inmigración: huellas de discurso institucional, académico y de la población" ("Multiple Discrimination and Immigration: Traces of Institutional, Academic and Population Discourse"). *Revista Española de Investigaciones Sociológicas*, 159, pp. 135-150. In addition, in 2013 a conference was held in Oñati entitled "Congreso Internacional sobre Violencias de Género: Intersecciones" ("International Conference on Gender Violences: Intersections"), organised by Instituto Internacional de Sociología Jurídica de Oñati: [www.iisj.net/iisj/de/descripcion-7494.asp?nombre=7494](http://www.iisj.net/iisj/de/descripcion-7494.asp?nombre=7494).

34. United Nations. 1979. *Convention on the Elimination of All Forms of Discrimination against Women*, article 1.

The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has declared that gender-based violence against women is a form of discrimination<sup>35</sup>.

The International Convention on the Elimination of All Forms of Racial Discrimination states in article 1.1 that:

**In this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life<sup>36</sup>.**

If we take as a starting point the two conventions, discrimination consists in any distinction, exclusion or restriction based on a protected ground, category or factor, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or civil field or in any other field. Discrimination also includes differential treatment of people in similar

35. Committee on the Elimination of Discrimination against Women. 1992. *General Recommendation No. 19 (11th session, 1992). Gender-based persecution and Committee on the Elimination of Discrimination against Women*. 2017. *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*.

36. United Nations. 1965. *International Convention on the Elimination of All Forms of Racial Discrimination* article 1.1.

situations without a reasonable and objective justification.

If we apply an intersectional analysis, we can define intersectional discrimination against women as the distinction, exclusion or restriction which is based on the intersection or interaction of various protected grounds, categories or factors, that occurs uniquely in a given woman, and that has the purpose or effect of nullifying or impairing the recog-

niton, enjoyment or exercise, on an equal footing, of her human rights and fundamental freedoms in the political, economic, social, cultural or civil fields or in any other field. There will be a differential treatment to a particular woman in similar situations, based on the intersection or interaction of various protected grounds, categories or factors, without a reasonable and objective justification.

This intersection will produce a particular type of discrimination which arises from the interaction and intersection of different systems of oppression, which will cause specific women human right's violations. Hence, intersectional discrimination is not about one form of discrimination "plus" another, or of highlighting one form of discrimination "and" another, or of using "etc" to refer to all the different forms of discrimination possible. Intersectional discrimination is much more complex and has a different dimension as it is a specific type of discrimination given by the intersection.

To understand intersectional discrimination, it is necessary to apply a gender perspective. As Marcela Lagarde points out:

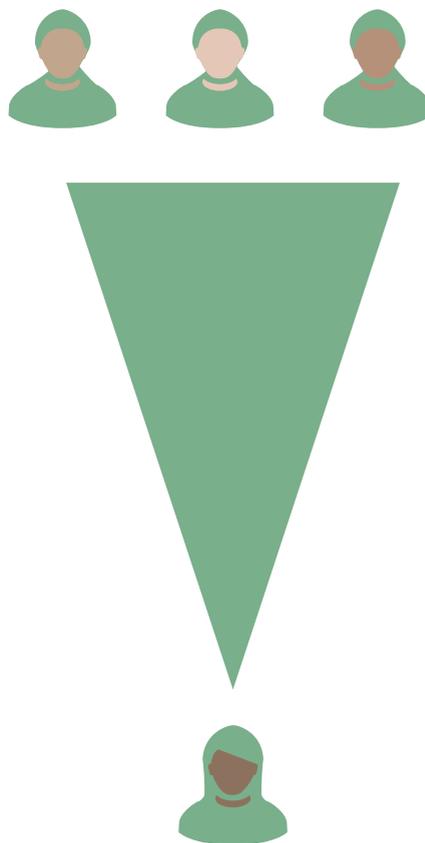
The gender subjects in human rights are women and men, and with respect to them, it is recognized that there is a differentiated impact in their human right's violations. The different impact is understood if analysed from a gender perspective that recognizes that, although men and women experience violations of their human rights, it is specifically against women that a type of discrimination and violence that can be detected is exercised, thus, the affectation is greater in certain cases due to the fact that they are women<sup>37</sup>.

37. Marcela Lagarde. 2010. "Peritaje de la Dra. Marcela Lagarde y de los Ríos" ("Expert Opinion of Dr. Marcela Lagarde y de los Ríos". In Red de Investigadoras por la Vida y la Libertad de las Mujeres (ed.). *Sentencia de la Corte Interamericana de Derechos Humanos y Peritaje del Caso Campo Algodonero vs. México*, Volumen 5, Series por la Vida y la Libertad de las Mujeres. México: Red de Investigadoras por la Vida y la Libertad de las Mujeres, p. 33.

In this regard, we can find in many cases in the basis of intersectional discrimination the use of gender stereotypes about women belonging to historically discriminated groups. These stereotypes are at the same time the cause and the consequence of discrimination and it is very important to identify them<sup>38</sup>. For example, in “A Black Feminist Statement”, the Combahee River Collective identifies the pejorative gender stereotypes relating to Black women: mammy, matriarch, Sapphire –a colloquial term which stereotypically refers to a loudmouthed, arrogant Black woman, with an emasculating attitude towards her boyfriend or husband – whore and bulldagger – which refers colloquially to a masculine, Black lesbian, often associated with the working class or with a prison settings<sup>39</sup>.

At a domestic level, the prohibition of discrimination is stipulated in each country’s Constitution and legislation. In Spain it is established in article 14 of the Spanish Constitution. We can trace the concept of intersectionality in the Constitutional Act 3/2007 of 22 March for Effective Equality between Women and Men, which states in article 20, c) that “when formulating their studies and statistics in their endeavour to ensure the effectiveness of the provisions of the present Act and of the integration of the gender perspective in their ordinary activities, public authorities will [...] c) Design and introduce the indicators and mechanisms required to ascertain the effect of other variables whose concurrence

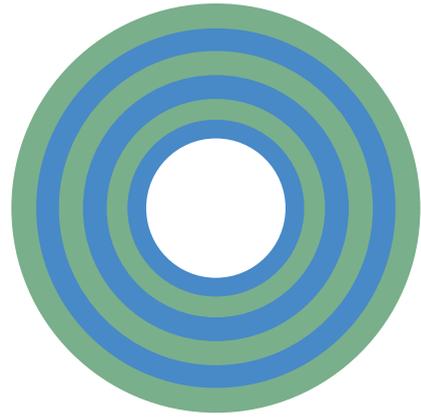
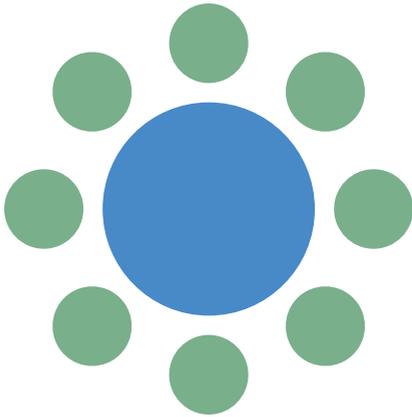
generates multiple discrimination in the different domains where actions is taken”<sup>40</sup>.



38. States’ obligation to eliminate gender stereotypes are stipulated in articles 2, f); 5, a) and 10, c) of the CEDAW and in articles 12, l) and 14, l) of the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence “Istanbul Convention”*.

39. Combahee River Collective. (1977) 2012. “A Black Feminist...”, *op. cit.*, p. 273.

40. Spanish Constitution and *Constitutional Act 3/2007 of 22 March for Effective Equality between Women and Men*.



#### **4. Is Multiple Discrimination the same as Intersectional Discrimination?**

As Fernando Rey Martínez has indicated in his work aforementioned: “In the Anglo-Saxon sphere the word <<intersectional>> is in common use, but in European non-Continental Law, <<multiple>> is preferred”<sup>41</sup>.

The use of one term or another in Spanish has also depended on translation, and there has been a certain conceptual confusion, to which work done within the European region framework has contributed by conflating the concepts of multiple, combined and intersectional discrimination<sup>42</sup>.

At the FSG we have decided to employ the concept of intersectional discrimination, despite the fact that the project giving rise to this guide is called “Identification, Awareness-raising and Reporting of Multiple Discrimination”. This decision reflects the recent development of the concept of intersectional discrimination in international hu-

man rights law and in some regional systems, as will be explained further.

**It has been stressed that multiple discrimination would be different from intersectional discrimination, given that “multiple” refers to varied, in many ways, many or numerous, and does not reflect the main characteristic of intersectional discrimination: intersection. Intersectional discrimination implies that there are not many or numerous discriminations or that it is not a question of adding, but of identifying the specific discrimination. This is one of our aims respecting the case of Roma woman, who face a particular and different discrimination from the discrimination faced by Roma men or non-Roma woman.**

41. Fernando Rey Martínez. 2008. “La discriminación múltiple...”, *op. cit.*, p. 267.

42. See: *Ídem*.

## Intersectionality in the Right to Equality and Non-discrimination

### 1. Universal, European and Inter-American Systems for the Protection of Human Rights and the European Union

In the Universal, European and Inter-American Systems for the Protection of Human Rights and in the European Union, the intersectionality development is linked to the right to equality and non-discrimination. On many occasions it is possible to trace the idea of intersectionality under the name of multiple discrimination, combined discrimination, double discrimination or triple discrimination.

Within the framework of the Universal Human Rights System, the first document to recognise that a multiplicity of factors can lead to discrimination against women is the Beijing Declaration and Platform for Action of 1995<sup>43</sup>.

The Committee on the Elimination of Racial Discrimination states in its General Recommendation XXV of 2000 regarding the dimensions of social

discrimination related to gender, that “racial discrimination does not always affect women and men equally or in the same way” and in its General Recommendation XXVII of 2000 regarding discrimination against the Roma, it indicates that **“Roma women [...] are often victims of double discrimination”**<sup>44</sup>.

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, also known as the “Durban Conference” of 2001 and in which Kimberlé Crenshaw participated in preparing, discussed multiple discrimination on several occasions and the intersection of discrimination. This was a novelty in international law at that time<sup>45</sup>.

44. Committee on the Elimination of Racial Discrimination. 2000. *General Recommendation No. XXV regarding the Gender Related Dimensions of Racial Discrimination* and the Committee on the Elimination of Racial Discrimination. 2000. *General Recommendation No. XXVII regarding discrimination against Roma*.

45. United Nations. 2001. World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration.

43. United Nations. 1995. *Beijing Declaration and Platform for Action*.

The CEDAW Committee has included intersectionality in its General Recommendations, Concluding Observations to States and Views on individual communications. In particular, General Recommendation No. 25: Article 4, paragraph 1, of the Convention (temporary special measures) of 2004 provides that:

“Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them<sup>46</sup>.”

**Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention and General Recommendation No. 25<sup>47</sup>.**

Additionally, CEDAW Committee's 2010 General Recommendation N° 28 on the core obligations of States parties under article 2 of CEDAW, establishes that:

In its General Recommendation N° 33 on women's access to justice (2015), CEDAW Committee notes intersec-

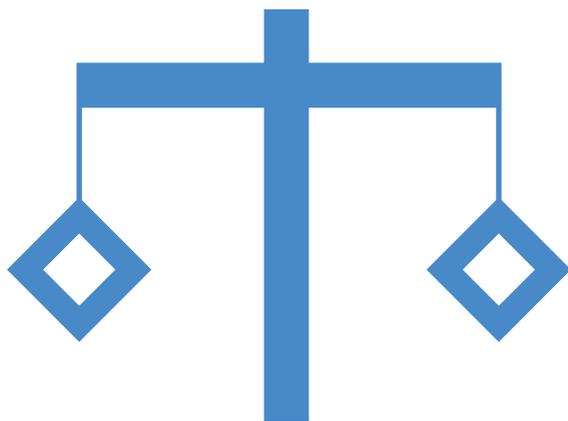
46. Committee on the Elimination of Discrimination against Women. 2004. *General Recommendation No. 25 on temporary special measures (article 4, paragraph 1 of the Convention on the elimination of all forms of discrimination against women)*, paragraph 12.

47. Committee on the Elimination of Discrimination against Women. 2010. *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, paragraph 18.

ting or compounded forms of discrimination, pointing out a link between obstacles and restrictions that impede women from realizing their access to justice on the basis of equality and factors such as intersecting or compounded discrimination. Some of the ground for intersecting or compounded discrimination given by CEDAW Committee in this recommendation include ethnicity, indigenous or minority status, color, socioeconomic status, religion or belief, political opinion, national origin, age, health status, disability and identity as a lesbian, bisexual or transgender woman or intersex person<sup>48</sup>.

Committee's General Recommendation No. 35 of 2017 on gender-based violence against women, updating General Recommendation No. 19, refers to intersecting forms of discrimination<sup>49</sup>.

**Within the Council of Europe framework, the ECRI General Policy Recommendation No. 13 on Combating Anti-Gypsyism and Discrimination against Roma (2011) recommends that, in order to combat anti-Gypsyism and discrimination against Roma, the governments of member States should ensure the advancement of Roma women and of their rights, and combat “the multiple discrimination which they may face”<sup>50</sup>.**



Within the European Union, the following European Commission documents have worked intersectional discrimination: “Tackling Multiple Discrimination. Practices, Policies and Laws” (Danish Institute for Human Rights, for the Directorate-General of Employment, Social Affairs and Equal Opportunities at the European Commission), 2007; “A Comparative Analysis of Gender Equality Law in Europe” (gender equality law experts of the European Equality Law Network), 2015; and “Intersectional Discrimination in EU Gender Equality and Non-Discrimination Law” (European Network of legal experts in gender equality and non-discrimination), 2016<sup>51</sup>.

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48. Committee on the Elimination of Discrimination against Women. 2015. *General Recommendation No. 33 on women's access to justice*, paragraphs 3 and 8.

49. Committee on the Elimination of Discrimination against Women. 2017. *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*.

50. European Commission against Racism and Intolerance. 2011. *ECRI General Policy Recommendation No. 13 on Combating Anti-Gypsyism and Discrimination against Roma*, paragraph 17, c).

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51. European Commission. 2007. *Tackling Multiple Discrimination. Practices, Policies and Laws*; European Commission. 2015. *A Comparative Analysis of Gender Equality Law in Europe*, and European Commission. 2016. *Intersectional Discrimination in EU Gender Equality and Non-Discrimination Law*. Sandra Fredman.

Regarding Directives, European Union legislation against discrimination was restricted until year 2000 to discrimination on the grounds of sex or nationality among European Union nationals. Since 2000, it includes discrimination on the grounds of racial or ethnic origin, disability, sexual orientation, religion, belief and age<sup>52</sup>. In particular, Directive 2000/43/EC Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin states

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52. European Commission. 2016. *Intersectional Discrimination*, op. cit., p. 62.

that “women are often the victims of multiple discrimination”<sup>53</sup>.

The Inter-American Human Rights System, made up of two bodies: Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR), has the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belén do Pará” of 1994, which includes the idea of intersectionality in article 9:

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53. European Union. 2000. *Directive 2000/43/CE of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin*, paragraph 14.



**With respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom<sup>54</sup>.**



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54. Organization of American States. 1994. *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belém do Pará”*, article 9.

The IACHR has given special attention to the especially vulnerable situation of some women facing violence and discrimination in its country, thematic and merits reports<sup>55</sup>.

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55. See, for example: Inter-American Commission on Human Rights. 2011. *Access to Justice for Women Victims of Sexual Violence: Education and Health*. Thematic Report, OEA/Ser.L/V/II, Doc. 65; Inter-American Commission on Human Rights. 2011. *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*. Thematic Report, OEA/Ser.L/V/II, Doc. 63, and Inter-American Commission on Human Rights. 2011. *The Situation of People of African Descent in the Americas*. Thematic Report, OEA/Ser.L/V/II, Doc. 62.

## 2. Main Case Law and Recommendations

In CEDAW Committee's work, we can find the idea of intersectional discrimination in the views it has issued in the cases of *A.S. v. Hungary*, *Jallow v. Bulgaria*, *S.V.P. v. Bulgaria*, *Kell v. Canada*, *R.P.B. v. Philippines* and *M.W. v. Denmark*. In *A.S. v. Hungary* (2006) **the CEDAW Committee decided that the rights of the Roma woman A.S., subjected to forced sterilization** in a public hospital, were violated<sup>56</sup>.

In *Jallow v. Bulgaria* (2012) the CEDAW Committee found that the State had failed to effectively protect a woman of Gambian nationality who faced physical, psychological and sexual violence from her husband, who also mistreated their daughter. The Committee recommended the State to provide for appropriate and regular training for judges, prosecutors, the staff of the agency for child protection and law enforcement personnel in a gender-sensitive manner, having particular regard to multiple discrimination<sup>57</sup>.

In *S.V.P. v. Bulgaria* (2012) the CEDAW Committee established that the State did not act with due diligence in

a case of sexual abuse of a girl<sup>58</sup>. In *Kell v. Canada* (2012) the CEDAW Committee determined that an indigenous woman had suffered intersectional discrimination and that the State had violated her right to property in equality<sup>59</sup>. In *R.P.B. v. Philippines* (2014) the CEDAW Committee found the State responsible for violating the rights of a deaf and mute girl of 17 years old who was raped, and recommended that the State should ensure that all criminal proceedings involving rape and other sexual offences are conducted in an impartial and fair manner and free from prejudices or stereotypical notions regarding the victim's gender, age and disability<sup>60</sup>.

Finally, in *M.W. v. Denmark* (2016) the CEDAW Committee concluded that a survivor of gender-based violence did not enjoy equal treatment in matters relating to her children and took into consideration the woman's allegations that she had been discriminated against as a woman and as a foreign national<sup>61</sup>.

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56. Committee on the Elimination of Discrimination against Women. *A.S. v. Hungary*. Communication No. 4/2004, 29 August 2006. See more decisions and judgements in sterilization cases in the bibliography at the end of this Guide.

57. Committee on the Elimination of Discrimination against Women. *Jallow v. Bulgaria*. Communication No. 32/2011, 28 August 2012.

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58. Committee on the Elimination of Discrimination against Women. *S.V.P. v. Bulgaria*. Communication No. 31/2011, 24 November 2012.

59. Committee on the Elimination of Discrimination against Women. *Kell v. Canada*. Communication No. 19/2008, 26 April 2012.

60. Committee on the Elimination of Discrimination against Women. *R.P.B. v. Philippines*. Communication No. 34/2011, 12 March 2014.

61. Committee on the Elimination of Discrimination against Women. *M.W. v. Denmark*. Communication No. 46/2012, 21 March 2016.

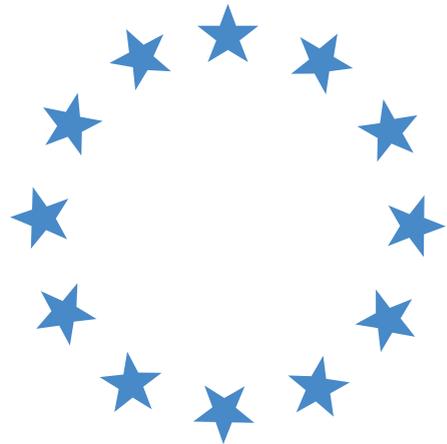
Regarding the European Court of Human Rights (ECHR), one of the most important decisions where we can trace the idea of intersectionality is the judgment of the Case of *B.S. v Spain* (2012). The ECHR found that the Spanish State did not effectively investigate allegations of inhumane and degrading treatment by police to a Nigerian woman in prostitution with a legal residence in Spain. The Court considered “that the decisions made by the domestic courts failed to take account of the applicant’s particular vulnerability inherent in her position as an African woman working as a prostitute”<sup>62</sup>.

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62. European Court of Human Rights. 2012. *Case of B.S. v. Spain*. Application no. 47159/08, 24 July 2012. [fra.europa.eu/en/databases/anti-muslim-hatred/node/1634](http://fra.europa.eu/en/databases/anti-muslim-hatred/node/1634)

There is another important judgment by ECHR, where we can trace the idea of intersectionality, the Case of *Carvalho Pinto de Sousa Morais v. Portugal* (2017). The applicant is a woman who had suffered severe harm as a result of medical negligence and who saw her compensation reduced by domestic courts in the basis of arguments such as “it should not be forgotten that at the time of the operation that plaintiff was already 50 years old and had two children, that is, an age when sex is not as important as in younger years” and that she “probably only needed to take care of her husband”. The Court determined that her age and sex “appear to have been decisive factors in the final decision, introducing a difference of treatment based on those grounds”<sup>63</sup>.

Within the Inter-American Human Rights System, we can find the first decision that applies an intersectional



approach to discrimination in the IACtHR judgment of the Case of *Gonzales Lluy et al. v. Ecuador* (2015), when the Court analyses the right to education of Talía Gabriela Gonzales Lluy, who was infected with HIV when she was three years old and received a blood transfusion from the Red Cross Blood Bank, the Court determined that:

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63. European Court on Human Rights. 2017. *Carvalho Pinto de Sousa Morais v. Portugal*. Application no. 17484/15, 25 July 2017.



The Court notes that, in Talía’s case, numerous factors of vulnerability and risk of discrimination intersected that were associated with her condition as a minor, a female, a person living in poverty, and a person living with HIV. The discrimination experienced by Talía was caused not only by numerous factors, but also arose from a specific form of discrimination that resulted from the intersection of those factors; in other words, if one of those factors had not existed, the discrimination would have been different. Indeed, the poverty had an impact on the initial access to health care that was not of the best quality and that, to the contrary, resulted in the infection with HIV. The situation of poverty also had an impact on the difficulties to gain access to the education system and to lead a decent life. Subsequently, because she was a child with HIV, the obstacles that Talía suffered in access to education had a negative impact on her overall development, which is also a differentiated impact taking into account the role of education in overcoming gender stereotypes. As a child with HIV, she required greater support from the State to implement her life project. As a woman, Talía has described the dilemmas she feels as regards future maternity and her interaction in an intimate relationship, and has indicated that she has not had appropriate counseling. In sum, Talía’s case illustrates that HIV-related stigmatization does not affect everyone in the same way and that the impact is more severe on members of vulnerable groups.

Based on all the foregoing, the Court concludes that Talía Gonzales Lluy suffered discrimination derived from her situation as a person living with HIV, a child, a female, and living in conditions of poverty. Consequently, the Court considers that the Ecuadorian State violated the right to education of Talía Gonzales Lluy contained in Article 13 of the Protocol of San Salvador, in relation to Articles 19 and 1(1) of the American Convention<sup>64</sup>.



Along with these decisions, the CEDAW Committee and the IACHR have carried out inquiries and issued reports applying an intersectional approach. Among the proceedings carried out by CEDAW Committee, the Committee can conduct an inquiry under article 8 of the Optional Protocol to the CEDAW into alleged systematic or grave violations of rights guaranteed under CEDAW<sup>65</sup>. The first inquiry and report under article 8 was in regard to the abduction, rape and murders (femicide) of women in Ciudad Juárez, Chihuahua, in Mexico (2005). The Committee noted that the victims were young women in a

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64. Inter-American Court of Human Rights. 2015. *Case of Gonzales Lluy et al. v. Ecuador*, (Preliminary Objections, Merits, Reparations and Costs), Judgment of September 1, 2015, Series C No. 298, paragraphs 290 and 291.

65. United Nations. 1999. *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*.

position of particular vulnerability and poverty<sup>66</sup>.

Another important inquiry under article 8 we would like to highlight, is the one that analyses the situation of missing and murders (femicide) of Indigenous women and girls in Canada (2015). The CEDAW Committee recommended the Canadian State to combat violence against indigenous women, to improve the socioeconomic conditions of Indigenous women, to overcome the legacy of the colonial period and to eliminate discrimination against Indigenous women. The Committee also recommended carrying out a national public inquiry and creating a plan of action.

In the report, the Committee emphasised the intersectional discrimination suffered by Indigenous women in Canada, underlining how this specific discrimination increases the risk of violence and heightens the adverse consequences of violence when it occurs.

The Committee also identified gender stereotypes about Indigenous women and considered that gender stereotyping is persistent in Canadian society and is institutionalized within the administration of the State. These stereotypes included portrayals of Indigenous women as prostitutes, transients or runaways and of having a high-risk lifestyle, and an indifferent attitude towards reports of missing Indigenous women. These stereotypes are linked to the inadequate response of the authorities to the disappea-

rances and murders (femicides)<sup>67</sup>. This report by the CEDAW Committee offers a very important analysis of the intersectional discrimination suffered by Indigenous women and girls in Canada.

Also, the IACHR released in 2014 a report entitled “Missing and Murdered Indigenous Women in British Columbia, Canada”<sup>68</sup>. The IACHR carried out an intersectional analysis of the case and stated, for example, that:

**As a consequence of this historical discrimination, the IACHR understands that indigenous women and girls constitute one of the most disadvantaged groups in Canada. Poverty, inadequate housing, economic and social relegation, among other factors, contribute to their increased vulnerability to violence. In addition, prevalent attitudes of discrimination – mainly relating to gender and race – and the longstanding stereotypes to which they have been subjected, exacerbate this vulnerability<sup>69</sup>.**

66. Committee on the Elimination of Discrimination against Women. 2005. *Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention and reply from the Government of Mexico*. CEDAW/C/2005/OP.8/MEXICO, 27 January 2005.

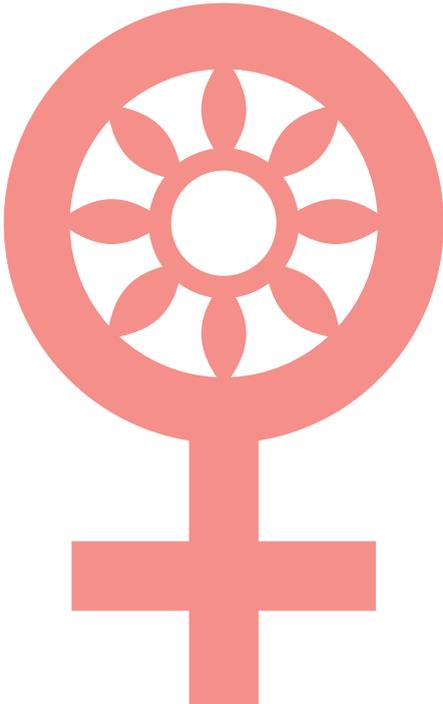
67. Committee on the Elimination of Discrimination against Women. 2015. *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*. CEDAW/C/OP.8/CAN/1, 30 March 2015.

68. Inter-American Commission on Human Rights. 2014. *Missing and Murdered Indigenous Women in British Columbia, Canada*. OEA/Ser.L/V/II., DOC. 30/14.

69. *Ibidem.*, paragraph 8.

# 04

## Intersectional Discrimination against Roma Women



In Roma feminism, we can also find the idea of intersectionality and claims of the specific form of discrimination which Roma women face. For example, there is the work and activism of Nicoleta Bitu, Angéla Kóczé, Enikő Vincze, Ethel C. Brooks, Carol Silverman, Debra L. Schultz, Petra Gelbart, Alexandra Oprea, Soraya Post and Vera Kurtic. In Spain, for many years now, organizations of Roma women activists have been highlighting the multiple and intersectional discrimination suffered by Roma women, and several Roma feminism congresses have been held<sup>70</sup>.

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70. "Jornadas Valencianas sobre feminismo romaní" ("Valencian Congress on Roma Feminism"). *Baxta/o's Blog*, published 12 November 2017. Retrieved 15 December 2017 from [baxtalo.wordpress.com/2017/11/12/reportaje-jornadas-valencianas-sobre-feminismo-romaní/](http://baxtalo.wordpress.com/2017/11/12/reportaje-jornadas-valencianas-sobre-feminismo-romaní/)

## 1. Naming Intersectional Discrimination against Roma Women

The specific discrimination faced by Roma women is particular and different from the discrimination suffered by Roma men and non-Roma women, placing Roma women in a position of vulnerability. In the words of the IACtHR regarding the Case of *Gonzales Lluy et al. v. Ecuador*, this discrimination is caused not only by numerous or multiple factors, such as being a woman or Roma. This is a specific form of discrimination resulting from the intersection of those factors. If one of these factors does not exist, e.g. being a Roma man or a non-Roma woman, the discrimination would have been different<sup>71</sup>.

Roma women face discrimination both within and outside their communities. They are expected to fulfil certain gender roles, given that the global patriarchal system affects all communities and human groups. Outside their communities, there is a negative social imaginary and a series of stereotypes about Roma women.

While not the only one, the interaction between gender and ethnicity constitutes one of the main interactions within discrimination against Roma women<sup>72</sup>. In addition, due to the lack of equal opportunities and access to education and employment on equal conditions, some Roma women are in a situation of poverty.

One of the concerns for this specific form of discrimination that we identify is the violation of more than one Roma women's right. This is related to the obstacles they will face for their rights to be respected and guaranteed and to access State institutions seeking for truth, justice and reparation when their rights are vulnerated.

The areas in which we detect a greater number of experiences of this form of discrimination are in the goods and services, health, education and employment.

We consider that the main obstacles to identifying this specific form of discrimination against Roma women are related to ignorance and the normalization of this discrimination, as well as the lack of training and of political will to identify and eradicate it. The internalization of systems of oppression such as sexism and racism also plays a crucial role in the reproduction of intersectional discrimination against Roma women in society and also by State institutions.

71. Inter-American Court of Human Rights. 2015. *Case of Gonzales Lluy... op. cit.*, paragraph 290.

72. For example, age and geographical location can also be identified as factors, along with gender identity, sexual orientation and disability.

## **2. What if she would have been a Roma Man or a non-Roma Woman?**

One way to identify intersectional discrimination against Roma women is to exchange the Roma woman facing discrimination for a Roma man

or non-Roma woman. This will allow us to analyse the configuration of this specific discrimination against Roma women. Thus, when we find a situation of discrimination against a Roma woman and we suspect it may be intersectional discrimination, we can ask the following questions:

- **If the person would have been a Roma man, would she have faced the same discrimination?**
- **If the person would have been a non-Roma woman, would she have faced the same discrimination?**
- **Is there a differential treatment that is neither objectively nor reasonably justified?**
- **What are the reasons for the differential treatment?**

If, as part of our answers, a Roma man would not have faced the same discrimination because the reason for the discrimination would not have been the same and a non-Roma woman would not have faced this discrimination either, then we are dealing with intersectional discrimination against a Roma woman. We may also consider if we are dealing with a distinction, exclusion or restriction that affects Roma women disproportionately or mainly.

In addition to these questions, we can try to find the arguments in the basis of the discrimination and frame the situation in the context in which the events took place to find out if we are dealing with an isolated case or if there is a systemic or structural discrimination against Roma people, women and Roma women in Spain.

### 3. Cases of Intersectional Discrimination against Roma Women

As examples of intersectional discrimination against Roma women in Spain, we have selected the Case “La Nena”

and the cases occurring in the area of access to goods and services; specifically, supermarkets.

#### i. Case “La Nena”

**Facts:** María Luisa Muñoz is a Roma woman who married Mariano Dual according to the traditions of her community, in a Roma wedding ceremony in 1971. From that date they were considered as a marriage. Although they did not register their marriage in the Civil Registry, they had a “Libro de Familia” (Family Book, an official document issued by the Ministry of Justice in Spain) and were officially recognized as a large family, having six children together.

María Luisa Muñoz Díaz was dedicated to the care of their children and husband, without working outside their home and economically depending on her husband’s income. Her husband contributed to Social Security for 19 years. When her husband died in 2000, María Luisa Muñoz was denied her widow’s pension on the grounds that she was not spouse of the deceased and that she had not been married outside the Roma wedding ceremony, despite the absence of any legal impossibility to do so.

She was represented by FSG and took her case to the Constitutional Court, which determined she was not discriminated. She continued her struggle and applied before de ECHR. In its judgement, the European Court found disproportionate that the Spanish

State did not recognized the effects of her Roma marriage and concluded that denying her pension constituted discrimination<sup>73</sup>. However, the ECHR lost the opportunity to rule on the intersectional discrimination against María Luisa Muñoz Díaz as a Roma woman<sup>74</sup>.

**Problem:** She is denied a widow’s pension.

**Arguments:** “She was not the spouse of the deceased” and “she had not contracted marriage outside the Roma wedding ceremony despite the absence of any legal impossibility to do so”.

**Questions:** If she would have been a Roma man, would she have faced the same discrimination? If she would have been a non-Roma woman, would she have faced the same discrimination? Is there a differential treatment that is neither objectively nor reasonably justified? What are the reasons for the differential treatment?

Due to the gender division of labour in our society and the fact that it is con-

73. European Court of Human Rights. 2009. *Case of Muñoz Díaz v. Spain*. Application No. 49151/07, 8 December 2009. [www.legal-tools.org/doc/003142/pdf/](http://www.legal-tools.org/doc/003142/pdf/)

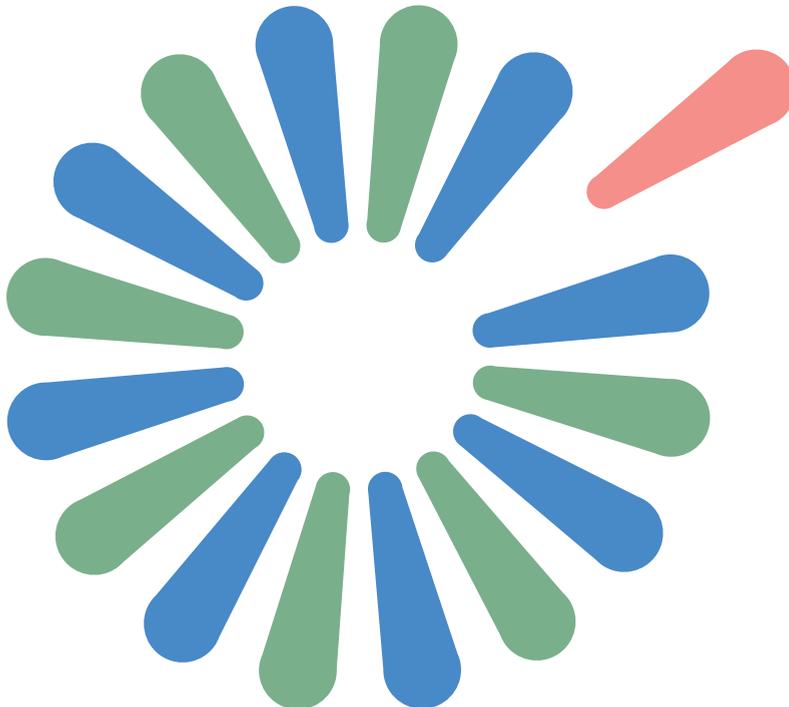
74. For more information on this case, see: Fundación Secretariado Gitano. 2009. *Report on Discrimination and the Roma Community*, p. 15 and [www.gitanos.org/actualidad/dossieres/17895.html](http://www.gitanos.org/actualidad/dossieres/17895.html) es

sidered that women are the ones who should be in charge of unpaid work at home, and that men should work outside home, a Roma man would not have faced the same discrimination because he was a Roma man.

Although it is possible that a Roma man apply for a widower's pension, because of the gender roles imposed in our society, women are the ones that mostly do unpaid care and domestic work. There could be some Roma man who would apply and be denied a widower's pension, but it would not be for the same reasons as a woman and a Roma woman, due to gender roles and gender stereotypes about Roma women. In addition, as a result of the patriarchal system, women are who demand in majority or disproportionate a widow's pension.

For instance, a non-Roma woman would not have faced this form of discrimination because she does not belong to a historically discriminated group whose customs and cosmovision were not recognized, in this case, the Roma marriage.

**Conclusion:** María Luisa Muñoz Díaz faced intersectional discrimination as a Roma woman. This example exposes the interaction and intersection between sexism and racism that has caused a specific form of discrimination against María Luisa that violated her rights in a specific way and conditioned her access to resources for being a Roma woman. This discrimination is particular and different from the experienced by Roma men and non-Roma women.



## ii. Access to Goods and Services: Supermarket

**Facts:** As many testimonies gather and the annual reports of the FSG –in particular that of 2017– highlights, in Spain many Roma women are discriminated against in supermarkets, they are watched and persecuted by security guards that apply the gender stereotype about Roma women: “Roma women steal”. Security personnel are often instructed to specifically monitor Roma women entering the establishment<sup>75</sup>.

**Problem:** Some Roma women are watched, harassed and persecuted in the supermarket and cannot make the purchase without being disturbed. They are also exposed to public checks and searches (opening their bags, etc.) that are offensive and humiliating.

**Arguments:** In these cases, we can identify gender stereotyping about Roma women as thieves and as responsible for caring their families and preparing food. In addition, Roma women are being associated with marginality.

**Questions:** If she would have been a Roma man, would she have faced the same discrimination? If she would have been a non-Roma woman, would she have faced the same discrimination? Is there a differential treatment that is neither objectively nor reasonably justified? What are the reasons for the differential treatment?

Roma women are seen as the ones who should shop for groceries due they are considered the ones that should take care of their family in this sense. Because gender stereotypes about Roma women, there is the belief that they are often married and have children, and they are not seen as autonomous and independent.

As in the previous case, this responds to a gendered social order that has established a gender division of labour that considers that women should be in charge of unpaid care and domestic work. Even though a Roma man may be watched by a security guard, he would not be watched or disturbed for the same reasons as a Roma woman, to whom it is attributed a certain function or role.

Furthermore, we have documented that these cases affect mainly or disproportionately Roma women, in comparison with Roma men.

Non-Roma women that do not belong to historically discriminated groups, are not watched or persecuted in supermarkets and it do not exist the belief that they are thieves, or they steal, as it happens to Roma women. Moreover, in many cases, security guards have the order to watch not Roma men or non-Roma women, but Roma women.

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75. The 2017 Report is available at: [www.gitanos.org/upload/96/99/Informe\\_de\\_discriminacio\\_n\\_2017\\_in-gles.pdf](http://www.gitanos.org/upload/96/99/Informe_de_discriminacio_n_2017_in-gles.pdf)

**Conclusion:** There is an intersectional discrimination against Roma women in supermarkets as they are watched and persecuted by security guards. As in the case of “La Nena”, this discrimination is the result of the intersection and interaction of sexism and racism that produces a specific discrimination against Roma women, particular and different from the discrimination against Roma men and non-Roma women in the access to goods and services.

## Final Reflections and Recommendations

- We are dealing with a case of intersectional discrimination against a Roma woman when this discrimination is the result of the intersection and interaction, mainly, of sexism and racism that leads to a specific discrimination that would not happen for the same reasons to a Roma man or a non-Roma woman.
- We may suspect that we are dealing with a case of intersectional discrimination against a Roma woman when there is a differential treatment, a distinction, exclusion or restriction that we observe affects mostly or disproportionately Roma women in comparison with Roma men.
- To identify and be able to investigate in the best possible way a case of intersectional discrimination against Roma women it is necessary to apply a gender perspective<sup>76</sup>.
- To find out whether we are dealing with a case of intersectional discrimination against Roma woman, we can compare whether other groups in the same place are being treated in the same way, e.g. Roma men or non-Roma women.
- Exchanging a Roma woman by a Roma man and a non-Roma woman and analysing whether or not they would have faced the same treatment and on what grounds can help us to identify intersectional discrimination.
- It is very important to identify gender stereotyping about Roma women that can be in the basis of intersectional discrimination. We can ask if it is expected that a Roma woman acts or behaves in a certain way according to the social imaginary.
- Having the facts, date and context as clear as possible can help us identify this type of discrimination.

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76. See: Fundación Secretariado Gitano. 2012. *Guía de intervención social...*, op. cit.

## **Conclusions**

As we have highlighted, there exists a discrimination faced by Roma women, which is particular and different from that faced by Roma men and non-Roma women. This is an intersectional discrimination that is mainly characterised, without excluding other possible factors in each case, by the interaction of gender and ethnicity.

As Patricia Hill Collins states, oppressions work together to produce injustices. For this reason, the “many heads of oppression” must be taken into account in order to do not leave the experience of Roma women and the specific discrimination they face in the margins. They face this discrimination not as women, in one hand, and Roma, in the other, but as Roma women, in a context characterized by the intersection and interaction of sexism and racism systems that places them in a situation of vulnerability.

In our quest towards an egalitarian society for Roma people and for the respect and guarantee of their human rights, it is essential to name and identify this form of discrimination and that professionals involved in this quest are aware of this specificity. If we left out Roma women or continue placing them at the margins, we will never achieve a true equality

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