THIRD-PARTY INTERVENTION OF THE AIRE CENTRE

BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

SOLOMON V SPAIN (APPLICATION NO.47159/08)

1. This intervention has been prepared in collaboration with The Columbia Law School Sexuality and Gender Law Clinic, based at one of the leading law schools in the United States and whose mission is to secure equality and challenge sexuality, gender bias and discrimination through legal advocacy, with Ms Barbara Cohen, Discrimination Law Consultant, and with Mr Eddie Bruce-Jones, Lecturer in EU Law.

2. The AIRE Centre is a non-governmental organisation founded in 1993 and based in the United Kingdom whose mission is to promote awareness of European rights and assist marginalised individuals and those in vulnerable circumstances in asserting those rights. The AIRE Centre ('the Intervener') is grateful to the Court for the opportunity to intervene in this case.

3. The Court has granted the Intervener leave to provide the Court with information about intersectional discrimination and relevant international law obligations. The Intervener will consider relevant provisions of Council of Europe law, European Union law, other provisions of international law and national jurisprudence.

4. The intervention proceeds in two parts. In Part A, the Intervener reviews intersectional discrimination as a form of recognised discrimination within Europe. In Part B, the Intervener provides views on the notion of intersectional discrimination as dealt with by other jurisdictions, mainly the United States and Canada.

Part A: Intersectional Discrimination in Europe

5. "Intersectional" or "multi-dimensional" discrimination[1] is a form of discrimination on the basis of a combination of characteristics that comprise a person's identity rather than on the basis of one isolated characteristic. Under Article 14 of the European Convention of Human Rights (ECHR) the single factors on which an individual can be discriminated against include sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national

[1] This is also termed 'multiple' or 'dual' discrimination.

minority, property, birth or other status.[2] Article 14 has not, as far as the Intervener is aware, been recognised as covering intersectional discrimination which arises when an individual faces inferior or discriminatory treatment because of a combination of factors.

6. The European Commission published a report in 2007[3] recognising increasing instances of intersectional of multiple discrimination and the need for legislation to combat this. The report looked at multiple discrimination as 'consisting in any combination of discrimination on the grounds of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation'[4]. The report notes that 'as EU legislation does not include an explicit provision, most Member States do not address Multiple Discrimination'.[5] While the equal treatment directives established under Article 19 TFEU (previously Article 13 of the EC Treaty) apply, similarly to Article 14 ECHR, to only one ground of discrimination, there is explicit recognition of the frequent incidence of multiple discrimination in both Recital 14 of the Race Equality Directive 2000/43/EC (which applies to racial or ethnic origin) and in Recital 3 of the Framework Employment Directive 2000/78/EC (which applies to religion or belief, disability, age and sexual orientation). Both recitals are identically worded and state that 'In implementing the principle of equal treatment [irrespective of racial or ethnic origin], the Community should, in accordance with Article 3(2)[6] of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.' The report of the European Commission also notes that 'Minority women seem to be most vulnerable to Multiple Discrimination'[7].

7. At the time of the European Commission's report, only three Member States explicitly referred to multiple discrimination in their national legislation. For example, Section 4 of the German Equal Treatment Act 2006 states that 'Where unequal treatment occurs on several of the grounds referred to under Section 1, this unequal treatment may only be justified under Sections 8 to 10 and 20 when the justification extends to all those grounds for which the equal treatment occurred'. Section 1 covers discrimination on the basis of grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation.

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[2] This is also reflected on the general prohibition of discrimination set out in Article 1 of Protocol 12 to the ECHR.
[3] 'Tackling Multiple Discrimination: Practices, policies and laws' European Commission 2007. The European Union has competence to legislate in the field of discrimination, but only on a limited number of grounds. Article 19(1), Treaty on the Functioning of the European Union.
[4] 'Tackling Multiple Discrimination: Practices, policies and laws' European Commission 2007 at p.9
[5] 'Tackling Multiple Discrimination: Practices, policies and laws' European Commission 2007 at p.20
[6] Article 3(2). "In all the activities referred to in this Article, the Community shall aim to eliminate inequalities, and to promote equality, between men and women."
[7] 'Tackling Multiple Discrimination: Practices, policies and laws' European Commission 2007 at p.5

8. Similarly, as noted by the European Commission, 'In Romania, the law regarding Equality between Men and Women (Act 340/2006 Article 4h) mentions multiple discrimination directly by defining it as an act of discrimination based on two or more grounds of discrimination. The Romanian Equal Treatment Act (2006) …provides that discrimination on two or more grounds is to be treated as an "aggravating circumstance'. The Austrian Disability Equality Act 'stipulates that authorities have discretion to take account of any Multiple Discrimination when assessing the award for damages', and Spanish legislation provides that 'authorities shall...devise and introduce the necessary mechanisms and indicators to show the incidence of other variables whose recurrence generates situations of Multiple Discrimination'.[8]

9. More recently, the United Kingdom has recognised intersectional discrimination in Section 14 of the Equality Act 2010[9] which relates to a new category of 'combined discrimination' previously non-existent in UK law. Section 14 applies when 'A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics'. The 'relevant protected characteristics' which this section applies to include age, disability, gender reassignment, race, religion or belief, sex and sexual orientation. 'For the purposes of establishing a contravention of this Act by virtue of subsection (1), B need not show that A's treatment of B is direct discrimination because of each of the characteristics in the combination (taken separately)' (Section 14(3)).

10. The new Section 14 of the Equality Act 2010 was not in the Equality Bill when it was first introduced. It was added during its consideration in the House of Commons following strong lobbying by discrimination lawyers who illustrated with a number of cases that a single-ground approach will not be adequate and will not succeed in the courts where the basis for the discrimination is the combination of two or more grounds, for example alleged combined sex and race discrimination against a black woman where the respondent can show no discrimination against black men (so not race discrimination) and no discrimination against white women (so not sex discrimination). Similarly, a Muslim man may face discrimination on the basis of his religion and gender and therefore appropriate comparators would be a Muslim woman or a non-Muslim man and not simply women and non-Muslim men.

[8] See 'Tackling Multiple Discrimination: Practices, policies and laws' European Commission 2007 at p.20
[9] The Equality Act 2010 is not yet in force. Many provisions will come into force in October 2010 and Section 14 will come into force in April 2011.

11. Prior to passing the new Equality Act 2010, the UK government also initiated a consultation in 2009 into the need for a specific provision prohibiting intersectional discrimination. In the Government's response to the Consultation, the UK noted that 'Currently, people can only bring a claim that someone has treated them unfairly because of one particular characteristic...However, there are situations where people are discriminated against because of a particular combination of characteristics'. In the example of the discrimination experienced by a black woman, 'Under current legislation [prior to the Equality Act 2010], a person against whom a claim of discrimination is brought may be able to evade liability by demonstrating that he or she treated a black woman no differently from how he treated other women and...black men'.

12. Under the new Act, as confirmed in the Explanatory Notes (paragraphs 64 to 68) published with the Equality Act 2010, for a claim to be successful, the claimant must show that the less favourable treatment was because of the combination of the factors precipitating the alleged discrimination, as compared with how a person who does not share either of the characteristics in the combination is or would be treated. The claimant does not have to show that a claim of direct discrimination in respect of each protected characteristic would have been successful if brought separately.

13. This is a significant development of UK Equality law as previously tribunals have applied the single grounds approach to cases of combined discrimination. For example, in *Bahl v the Law Society, UK [2004] IRLR 799* which concerned a claim by an Asian woman that she had been discriminated on the grounds of her race and gender, the Employment Appeal Tribunal and the UK Court of Appeal were both of the view that she could not be compared to a white man to establish the effects of the combined discrimination as each ground has to be considered separately.

14. A more recent case in the UK Employment Appeal Tribunal in 2009 involving claims of indirect sex and race discrimination illustrates the reality of intersectional discrimination and how, even without explicit legislation, jurisprudence is developing which enables claims of combined discrimination to be considered by UK courts.

15. In *Ministry of Defence –v- Debique [2009] UKEAT 0048/09*, the claimant, serving in the British army, claimed indirect sex and race discrimination when she was disciplined because as a single parent from St. Vincent & the Grenadines she could not comply with the requirement to be available for deployment on a 24/7 basis, because she had to care for her child and could not be assisted with childcare by her sister because of the application of immigration rules. The

Employment Appeal Tribunal upheld the decision of the Employment Tribunal that the claimant was put at a particular disadvantage by the combination of these requirements reflecting the combination of the grounds of her claim.

16. The Employment Appeal Tribunal stated that "*In general the nature of discrimination is such that it cannot always be sensibly compartmentalised into discrete categories. Whilst some complainants will raise issues relating to only one or other of the prohibited grounds, attempts to view others as raising only one form of discrimination for consideration will result in an inadequate understanding and assessment of the complainant's true disadvantage. Discrimination is often a multi-faceted experience. The Claimant in this case considered that the particular disadvantage to which she was subject arose both because she was a 24/7 female soldier with a child and because she was a woman of Vincentian national origin, for whom childcare assistance from a live-in Vincentian relative was not permitted. The Tribunal recognised that this, double disadvantage, reflected the factual reality of her situation.*"[10]

17. The Intervener submits that while the recognition of intersectional discrimination in Council of Europe Member States has not been widespread, this does not represent a lack of consensus on the existence of this kind of discrimination. Instead, the Intervener proposes that it represents a lack of understanding or familiarity with that kind of discrimination, which defies normal anti-discrimination analysis; in particular, it can often be difficult to find a comparator in cases of intersectional discrimination. In addition to the European experience, the Intervener proposes that experience from other jurisdictions, notably the United States and Canada, will be of additional assistance to the Court in understanding this phenomenon.

Part B: Intersectional discrimination in other jurisdictions

18. Numerous courts in the United States and Canada have also identified incidents in which multi-dimensional discrimination occurred at the intersections of characteristics such as race, gender, age, and disability. These cases demonstrate courts' ability to recognise intersectional discrimination as a form of discrimination in which the whole is more than the sum of its parts. Most importantly, they serve to demonstrate courts' understanding of the injustices likely to result from adopting a single-ground approach to the analysis of a case that involves discrimination on the grounds of multiple factors.

[10] *Ministry of Defence –v- Debique [2009] UKEAT 0048/09 at para.165*

Intersectional Discrimination in United States Case-law

19. Despite the absence of explicit prohibition of intersectional discrimination, American courts have nevertheless found such discrimination to exist and to be in violation of Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of 'race, color, religion, sex or national origin'. The most frequently identified incidents of multi-dimensional discrimination appear to be based on race and gender. For example, in *Lam v. Univ. of Hawaii*, 40 F.3d 1551 (9th Cir. 1994), the plaintiff, an Asian woman, claimed that she had been discriminated against because of her race and gender. The court recognised the intersectional discrimination, noting "Asian women are subject to a set of stereotypes and assumptions shared neither by Asian men nor by white women … As other courts have recognised, where two bases for discrimination exist, they cannot be neatly reduced to distinct components … The attempt to bisect a person's identity at the intersection of race and gender often distorts or ignores the particular nature of their experiences."[11]

20. Similarly, several courts in the United States have also recognised, as has the UK, that discrimination against black women differs from discrimination against black men or against white women because it occurs at the intersection of race and gender. In an employment discrimination case concerning discriminatory treatment of black women, the court held that an employer should not escape liability for discrimination against black females simply by showing that it does not discriminate against black men or against white women: *Jefferies v. Harris County Community Action Ass'n*, 615 F.2d 1025 (5th Cir. 1980).[12] In another case where a black female plaintiff alleged discriminatory termination on account of her race and sex, *Chambers v. Omaha Girls Club*, 629 F.Supp. 925, 942 (D. Neb. 1986), the court adopted the reasoning from *Jefferies* to allow black women to be treated as a subclass under Title VII.[13] Similarly, *Graham v. Bendix Corp*., 585 F.Supp. 1036, 1047 (N.D. Ind. 1984) found that Title VII protects black women against discrimination on the double grounds of race and sex. Finally, courts have held that employment actions directed against black women as a group violated Title VII. *Judge v. Marsh*, 649 F.Supp. 770 (D.D.C. 1986).[14]

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[11] *Lam v. Univ. of Hawaii* 40 F.3d 1551, 1562

[12] "We agree that discrimination against black females can exist even in the absence of discrimination against black men or white women." 615 F.2d 1025, 1032.

[13] The court wrote, "The plaintiff in this case is defined by both race and sex, alone or in combination," and [t]he class or classes of which the plaintiff is a member are clearly within the protection of the statute." 629 F.Supp. 925, 942 (D.Neb. 1986). Ultimately, the plaintiff's discrimination claim did not succeed, though the court emphasised that it was because the plaintiff failed to establish discriminatory animus, not because of the intersectional discrimination that she experienced. *Id.*

[14] In another case acknowledging multi-dimensional discrimination, *Moore v. Hughes Helicopters, Inc.*, 708 F.2d 475 (9th Cir. 1983), the court refused to certify a black female plaintiff as a class representative because she claimed to have been discriminated against specifically as a *black* female, and she was therefore not necessarily representative of all females.

21. In some cases, even if the court does not find sufficient evidence to support a claim purely based on sex or race discrimination, the aggregate discrimination could support an intersectional discrimination claim. For example, in *Hicks v. Gates Rubber Co.*, 833 F.2d 1406 (10th Cir.1987), the plaintiff, a black woman, accused her employer of both racial discrimination and sexual harassment. While the court found that the use of racial slurs by the plaintiff's co-workers were occasional and incidental enough that they could not support a racial discrimination claim, and the unwelcome sexual advances the plaintiff described were not enough to show sexual harassment, the evidence of both racial and sexual hostility could be aggregated to support a hostile work environment claim under Title VII.[15]

22. The courts have also recognised intersectional discrimination involving other characteristics. For example, in *Phillips v. Martin Marietta Corp.* 400 U.S. 542 (1971), the United States Supreme Court found that an employer's policy of refusing to hire women with pre-school aged children constituted discrimination under Title VII of the Civil Rights Act of 1964. While the employer argued that the fact that 75-80% of people hired for the position were women was clear evidence that it did not discriminate on the basis of sex, the Court recognised that women with pre-school aged children were being treated differently from other women, and differently from men with pre-school aged children.

23. In other cases, the courts did not hold in favour of the complaining plaintiffs but nonetheless acknowledged the concept of intersectional discrimination. *See e.g., Noviello v. City of Boston*, 398 F.3d 76 (1st Cir. 2005) [16] and *Wilken v. Cascadia Behavioral Health Care, Inc.*, 2007 WL 2916482 (D.Or. 2007). In this case, a lesbian woman claimed discrimination on the basis of her gender and sexual orientation. Citing *Lam* and acknowledging that intersectional discrimination may have occurred, the court nonetheless dismissed her claims because, unlike both race and gender, sexual orientation was not among the classifications protected under the statute.

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[15] "[The] question is whether, in determining the pervasiveness of the harassment against a plaintiff, a trial court may aggregate evidence of racial hostility with evidence of sexual hostility. We conclude that such aggregation is permissible." 833 F.2d 1406, 1416. "[The] evidence should be considered on remand to determine whether there was a pervasive discriminatory atmosphere, *combining the racial and sexual harassment evidence*, so that a hostile work environment harassment claim may have been established … Even though we have held that the evidence sufficiently supports the discrete finding that [the defendant] did not maintain a work environment openly hostile to blacks … [the] evidence on racial treatment should be considered for this combined purpose here with the sexual harassment evidence." F.2d 1406, 1416-1417, emphasis added.

[16] The court recognised the existence of intersectional discrimination but did not find sufficient evidence of such discrimination in the case.

24. Nevertheless, while many courts have recognised and responded to intersectional discrimination, others unfortunately have not. Scholars have documented the immense difficulties the victims of intersectional discrimination face when bringing their claims to court.[17] A court's failure or refusal to recognise this form of discrimination can lead to unjust results.[18] Critics of these decisions note that courts, in failing to acknowledge intersectional discrimination, have allowed employers to continue to discriminate against black female employees and others who experience discrimination based on multiple characteristics.[19] These criticisms highlight the need for courts to be aware of the realities of intersectional discrimination and the implications of failing to recognise it.

Intersectional Discrimination in Canadian Human Rights Case-law

25. Canadian human rights tribunals have also acknowledged that discrimination can occur at the intersections of race, gender, and/or other protected classes and have developed human rights jurisprudence to specifically address this form of discrimination.[20] For example, in a case where the defendant had committed ongoing acts of sexual solicitation and sexual and racial harassment against the plaintiff, the Ontario Human Rights Tribunal found that the racial and sexual discrimination intersected in direct violation of the spirit and purpose of the *Ontario Human Rights Code*. *Baylis-Flannery v. DeWilde*, 2003 CarswellOnt 8050 11 (2003). In determining that these facts warranted an analysis considering intersectional discrimination, the court wrote, "[a]n intersectional analysis of discrimination is a fact-driven exercise that assesses the disparate relevancy and impact of the possibility of compound discrimination, as per the analysis of the British Columbia Human Rights Tribunal in *Comeau v. Cote*, [2003] B.C.H.R.T.D. No. 32 (B.C.

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[17] *See* Minna J. Kotkin, *Diversity and Discrimination: A Look at Complex Bias,* 50 WM. & MARY L. REV. 1439 (2009) ("Empirical evidence demonstrates that multiple claims are all but impossible to win, more problematic even than single claims.")

[18] *See, e.g.,* In *DeGraffenreid v. Gen. Motors Assembly Div.*, 413 F. Supp. 142 (E.D. Mo. 1976), the court refused to recognise the plaintiffs' claim that the discrimination they encountered as black women was a combination of race and sex-based discrimination. ("[T]his lawsuit must be examined to see if it states a cause of action for race discrimination, sex discrimination, or alternatively either, but not a combination of both."). *See also Anthony v. Cnty. of Sacramento*, 898 F. Supp. 1435, 1445 (E.D. Cal. 1995) (stating that "the epithet 'black bitch' cannot be designated exclusively as either racist or sexist");

[19] *See* Bradley Allan Areheart, *Intersectionality and Identity: Revisting a Wrinkle in Title VII*, 17 Geo. Mason U. Civ. Rts. L.J. 199, 201 (2006). "*DeGraffenreid* illuminates the highly practical approach that intersectionality brings to the dilemma of multi-faceted discrimination. In that case, the legal void for recognising intersectional complications in identity allowed GM to skirt the spirit of Title VII by feigning good faith."

[20] Note that, in addition to Canada, other international courts and bodies have recognised intersectional discrimination as a violation of human rights and domestic law. *See, e.g.,* United Nations Innocence Project, "Intersectional Discrimination Against Children: Discrimination Against Romani Children and Anti-Discrimination Measures to Address Child Trafficking," http://www.unicef-irc.org/publications/pdf/iwp_2009_11.pdf (2009) (a working paper investigating the issue of intersectional discrimination and the complexities that arise when children experience discrimination on the basis of multiple grounds, such as age, ethnic origin, disability, and gender); International Women's Rights Action Watch Asia Pacific, "Addressing Intersectional Discrimination with Temporary Special Measures," http://www.iwraw-ap.org/aboutus/pdf/OPSVIII.pdf (encouraging advocates, states, and treaty bodies to acknowledge the problems of women who experience intersectional discrimination and face multiple human rights barriers).

Human Rights Trib.), and of this Tribunal in *Morrison*."[21] *Id.* at 143 (citing *Morrison v. Motsewetsho*, 2003 CarswellOnt 8046, 14 (2003)).[22] The court concluded, "While the findings of discrimination made in this case are of sufficient gravity that Ms. Baylis-Flannery could succeed on either enumerated ground of race or sex … the law must acknowledge that she is not a woman who happens to be Black, or a Black person who happens to be female, but a Black woman." *Id.* at 145.

26. Though *Comeau v. Cote*, 2003 CarswellBC 3491 (2003), is not a case that addresses the intersectional discrimination of race and gender, the court's analysis of the plaintiff's experience of employment discrimination at the intersection of disability and age is instructive. There, the court found that the impact of the discrimination on the basis of age and disability was more harmful to the plaintiff than if the discrimination were only to have been on one ground.[23]

27. As can be seen from the above mentioned cases, Canadian courts have recognised intersectional discrimination as a legitimate form of discrimination and factor analysis of this form of discrimination into their decisions. Under an intersectional analysis, plaintiffs who experience multiple forms of discrimination are no longer at risk of having their claims dismissed solely on account of their claims not fitting neatly within the "race" or "gender" framework.

28. There is danger in adopting a single-ground approach to the analysis of a case that involves discrimination due to multiple factors. As the court in *Baylis-Flannery v. DeWilde* recognised, characterising a case of race and sex discrimination only as a sexual harassment matter that

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[21] The court also relied on secondary sources to support the use of intersectionality analysis. *See e.g.,* "An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims," OHRC, 2002; Duclos, N., "Disappearing Women: Racial Minority Women in Human Rights Cases" (1993) 6 C.J.W.L. 25; and Iyer, N., "Categorical Denials: Equality Rights and the Shaping of Social Identity" (1993) 19 Queen's L.J. 179. The court wrote, "[t]he common theme of these secondary sources … is that reliance on a single axis analysis where multiple grounds of discrimination are found [ ] *tends to minimize or even obliterate the impact of racial discrimination on women of colour who have been discriminated against on other grounds, rather than recognize the possibility of the compound discrimination that may have occurred*." *Id.* at 144 (emphasis added).

[22] In *Morrison*, the court held that the plaintiff suffered from an "intersectionality of discrimination based on sex and ethnic origin," in violation of the *Ontario Human Rights Code* and awarded both plaintiffs compensatory damages as "compensation for [their] humiliation and loss of dignity resulting from the infringement of [their] rights under sections 5 and 7 [of the Ontario Human Rights Code], *to be free from intersectional discrimination based on [their] sex and ethnic origin*, sexual solicitation and harassment." 2003 CarswellOnt 8046 231 & 234 (emphasis added).

[23] For other examples of international human rights tribunals recognising intersectional discrimination, *see Canada (Attorney General) v. Mossop*, 1993 CarswellNat 1365 ¶153 (1993) (noting that "It is increasingly recognized that categories of discrimination may overlap, and that individuals may suffer historical exclusion on the basis of both race and gender, age and physical handicap, or some other combination.") (citing Patricia Williams, *The Alchemy of Race and Rights* (1991)); Nitya Duclos, "Disappearing Women: Racial Minority Women in Human Rights Cases" (1992), *Proceedings: Conference on Women and the Canadian State* (McGill-Queen's)). The court went on to conclude, "[c]ategorizing such discrimination as primarily racially oriented, or primarily gender-oriented, misconceives the reality of discrimination as it is experienced by individuals." *Id.*

involves a black complainant negates the importance of the racial discrimination that she suffered as a black woman.[24] In terms of the impact on the victim, the "whole is more than the sum of the parts: the impact of these highly discriminatory acts on her personhood is serious."[25]

29. The importance of recognising the need for intersectional discrimination to be a form of discrimination in its own right is highlighted by the inconsistency of application of discrimination law by European States and by courts in the USA and the UK. The impact of discrimination on combined grounds divides individuals into much smaller groups, for example Asian women instead of just women or just Asians, and inevitably the affect of such discrimination is thereby more serious.

Conclusion

30. The Intervener notes the Court's recent jurisprudential innovations designed to ensure that individuals making complaints under Article 14 (taken, of course, with one or more other articles of the Convention) do not face an insurmountable burden of proof. *See, e.g., D.H. v Czech Republic* (Grand Chamber, 2007) para 186. The Intervener likewise invites the Court to recognise the phenomenon of intersectional discrimination within the context of Article 14: an individual may be a victim of Article 14 taken in conjunction with one or more articles because she presents characteristics that cover two or more of the categories that Article 14 covers (for example, a woman of minority ethnicity). This is different from a claim of multiple acts of discrimination, which might fall to be considered separately (see, e.g., *Abdulaziz, Cabales and Balkandali v. The United Kingdom (1985), Paragraphs 70-92*). A situation of intersectional discrimination demands a more complex, fact-driven analysis that takes into account the multi-faceted nature of the discrimination and the impact on the victim's personhood. The reality is that such discrimination is, as one of the courts cited above noted (see paragraph 28), "more than the sum of its parts". Its effect is not merely degrading (*Moldovan and Others v Romania* (2005), paragraph 111) but is also – far more so than discrimination based on one ground – potentially isolating to the victim. It would be beneficial to authorities applying Article 14 of the Convention, but also Protocol 12 and national anti-discrimination law, for the Court to set out an accessible legal analysis of this kind of discrimination.

Saadiya Chaudary
The AIRE Centre
30 September 2010

[24] *Baylis-Flannery v. DeWilde*, 2003 CarswellOnt 8050 at 11
[25] *Baylis-Flannery v. DeWilde*, 2003 CarswellOnt 8050 at 11