Intersectionality and Interdependence of Human Rights: Same or Different?

Johanne Bouchard and Patrice Meyer-Bisch[1]

Introduction

Between September 2013 and December 2015, the Interdisciplinary Institute for Ethics and Human Rights and the Department of Public Law of the University of Fribourg collaborated with the Geneva Academy of International Humanitarian Law and Human Rights on a research project on the intersectionality of human rights violations and multiple discrimination. Although situations which combine multiple human rights violations and multiple forms of discrimination (defined in our research as intersectional human rights violations), have a particularly devastating impact on their victims, it appeared that these situations had not been sufficiently considered within the international human rights system. This project, supported by the Swiss Network for International Studies, used a multidimensional case study approach to analyse different types of intersectional human rights violations in order to map the dynamics and consequences of these combinations of violations on the persons experiencing them. It also considered current institutional responses to these situations in order to identify obstacles, challenges and possible avenues for change, focusing particularly on the human rights treaty monitoring bodies and their methods of work. The research aimed to clarify the multiple dimensions of intersectional human rights violations and, in collaboration with several experts from international human rights and civil society organisations, to formulate strategic proposals to better address them.

In this paper, we present some of the arguments that the research has allowed us to develop, as well as a number of our conclusions. The first section discusses the interdisciplinary approach to human rights and how it was key to the development of our research questions. In the second section, we explain how we took the concept of intersectionality beyond its traditional range of application to apply it to all violations of human rights. The relevance of doing so was demonstrated through the analysis of a number of case studies, selected to explore the applicability of the concept. The central elements of these case

1 Interdisciplinary Institute for Ethics and Human Rights, University of Fribourg, Switzerland. Many other persons contributed significantly to the research presented here, either as members of the research team or as experts and co-authors of the cases studies. We would like to acknowledge their contributions and thank each of them, as the projects would not have been possible without their insights. See the following website for more information: www.unifr.ch/iiedh/fr/recherche/ethique-politique-dh/snis (in French).

studies are presented here and used as examples to illustrate, in the third section, the implications of the interdepedence of human rights violations to the design of effective remedies. The last section presents some of our conclusions both in terms of academic research and institutional proposals made to our colleagues working in the UN human rights system.

1. The Interdisciplinary Discipline of Human Rights

a. The Political Nature of Human Rights

The development of human rights suffers from being too often understood as deriving essentially, if not exclusively, from the judicial realm.[2] However, originally and inherent in their nature, human rights are political: the shared exercise of citizenship. In 1993, the Vienna Declaration and Program of Action, just as the Universal Declaration of Human Rights before it, was a political engagement, reaffirmed the will of all states parties to the UN to recognise, respect and protect human rights and to work together towards their implementation for all.[3] After years of opposing views on the nature of civil, cultural, economic social and political rights, all states were ready to affirm the universality, indivisibility and interdependence of all rights.[4] But did the parties involved really understand what these three principles meant and what their implementation could imply?

Because human rights are ethical norms intended to underpin constitutions and practices, this political commitment should have been translated into actions, instruments, measures and mechanisms at the level of each state party, but also throughout the organisation of the UN. It should have changed the practice of the organs monitoring these rights to foster a more integrated approach to the interconnectedness between the rights, starting with

2 See Meyer-Bisch, P., "What makes a people? The grammar of the development of freedoms", in *Human rights: a grammar for development* (translation by the authors, original title in French: "Qu'est-ce qu'un peuple? La grammaire du développement des libertés", *Les droits de l'homme : une grammaire du développement*), L'Harmattan, 2013, pp.19–31 ; see also, in the same publication, Gandolfi, S., Rizzi, F., Bouchard, J., Meyer-Bisch, P. and Melo, A. "Human rights, grammar of the development of individuals and their organisations" (translated by the authors, original title in French : "Les droits humains, grammaire du développement des personnes et de leurs organisations"), pp. 11–15.

3 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, 25 June 1993, Preamble, available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx.

4 Since the *Vienna Declaration and Programme of Action* in 1993, the three principles have been systematically taken up in the declarations and recommendations of different UN organs, the Human Rights Council in particular. See, for example, Convention on the Rights of Persons with Disabilities (CRPD), Preamble, Para (c); General Assembly, "Resolution 60/251: Human Rights Council", UN Doc. A/RES/60/251, 3 April 2006, Preamble; and Human Rights Committee, "Resolution 5/1: Institution Building of the United Nations Human Rights Council", UN Doc. A/HRC/RES/5/1, 18 June 2007, Annex, Section B, Para 3 (a), creating the Universal Periodic Review mechanisms.

the practice of the UN mechanisms themselves.[5] However, in 2008, people working at the Office of the High Commissioner for Human Rights (OHCHR) with the treaty monitoring bodies still saw the implementation of the three principles of universality, indivisibility and interdependence of all rights as a challenge for the UN human rights system, which required much more in-depth consideration.[6]

In spite of the formal acceptance of universality, indivisibility and interdependence as foundational human rights principles, there is no common agreement as to how they should be operationalised in policies or in the legal work of the UN.[7] How can those principles penetrate a discipline such as law, which builds the legitimacy of its rulings on previous decisions, its methods of analysis on the strict separation of each article and, at the international level, the competence of its monitoring bodies on a singular instrument (covenant or treaty)? In their analysis of states' periodic reports and of individual complaints, UN treaty monitoring bodies analyse each article (right) of their respective human rights instruments. States respond by developing laws and policies addressing each of these rights, most of the time separately. But what happens when a situation concerns two or more rights? What happens when these rights are enshrined in different instruments? How can the established process then take into account the indivisibility and interdependency of the rights, in terms of causes and consequences?[8]

Law is necessary: it *publicly demonstrates* the coherence of a legal system of written laws and the practices that this system gives rise to, performing a preventive and sanctioning function. This is its contribution to a democratic political order. However, an analysis of rights violations makes it clear that the law cannot cover everything. The function of the law is inseparable from other rationalities that depend on other disciplines; the first of

5 See General Assembly, "Resolution 48/141: High Commissioner for the promotion and protection of all human rights", UN Doc. A/RES/48/141, 20 December 1993, creating the Office of the High Commissioner for Human Rights (OHCHR).

6 During the international colloquium on "Ethics of cooperation and democratisation of international relations" (translated by the authors, original title of the event in French: "Ethique de la coopération et démocratisation des relations internationales"), Bergamo, 23–25 October 2008, organised by the United Nations Educational, Scientific and Cultural Organization (UNESCO) Chairs of Fribourg and Bergamo, the head of the OHCHR treaty service expressed the need for the creation of a group to reflect on the ways in which indivisibility could be factored into the strengthening process for the UN human rights mechanisms. This request opened the door to the development of this research, and has also made its way into the treaty monitoring bodies themselves, as can be seen in the report of the chairs of the human rights treaty bodies on their twenty-seventh meeting, General Assembly, *Implementation of human rights instruments*, UN Doc. A/70/302, 7 August 2015, Paras 59–60.

7 For an analysis of this observation, see Alston, P., "Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals", *Human Rights Quarterly*, Vol. 27, 2005, pp. 755–829.

8 These were some of the questions that guided the development of the research hypothesis.

which are the other social sciences that contribute to the understanding of freedoms, to their protection and to sanctions in the event of liberticidal practices and inequalities.[9]

b. The Intuition Motivating our Research

The development of the idea for our research started from the observation that too little attention had been dedicated, in theoretical and practical studies, to the universality, indivisibility and interdependence of human rights. Our intuition was that it would probably be easier to demonstrate the interdependence of the violations of human rights rather than their positive interdependence (how the realisation of one right contributes to the realisation of other rights). One of the rare known demonstrations of interdependence concerned the definition of extreme poverty as a "sequence of precarities", an aggravated cycle of abuse in which the impact of the violation of one right contributes to causing the violation of another right, which further contributed to the violation of yet another right and so on.[10] In discussions with experts from the OHCHR which works with treaty monitoring bodies, we identified discrimination as a cross-cutting form of human rights violations; one that could be used to help reinforce indivisibility and interdependence of human rights, particularly through the existing body of work on intersectional theories.

Intersectional theories, which became prominent in gender studies in the early 1990s, have been applied within a range of disciplinary fields, including critical legal studies, sociology, ethnography and, more recently, public policy analysis.[11] Theories of intersectionality seek to explain the interaction between multiple and interlocking forms of oppression, noting that this combination creates experiences of subordination and exclusion that are both qualita-

9 These concepts of philosophy of law have been developed through the writings of François Ost, Michel Van de Kerchove and Mireille Delmas-Marty in many of their writings. See in particular Ost, F., *The nature outlaw. Ecology at the test of law* (translation by the authors of the original French title: *La nature hors la loi. L'écologie à l'épreuve du droit*), La découverte, 1995 ; Van de Kerchove, M., *Milestones for a critical theory of law* (translation by the authors of the original French title: *Jalons pour une théorie critique du droit*), St-Louis University press, 1987; Delmas-Marty, M., *Towards a Truly Common Law,* Cambridge University Press, 2002 (original in French, *Pour un droit commun*, Paris, Seuil,1994); and Delmas-Marty, M., *Ordered pluralism*; *the imagined forces of law (II) (translation by the authors of the original French title: Le pluralisme ordonné: Les forces imaginantes du droit (II))*, Seuil, 2006,

10 Sub-Commission on Prevention of Discrimination and Protection of Minorities, *The realization of economic, social and cultural rights: Final Report on Human Rights and extreme poverty, submitted by the Special Rapporteur, Mr. Leandro Despouy*, UN Doc. E/CN.4/Sub.2/1996/13, 28 June 1996. See also Human Rights Council, *Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepulveda Carmona, on the draft guiding principles on extreme poverty and human rights*, UN Doc. A/HRC/15/41, 6 August 2010.

11 See, for example, Walby, S., Armstrong, J. and Strid, S., "Intersectionality: Multiple Inequalities in Social Theory", *Sociology*, Vol. 46, 2012, pp. 224–240; Hankivsky, O., (ed.), *An Intersectionality-Based Policy Analysis Framework*, Institute for Intersectionality Research and Policy, Simon Fraser University, 2012; and Ontario Human Rights Commission, *An intersectional approach to discrimination: addressing multiple grounds in human rights claims*, Discussion Paper, 9 October 2001.

tively and quantitatively different from discrimination that occurs on the basis of a "single ground", or from the addition of two or more grounds.[12] Could the same be said about "intersectional" violations of human rights? Could this concept help us understand the dynamics of multiple and interdependant violations of human rights?

While many academics working on the intersection of various grounds of discrimination noted the connection discrimination had with other human rights violations, research linking theories of intersectionality with human rights law, policies and institutions remained scarce. On the other hand, the practice of the majority of existing human rights architectures, both at national and international levels, still tended to compartmentalise human rights violations into discrete categories, as much as the policy arrangements and institutions tended to separate the promotion and protection of human rights into different sectors. This meant that only a few – if any – practical examples of interdependence and indivisibility of human rights violations were available. In this context of lack of data on "intersectional" human rights violations, it seemed natural that policy-makers, judicial officers, human rights experts and legislators would not possess the tools or adequate information to understand the prevalance, dynamics and consequences of interdependent human rights violations.

At the time of preparing the project, discussions about the need for intersectional analyses of human rights violations had already driven part of the process of strengthening the UN human rights treaty monitoring system,[13] but there still remained a gap between theoretical acknowledgment of the indivisibility and interdependence of all human rights and the implementation of these principles in the context of concrete cases. What was needed to legitimate a change in the existing architecture was a demonstration of the limits that the current system had and of the added value of approching human rights violations as interdependent. Could we, on the basis of the analysis of concrete cases, demonstrate the intersectional dynamics of interdependent violations of various human rights? Could these cases help us identify ways to adapt the existing methods of work of the UN human rights treaty monitoring system to better take into account the universality, indivisibility and interdependence of human rights in practice? And most importantly, what would this change for the people concerned by such violations?

With these research questions in mind, we developed an interdisciplinary research framework and methodology – various disciplines of law, political philosophy and anthropology – that took into account the inherently multidimensional nature of human rights and the need

12 See, for example, Crenshaw, K., "Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Color", *Stanford Law Review*, Vol. 43, 1991, pp. 1241–1299; and McCall, L., "The Complexity of Intersectionality", *Signs: Journal of Women in Culture and Society* Vol. 3, 2005, pp. 1771–1800.

13 See OHCHR, "The treaty body strengthening process", 2012, available at: www2.ohchr.org/english/bodies/HRTD/index.htm. See in particular OHCHR, *Strengthening the United Nations Human Rights Treaty Body System: Dublin II Meeting outcome document,* November 2011.

to analyse both international human rights law practice and the individual cases of violations on the ground.

2. A Broader Use of the Concept of Intersectionality

a. The Relationship Between Discrimination and Human Rights

As noted above, the concept of intersectionality has been used to analyse situations where multiple grounds of discrimination overlap, creating different consequences or forms of vulnerability that the mere addition of the concerned grounds cannot account for. In other words, intersectional discrimination gives rise to a new situation, for which existing measures and responses are not sufficient or adequate anymore.[14] Our intention in the research was to broaden the use of this concept to explore:

i. If the same intersectional process applied to multiple violations of human rights, creating new and different situations than a simple addition of the violations; and
ii. If comparable consequences could be observed, meaning that the measures and responses usually designed to repair violations of the single rights, even when combined, were not sufficient or adequate anymore.

Three elements allowed us to think that the concept of intersectionality could be broadened to violations of human rights. The first is that, from a human rights perspective, discrimination is a violation of human rights. We considered discrimination in our research as a stand-alone human rights violation, violating the right to equal dignity of the person or persons concerned. A close analysis of the list of prohibited grounds recognised by international human rights instruments and the practice and quasi-jurisprudence of the treaty monitoring bodies[15] supported this position. The focus is not on the motives behind the differential treatment, but on the discriminatory act in itself: an arbitrary differentiation in treatment[16]

14 On this argument, see Previtali, A., "The difficulties of jurists when faced with the notions of multiple discrimination and intersectionality : the need to understand the central question" (translated by the authors, original title in French: "Les difficultés du juriste face aux notions de discrimination multiple et d'intersectionalité : le besoin de comprendre la question centrale"), 2016.

15 We considered the 10 main international human rights instruments: Universal Declaration of Human Rights; International Convention on the Elimination of all forms of Racial Discrimination; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention on the Elimination of All Forms of Discriminations against Women; Convention Against Torture and other cruel, inhuman or degrading treatment or punishment; Convention on the Rights of the Child; International Convention on the protection of all Migrants Workers and members of their families; and International Convention for the protection of all Persons from Enforced Disappearance; and the CRPD.

16 See, for example, Human Rights Council, *General Comment No. 18: Non-discrimination*, 1989, Para 13, which states that "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant".

resulting in the violation of the right to equal dignity of the person(s) concerned.[17] Our research encompassed both the situation in which persons are treated differently in similar circumstances and the situation in which persons are treated the same who should be treated differently (as both situations may amount to prohibited discrimination).[18]

The second element derives from our extensive research on cultural rights and their recent development in the international human rights system. In its General Comment No. 21,[19] the Committee on Economic, Social and Cultural Rights (CESCR) adopted a wide interpretation of the right to take part in cultural life, stressing that it covers:

> *[T]he right of everyone – alone or in association with others or as a community – to choose his or her own identity, to identify or not with one or several communities or to change that choice, to take part in the political life of society, to engage in one's own cultural practices and to express oneself in the language of one's choice.*[20]

The General Comment also makes it clear that cultural diversity is the necessary condition for this choice to be effective, and that guaranteeing the participation of all in cultural life on the basis of their identity will ensure that vibrant, cultural diversity is maintained and developed.[21.] As further stated by the CESCR, this also includes the right not to be subjected

17 We incorporated all grounds that have been recognised in the 10 main treaties themselves and in the subsequent interpretation by the treaty monitoring bodies (general comments, general recommendations or individual cases), amounting to a list of at least 27 grounds. More information about this aspect of the research can be found in the working paper, Bouchard, J., *Intersection 2*: *grounds of discriminations,* 11 December 2015, available at: www.unifr.ch/iiedh/fr/recherche/ethique-politique-dh/intersectionalite.

18 See, for example, Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the ICESCR),* UN Doc. E/C.12/2005/4, 11 August 2005, Para 13; CESCR, *General Comment No.20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the ICESCR)*, UN Doc. E/C.12/GC/20, 2 July 2009, Para 10(a); and Committee on the Elimination Discrimination against Women, *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*, UN Doc. CEDAW/C/CG/28, 16 December 2010, Para 16.

19 CESCR, *General Comment No. 21: The right of everyone to take part in cultural life (art. 15, para 1(a), of the ICESCR)*, UN Doc. E/C.12/GC/21, 21 December 2009. This interpretative comment relies widely on the 2007 *Fribourg Declaration on Cultural Rights* for its definitions of the nature, scope and application of cultural rights.

20 *Ibid*.

21 This principle of mutual protection between human rights and cultural diversity was first introduced in UNESCO's *Universal declaration on cultural diversity*, 2005, Article 4, and formulated more precisely in General Assembly, "Resolution 64/174: Human rights and cultural diversity", UN Doc. A/RES/64/174, 18 December 2009, Para 10. It was further developed more precisely for cultural rights, in particular in the resolution creating the mandate of Special procedure in the field of cultural rights, HRC, "Resolution 10/23: Independent expert in the field of cultural rights", UN Doc. A/HRC/10/23, 26 March 2009, Para 9(d), and in the first report of that expert, HRC, *Report of the independent expert in the field of cultural rights, Ms. Farida Shaheed, submitted pursuant to resolution 10/23 of the Human Rights Council,* UN Doc. A/HRC/14/36, 22 March 2010, Para 24.

to any form of discrimination based on cultural identity. When considering the prohibited grounds of discrimination, one can see that the grounds are constitutive elements of identity. Each person's identity is constructed by relying more or less strongly on gender, age, religion, ethnic, social and national origin, language, etc.; everyone defines one's self against or in accordance with what each of these element means in the context in which they live. Discrimination on these prohibited grounds can therefore amount to discrimination on the basis of one's cultural identity, and could be considered as a violation of cultural rights, or the right to the equal dignity of each person's identity.[22]

Finally, it appeared to us from the analysis made of extreme poverty that the effects of discrimination and of other human rights violations, especially when unresolved, were often similar in the way that they expose the person concerned to a higher level of vulnerability that could then lead to further violations of their human rights. If unresolved violations of human rights could overlap and intersect in the same manner as grounds of discrimination did in cases of intersectional discrimination, maybe the intersectional process observed as a distinctive dynamic between various grounds of discrimination could also apply to various violations of human rights. For the purpose of our research, we considered the concept of intersectionality to apply to all complex situations of intertwined violations of many human rights, where the violations are so closely related that it cannot be distinguished which violation or ground of discrimination causes which impact.

b. Selecting and Informing Case Studies: Interdisciplinary Methodological Considerations

In light of the considerations discussed above, our objective in selecting the cases to study was to find cases in which a variety of human rights violations, including discrimination on the basis of different grounds, created a situation that was both quantitatively and qualitatively different from the mere addition of the "single" violations.

Considering the wide number of possible combinations of violations in situations of intersectionality (as we defined it), no selection could be exhaustive. The cases chosen were therefore illustrative, featuring different combinations of rights and grounds of discrimination, different geographic territories and contexts. The hypothesis was that, while each case of intersectionality would feature a specific combination of human rights violations, an analysis of several cases could give rise to findings about the limits and opportunities that the current human rights system presents and, eventually, to evidence based proposals for legislative and policy reform.

While many elements were considered in the choice of the cases to study, the most important for our team was the possibility to have as direct a link as possible to the persons experiencing the violations. This was essential for two reasons. Firstly, to consider complex situations involving many human rights violations, we needed more information

22 These considerations are further developed in a separate article by the authors, to be published shortly.

than what is usually provided to existing complaint mechanisms. Secondary sources were therefore often too limited to be used. Secondly, we wanted to be able to appreciate the effects of the measures implemented to resolve the situation, and their effectiveness for the persons concerned in the medium or long run. This meant engaging in a follow-up exercise that is usually very hard to conduct for mechanisms addressing complaints of human rights violations.

The eight cases chosen took place in different social, geographic, political, cultural and economic contexts.[23] Each featured a combination of civil, cultural, economic, political and social rights and at least one ground of discrimination. The intersectional nexus – or intersection of human rights violations and discrimination – triggering the complex situation in each case is summarised below.

i. In the case of a journalist in the context of the intensifying conflict in Sri Lanka, we identified violations of the right to freedom of opinion and expression, the right to take part in cultural life, the right to safety of the person and protection against arbitrary arrest and detention, combined with discrimination on the ground of political opinion, ethnicity, religion and as a journalist (considered under "other status").
ii. In the case of the forced eviction of travelling people (*gens du voyage*, as used in French) in France, the rights violated were the right to housing, freedom of movement and the right to freely choose one's place of residence, the right to a standard of life that respects human dignity, the right to choose and exercise a way of life and the cultural practices of one's choice, combined with discrimination on the basis of ethnicity (in this case, the persons consider themselves as belonging to a certain community and choosing a particular way of life, which was perceived as ethnicity) and socio-economic status.
iii. In the case of the use of sexual violence against women as a strategy of war in the Democratic Republic of Congo, the main rights violated were the right to life, to physical integrity, to safety of the person and protection against torture and slavery, combined with discrimination on the grounds of sex, socio-economic status, and ethnicity.
iv. In the case concerning forms of slavery practices specific to women and girls in Mauritania, discrimination on the basis of birth (caste) and sex are combined with violations of the rights to nationality (registration as a citizen) and to marry and found a family. Depending on the ethnic component of the population, further rights are violated, including the right to education and to physical integrity.
v. In the case of violations of the right to education in rural areas of Burkina Faso, the main right violated was the rights to education, combined with discrimination on the basis of place of residence, socio-economic status and sex.
vi. In the case considering the impact of austerity measures on young people in Greece, the main rights violated were the rights to work and its correlated rights (the right to

23 The eight cases are published on our website, each as a separate document (series *Intersection 5*), with further resources relating to that case. See working papers available at: www.unifr.ch/iiedh/fr/recherche/ethique-politique-dh/intersectionalite.

join a trade union, the right to fair pay and to safe conditions of work), the right to social security and the right to education. This was combined with discrimination on the basis of age.

vii. In the case of the stolen generations of Indigenous Australian children forcibly separated from their parents, the concerned grounds of discrimination include ethnicity (including skin colour and parentage), age, gender, physical and mental health, cultural practices, economic status and place of residence, combined with violations of the rights to self-determination, to family life, to education, to work, to freedom of religion or belief, to freedom of expression, to equality before the law including access to justice and effective remedies, to freedom of movement, cultural rights and the protection of physical integrity.

viii. In the case of the forced sterilisation of Roma women in the Czech Republic, the main rights violated are the right to inviolability of the person, to protection against illegitimate interference in private life, home and correspondence, to marry and found a family, to protection of motherhood including family planning, to appropriate health care, combined with discrimination on the grounds of sex, ethnicity and disability.

Each of these cases concerned past violations and had been considered by different existing human rights mechanisms. To capture this wide spectrum in a way that would allow in-depth analysis of each case as well as comparative considerations between the cases, we developed a method of documenting the cases that included desk research about the context of the country and the responses given by the relevant human rights mechanism involved in the case, combined with collecting the life story of the persons concerned in order to inform the complexity of the intersectional violations and their impacts, as well as to understand the person's assessment of the effectiveness of the measures taken.[24] History, sociology, anthropology, religious studies, economic and institutional studies complemented the discipline of law to embrace and analyse each of the complex cases.

c. The Intersectional Process: Multiple Violations and Discrimination

By starting the analysis from the situation of intersectional violations as expressed by the persons concerned, identifying the various human rights violations including discrimination that contributed to the complexity of what we called the "original" situation revealed to be quite easy. Listening to each life story with a broad human rights perspective, it was fairly clear which rights were violated and what the relevant grounds of discrimination were. When taking into consideration the testimony of the persons concerned and their circumstances, the interdependency of the violations and indivisibility of human rights were obvious. It was also obvious that the violations experienced reached across categories of rights (civil and political; economic, social and cultural) and single grounds of discrimination (for example gender, age, race and ethnicity or disability), again raising the question of the capacity of human rights mechanisms designed to address only one

24 The resulting methodological framework developed to inform each case study for this research is available as a working paper, see *ibid*.

category of right or one ground of discrimination to respond adequately to all the violations concerned.

One of the challenges when considering the life story narratives was to clearly differentiate between two types of interdependent reactions between the various human rights violations:

i. Chain reactions of violations: in this interdependence, causality can be identified – this violation caused this impact, which increased the vulnerability of the person and exposed them to this further violation – even if the addition of the subsequent violations can amount to an aggravated situation, as is the case for extreme poverty;
ii. Intersectionality: this interdependence blurs the lines of causality, to a point where it is not possible anymore to identify which violation had which impact. The closely intertwined violations of human rights impact the person concerned in ways that are quantitatively and qualitatively different than the sum of each violation taken separately.

Each of the cases studied presented both of these types of interdependence. The situation from which we started our analysis (the "original" situation) was chosen because it corresponded to the second type: a situation in which simultaneous violations of many human rights were so complex that it was impossible to attribute the impact on the persons concerned to one or the other human rights violations involved. Were the persons evicted in France because of their way of life or because the area was run down? Or was it discrimination against the community of travelling people that lead to the location being left without sanitation? Was the journalist being pursued because of his political opinion, the fact that he belonged to a certain ethnic group and religion or because of his journalistic activities? Or is it that his opinion should not have been expressed by someone of his ethnic group? It is difficult to say, since all of these elements concur in a way that is not linear. From the point of view of the persons concerned, it was not always the first time that they experienced a violation of any of their human rights taken separately, or the first occurrence of discrimination for any one of the grounds involved, but the situations serving as the starting point of our analysis were chosen because of the combination of violations experienced at this point. Chain reactions of violations occurred as well and could be identified as a consequence of this first situation of intersectionality and of the failure to remedy to it. However, in each of the cases, the "original" situation and its impacts were different than the sum of each violation separately.

This confirmed the relevance and applicability of the concept of intersectionality to the analysis of violations of human rights more broadly (and not solely to discrimination). Using this concept, we could demonstrate more precisely the indivisibility and interdependence of human rights violations. However, it still did not support an argument that changes to the methods of work of the UN treaty monitoring bodies needed to be made, nor identify what these changes should be. To achieve this, we needed to further analyse the cases.

3. Intersectional Contamination: the Implication of Human Rights' Interdependence for Effective Remedies

a. Complex Causes, Multiple Consequences and Partial Remedies

The analysis of the case studies not only demonstrated that the interdependence of human rights violations could be intersectional, it also pointed towards interdependence in the form of chain reactions. This type of interdependence became particularly evident when we looked into what happens *after* the original nexus of violations occurred. What we saw was that the original violations had far-reaching impacts in terms of chain reactions of violations. This led us to further analyse the responses provided in each case to remedy the human rights violations and to consider their effectiveness for such complex situations.

In all the cases we studied, we noticed that the measures taken to remedy the situation were only designed to respond to the violation of one or two rights, considered more urgent, or to discrimination on one ground, perceived as more visible or important. This is in large part the consequence of the way that mechanisms receiving complaints are constructed, being competent to receive information only on one category of rights, from which the plaintiff has to select a main "entry door" (a single right or a combination, but only within one human rights instrument), or one main ground of discrimination. This division of the rights and grounds of discrimination between various monitoring bodies requires persons or organisations wishing to complain about intersectional situations to select only part of the violations to be addressed.[25] Many times, this selection is made according to strategic considerations (which mechanism is faster, closer or requires less documents) and in full knowledge of the many aspects of reality that will be left out.

The logical consequence is that the responses provided are also partial, if not completely ineffective. In these cases, compensation for the victims falls well below the real damage, sometimes weakening them even more; the perpetrators – when rightly identified – are only made accountable for a portion of the injury and are allowed impunity for the rest; and society, unable to restore justice, loses trust in the legitimacy of the rule of law and its own institutions. One of the important lessons learned from the cases studied is that, from the moment the "original" violation and the complexity of the situation are not properly recognised, *remedies and measures cannot be comprehensive nor adequate*. This observation leads us to acknowledge that the human rights monitoring system, as it has been elaborated until now, has important limits when it comes to analysing and providing adequate responses to intersectional violations of multiple human rights.

b. *The Three Types of Contamination and the Levels of Seriousness*

Unremedied human rights violations or partial responses to intersectional situations are not only insufficient; they tend to continue to have negative impacts. In each of the eight cases

25 For more details about the complaint procedures to the treaty monitoring bodies, see OHCHR, *23 Frequently asked questions about the Treaty Bodies Complaint Procedures,* available at: www.ohchr.org/Documents/HRBodies/TB/23FAQ.pdf.

we studied, the unremedied violations and partial or inadequate responses caused a negative chain reaction that lead to further human rights violations. This extension of the violation can be compared with the spread of a virus; a contamination.

For the Sinhalese journalist, the "original" violations took place during the radicalisation of civil violence between 2005 and 2008 in the Western Province of Sri Lanka. He faced threats and harassment, violating his right to freedom of expression, to take part in cultural life, to safety and security of the person and protection against arbitrary arrest and detention on the basis of his opinion, ethnical and religious identity and profession. He explained that the political context of radicalisation and repression of freedom of expression made it difficult for him to alert the police and seek or expect reasonable protection.[26] Without this possibility, his exposure to danger rose, causing further human rights violations, until he had to flee the country. This is what we identified as *comprehensive contamination*; the contamination spread in to further aspects of our journalist's life (he remained weakened by the lack of adequate response to the original violations, which heightened the risk of further violations), and also allowed the perpetrators to be reinforced by the climate of impunity to continue with their behaviour.

The degradation of his situation also had a direct impact on his family, causing them social and financial insecurity, but also leading to fears for their own security due to the precarious nature of their situation and his sudden exile. The fact that the threats and harassments against him remained unpunished also had an impact on other human rights activists and journalists, making them fearful of their own security and causing them to self-censor, thereby violating their rights to freedom of expression and to take part in cultural life. Impunity in this case contributed to the existing tensions in the society, worsening the situation for our journalist and the climate of fear for all involved. More broadly in society, similar individual cases concerning other journalist, human rights advocates or other individuals that were experiencing threats were not investigated, the individuals not being protected, which eroded trust in the rule of law and in society. Tensions began to escalate into violence. This corresponds to what we identified as *horizontal contamination,* where the impacts of the un-remedied violations start affecting other persons related to the victims. Families and friends are often affected, but also, as in this case, members of a shared community, who become further exposed to similar violations.

The Australian case study gives an example of the third type of contamination we identified, *vertical contamination,* which refers to the long-lasting impact on the persons to the point where it has an impact on the following generations. For the Indigenous Australian families,

26 The gravity of the situation was presented in OHCHR, *Report of the OHCHR Investigation on Sri Lanka (OISL)*, UN Doc. A/HRC/31/ CRP.2, 16 September 2015, Paras 63, 213, 217–218, 231, 257 and 260. The threat to media workers and tendency for impunity in cases of harassment had been also acknowledged by treaty monitoring bodies before and after the period concerned in the case study. See in particular Human Rights Committee, *Concluding observations of the Human Rights Committee: Sri Lanka*, UN Doc. CCPR/CO/79/LKA, 1 December 2003, Para 18, and Committee against Torture, *Concluding observation of the Committee against Torture: Sri Lanka* UN Doc. CAT/C/LKA/Co/3-4, 8 December 2011, Para 13.

the "original" situation of forced removal of their children, starting in 1910, was a violation of their rights to self-determination, to family life, to education, to cultural rights, to equality before the law, including equal access to justice and remedies. These violations were all perpetrated on the basis of ethnicity (including skin colour and parentage), age, gender, physical and mental health, cultural practices, economic status (poverty) and geographical location. Since the children placed in care by the welfare policies were deprived of their relationship with their parents and original communities, lines of transmission, ensuring access to and participation in cultural heritage, traditions and practices, knowledge of one's own history and that of one's family, all the shared values and meaning of everyday acts, were cut off, depriving these children of their own cultural resources for their whole life. One of the women concerned, waiting for the birth of her child, admitted feeling completely helpless when it came to motherhood, as she had no significant experience of this role, having been deprieved of her own mother, and did not know what she would could transmit as cultural and family heritage. The damage inflicted by the intersectional violations and the lack of appropriate reparation contributed to creating long-lasting cultural, social, economic,[27] and in this case, emotional, differences that encompass subsequent generations.

To summarise, the seriousness of intersecting human rights violations can be understood as comprising three dimensions, aggregated or not:

i. The seriousness of that violation of the person's rights (injury), in terms of the capacity of the victim to claim redress;
ii. The interdependent effect of several violations, which act as an "aggravating factor" through multiplication (aggravation through comprehensive contamination); and
iii. The number of direct and indirect victims, which can reach the dimension of a massive violation (aggravation through extension) and may encourage the belief that the victims themselves are at least in part responsible for the violations ("there is no smoke without fire").

The result of this is that, when faced with intersecting violations, nobody knows where to begin. The dominant impression is of a "bottomless pit". Actors wishing to react, be they governmental or otherwise, have limited resources and authority, and recognise with resignation that their actions will likely only address some of the symptoms and consequences, but not the sources of the problem. At this stage, we have observed in the case studies that a leaden silence tends to prevail: the magnitude of the injury reaches a point where it cannot be directly contemplated nor expressed anymore. The strongest example of this was the Mauritanian case: the official discourse speaks of "sequelles" (after effects) of slavery concerning only a few isolated cases, and the situation of girls and women subject to practices of slavery is often minimised as a traditional arrangement between families. No one wants to admit how broad and grave the situation is.

27 See Makkonen, T., "Multiple, compound and intersectional discrimination: bringing the experience of the most marginalized to the fore", Institute for Human Rights, Åbo Akademi University, 2002, p. 9.

c. The Multiple Actors' Perspectives and their Role in the Search for Adequate Reparations

Every infringement of a human right produces – by virtue of the universality of the dignity of the person affected – a legal tort and invokes the responsibility of the state and its institutions, directly or indirectly, to reestablish and confirm the rule of law. This should be done in cooperation with all other relevant stakeholders.

For each case study, part of the work consisted in identifying the institutions and mechanisms that should provide protection against the human rights violations concerned and guarantees for their non-recurrence, and to analyse how these had addressed (or not) the situation and what types of measures they recommended and put in place to ensure effective remedies. These included primarily the governmental and national legal institutions, as well as the relevant regional mechanisms, in the various relevant fields including law, social policies and educational measures, to name a few. Specific emphasis was put on the human rights mechanisms of the UN, but civil society organisations and other informal initiatives were also taken into account, when they contributed to finding solutions or providing support to the persons concerned.

What struck us was the difficulty in providing adequate forms of reparation. In all of the cases, no matter how many measures of reparation were added up, when these aimed to address only part of the violations intertwined in the "original" situation, they continued to miss the target. The sum of all the measures taken – recognising responsibilities, legal procedures, adjustments in social policies, compensations for part of the harm experienced, etc. – failed to really provide durable remedies, understood as at least stopping the ongoing negative contamination in all three directions mentioned above. This is particularly true once the chain reactions had started and time had allowed for wider contamination.

In each case of intersectional violations of human rights, it was quite interesting to note the number of existing actors, resources and mechanisms that could contribute to remedies, either on specific aspects or with a more general mandate, and the long list of identified actions that had actually taken place. In the majority of cases, what failed was not so much actions as effective coordination between actors and mechanisms, creating gaps and interruption in the protection and rending it impossible for any one body to apprehend the entire situation. Instead of acting together or in complementary way, these actors or mechanisms intervened in parallel, each in their restricted field. In the worst examples of this failure to work together, such as for the French travelling people forcibly evicted from their homes or the young Greeks suffering from the impact of the austerity measures, existing institutions and mechanisms involved kept invoking the responsibility of others, and sending the persons from one office to the next. After 10 years of fighting and advocacy and a favourable decision before the European Court of Human Rights,[28] some of the French persons evicted still don't have a place they can call home. At the national level, some governmental agencies refuse to imple-

28 *Winterstein and others v France,* Application No. 27013/07, 17 October 2013.

ment and follow-up on the recommendations formulated by UN human rights mechanisms. In other cases, efforts to remedy intersectional violations become dislocated. For example, in the Democratic Republic of Congo, legal procedures were engaged against some of the authors of sexual crimes committed against women (and in some cases, against men) but judgements were not always enforced, measures to support and rehabilitate the women victims are mainly put in place by different NGOs but are not coordinated, and almost nothing has been done to rehabilitate the men involved (as both victims and authors) and to reestablish trust between members of the community.

But it is also through the presence of multiple actors in the research of adequate remedies that we found the most efficient practices, when three conditions are met. First, the study of these cases shows that, when civil society actors (through organisations as well as informal networks) and local authorities in all sectors coordinate their actions as the first line of response, this is the best way to stop the spread of negative impacts. This implies recognising what is done by first- line actors, even informally, and the remedies available in the society itself. The second condition is to ensure that, whenever required, these first networks of responses are reinforced and followed through by other levels of responses. Actions have to flow from the ground up, and then reach all the appropriate levels to repair the harm done and prevent recurrence and further damage. The third condition we see emerging is the importance of continued engagement from all level in the implementation of the responses. In other words, decisions from courts, promises from authorities and recommendations from UN mechanisms will only be efficient if all involved actors, and not only the victims, continue to demand their implementation and take their part in their implementation. This means ensuring adequate information is shared about these higher level decisions, through for example translation in the appropriate languages and wide diffusion of the recommendations.

The prevention or the remedy of multiple injuries occurring in intersectional violations requires optimal interaction among and between: the public actors (at all levels), private actors and civil society organisations; cultural, economic, social, legal and political actors; and all the legal processes. Only then can the damage caused by intersectional violations of human rights to the victims, their families and communities and to the wider society, be treated in an adequate manner.

4. Some Proposals

a. The Need for More Interdisciplinary Analysis

When considering how far the impacts of intersectional violations of human rights reach and how complex the elaboration and design of adequate responses and reparations is, one realises that these complex situations are systemic, involving elements from history, politics, economics and culture that go far beyond the person's directly harmed, but concern whole societies. In view of this conclusion, sectorial approaches and mechanisms relying mainly or solely on one discipline, law, will never be sufficient to embrace them, neither in their comprehension, nor in the edification of adequate responses.

Throughout our research, the study of the grounds of discrimination in the light of recent developments in the field of cultural rights, and the analysis of cases of intersectional violations of multiple human rights, including violations through discrimination, both highlight the importance of including more disciplines of social sciences, their tools and concepts in the analysis, investigation and redress of human rights violations. It is not sufficient to involve all these disciplines only at the level of remedies: to understand how the violations work, where they originate from and the impact that they have requires the inclusion of insights from more disciplines at an earlier stage. This means having a variety of disciplines represented in existing human rights monitoring mechanisms, at the national, regional and international levels. It is with a broader comprehension of the violations that we will be able to prevent their recurrence and restore human dignity after violations have been committed.

A better understanding of the complex situations that intersectional human rights violations involve can help devise responses that take into consideration the whole range of stakeholders that are able to contribute to prevention and remedies (not only reacting, but acting prior to contamination). What the case studies have also demonstrated is the importance of coordination between all involved actors in order to design the most adequate responses that will embrace the whole of a particular situation. This means also involving the rights holders in choosing the right responses, which may be different from those that obligation holders immediately think of. The involvement of rights holders should be the basis of a human rights based approach, but it is still sometimes forgotten. Most importantly, the original objective, to restore the dignity of the persons whose rights have been violated, should always be kept in sight. For those involved in the situations we have looked into, this has not been the case.

As human rights are in essence political, all actors and all types of policies can play a role in the promotion, protection and implementation of human rights. This means that human rights analysis should be developed in all policy-making institutions, as a transversal tool. To have people from all disciplines feel concerned with, and relevant to, the field of human rights requires human rights teaching and analysis to extend from a specialised field of law studies to embrace all faculties of our universities and more generally, to be transmitted through civic education, including in schools. In this sense, our universities have an important role to play if we want to improve our human rights records across the world.

b. Some Thoughts about the Work of the UN Mechanisms

From the insights gathered throughout our research and the analysis of the case studies, it is possible to formulate some pragmatic and progressive proposals to monitoring bodies that should contribute to the search for coherence in the long term.[29]

29 For a presentation of proposals collected in the course of the research, see working paper, "Intersection 6: Mesures et recommandations/ Measures and recommendations", 11 December 2015, available at www.unifr.ch/iiedh/fr/recherche/ethique-politique-dh/intersectionalite.

The first type of proposals concerns doctrinal clarifications. The UN human rights treaties and their monitoring bodies were built with a doubly divided approach: between the two categories of rights as delineated in the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights, then between the various sorts of violation, either torture or the various grounds of discrimination (such as sex, race, disabilities, etc.). This divided approach must be progressively corrected in order to clearly introduce the principles of indivisibility and interdependence. This could, for example, take the form of more common work on the definition of these principles and of other key concepts relevant to all treaty bodies.

Another type of proposal concerns the methods of work of the bodies and procedural clarification. To breach the divisions of the system, more spaces for transversal work between the treaty bodies and also with external partners could be created to share observations and analysis. This is done already to a certain extent in the UN system, owing to numerous initiatives, but the concluding experiences are not as known and valued as they should be.[30] Methods of work should be developed to allow complex situations involving intersectional violations of multiple human rights to be considered as a whole, and not only through one entry point. On this point, the experiences across mandates, like the regular joint work by the special procedures to address complex cases,[31] could help constitute a catalogue of realistic proposals to be reinforced and developed in the treaty body system.

Conclusion

The study of specific situations of intersectional human rights violations should be developed further, to look into more cases and strengthen and complete the observation of our research so far. The shared feeling from our research team is that these cases tell us much about the limits of the current human rights monitoring system, and even more about the avenues that need to be explored so that this system fulfils the aspiration we all share for the universal realisation of human rights. What is needed is a paradigm change benefiting a more concrete approach to persons in their milieus, an approach which is more systematic, more participative, more observant, attentive to tracing, and to restoring and developing chains of knowledge.

30 See, *ibid,* for examples.

31 See, for example, the joint report on communications from the special procedures, published three times a year on at: www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.