Institutionalising intersectionality in Sweden – from pro-active to re-active measures?

by

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Abstract

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In recent years equality has become a key policy priority for the European Union, which has required its member states not only to pursue gender equality but also to promote diversity and to eradicate the multiple discriminations many people are exposed to. It has been recommended that legislators and policy makers address the various grounds of discrimination and axes of inequality, including gender, race, ethnicity, class, sexuality and disabilities and the intersections between them. In line with this development, a new Discrimination Act entered into force in Sweden on 1 January 2009. This new act replaces seven separate acts of legislation. The new act is to combat discrimination on grounds of sex, transgender identity or expression, ethnic origin, religion or other belief, disability, sexual orientation and age. While two more grounds for discrimination have been added - age and transgender identity or expression - one has been removed - race. At the same time, a new government agency, the Discrimination Ombudsman, was established, merging the former separate Ombudsmen (The Gender Equality Ombudsman, the Ombudsman against Ethnic Discrimination, the Disability Ombudsman and the Ombudsman against Discrimination due to Sexual Orientation) into one institution. This development has, however, met with resistance from feminists and representatives of the Gender Equality Ombudsman, who have argued that women as a group cannot be compared to ‘minority groups’. It has also been argued there is an apparent risk that the new equality law will focus on anti-discrimination rather than on promoting equality, thus taking a re-active position rather than a pro-active position. In this paper, the responses to the new institutional arrangement for promoting equality are analysed. Based on policy documents, including the Swedish Government Official Report on a new Discrimination Act and the comments submitted by bodies to which the report was referred as well as the parliamentary bill, counter-proposals to the bill and the subsequent parliamentary debates, this paper analyses the process leading up to the enactment of the new equality legislation and discusses the potential for the new Discrimination Ombudsman to deal with issues of multiple inequalities and intersectionality.
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Introduction

In recent years equality has become a key policy priority for the European Union (EU), which requires its member states not only to pursue gender equality but also to promote diversity and to eradicate the multiple discriminations many people are exposed to. While gender equality in all areas of life has been identified as a fundamental right and value of the EU, enshrined in its policies since the Treaty of Rome in 1957, it has been recommended that legislators and policy makers address the various grounds of discrimination and axes of inequality and the interaction between them. In EC Article 13 six components requiring measures to combat discrimination are identified: sex, racial and ethnic origin, disability, age, religion and sexual orientation. In the European Convention on Human Rights (ECHR), furthermore, it is stated that the enjoyment of rights and freedoms should be secured without discrimination in relation to several dimensions. Thus, where member states have previously been accustomed to combating problems ‘single’ inequality strands, they are now challenged to tackle multiple inequalities and the intersections between them.

These new political efforts to combat multiple discriminations are also guided by the concept of ‘intersectionality’, which has been developed by legal scholars in order to study the intersections between multiple equality strands (Crenshaw 1989). This new catchphrase in feminist theory emanates from the work of black feminist scholars on the ways in which Western feminist studies had taken white women and anti-racism policies and the activities of black men as a starting point, in that way disregarding the experiences of black women (hooks 1981; Hill Collins 1991; Anthias and Yuval-Davis 1992). A crucial issue in current research is, thus, to analyse and problematise how theoretical concepts are related to practical politics and the extent to which they are used and applied.

At an institutional level, the increasing focus on multiple equality strands has generated different responses across member states. Equality reviews have been conducted in many member states, and a wave of changes in institutional arrangements for promoting equality has spread across the European continent, including Sweden which this paper is focused upon. In line with Hancock’s distinctions between different approaches to the study of inequalities, some member states have taken a ‘Multiple Approach’ of double or multiple discrimination or even embarked upon an ‘Intersectional Approach’, through which intersections between multiple equality strands are analysed and tackled, while others have taken a ‘Unitary Approach’, continuing on the path of tackling inequalities separately (Hancock 2007). For instance, in the UK an Equality and Human Rights Commission, which is responsible for enforcing equality legislation in relation to age, disability, gender, race, religion or belief and sexual orientation of transgender status, has been established, while other member states, such

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1 This paper is part of FEMCIT “Gendered Citizenship in Multicultural Europe” financed by EU’s 6th framework programme.
2 EC, Article 13: “Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation” (Article 13 of the Amsterdam Treaty 1997).
3 ECHR, Article 14. Prohibition of discrimination: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other Status.”
as Spain, have opted for separate equality bodies and for giving priority to the category of
gender (Bustelo 2009).

These changes in institutional arrangements to address multiple inequalities are also
reflected in remote parts of Europe. In the Nordic countries, equality politics are currently
undergoing great changes. Public policies are increasingly aimed at an ‘integrated’ and
‘multiple’ approach to discrimination, moving away from a single gender equality framework,
and administrative enforcement bodies are being reorganised, merging separate institutions
into one.

In line with this development in the EU, a new Discrimination Act entered into force in
Sweden on 1 January 2009. This new act replaces seven separate acts of legislation.4 The new
act is designed to combat discrimination on grounds of sex, transgender identity or
expression, ethnic origin, religion or other belief, disability, sexual orientation and age. While
two more grounds for discrimination - age and transgender identity or expression - have been
added, one - race - has been removed. At the same time, a new government agency, the
Discrimination Ombudsman, was established to supervise compliance with the act,
amalgamating the four previously separate ombudsmen - the Gender Equality Ombudsman
(JämO), the Ombudsman against Ethnic Discrimination (DO), the Disability Ombudsman
(HO) and the Ombudsman against Discrimination due to Sexual Orientation (HomO) - into
one institution.

This new development in Sweden has met with resistance from feminists and
representatives of JämO, who have argued that women as a group cannot be compared to
‘minority groups’. It has also been argued there is a clear risk that the new integrated and
consolidated equality law will focus on anti-discrimination rather than on promoting equality,
thus taking a re-active position rather than a pro-active one. This ‘feminists’ fear’, thus,
addresses the question of what happens when new international impulses, in this case EU
gender equality policy, are to be incorporated into the legal frameworks of member states
which are based on a different gender equality regime? Will there be a conflict, will there be a
change, or neither?

In this paper, the responses to the new institutional arrangements for promoting equality
in Sweden are analysed. Based on policy documents, the paper will study the process leading
to the enactment of the new equality legislation and the reorganisation of enforcement
agencies and discuss the potential for the new institution of the Discrimination Ombudsman
(DO) to tackle issues of multiple inequalities and intersectionality. In particular, the paper
focuses on the ways in which the promotion of diversity and the combating of multiple
inequalities are debated, perceived and justified among political party spokespersons and
parliamentarians, former ombudsmen and representatives of civil society. Some of the
questions that will be discussed in the paper include: a) To what extent is combating
discrimination on the basis of an intersectional approach stressed as a motive for institutional
reform and change? b) What are the positions taken by the various actors involved in the
process, including the political parties, the ombudsmen and the non-governmental
organisations, on the new equality legislation and reorganised enforcement arrangements?
and, c) To what extent is the of equality enforcement agencies seen as a ‘threat’ or an
opportunity to gender equality, i.e. what does an intersectional approach entail for established
gender equality discourse in Sweden?

4 The new Discrimination Act replaced the following legislation: the Equal Opportunities Act, the Act on
Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or Other Religious
Faith, the Prohibition of Discrimination in Working Life on Grounds of Disability Act, the Prohibition of
 Discrimination in Working Life on Grounds of Sexual Orientation Act, the Equal Treatment of Students at
Universities Act, the Prohibition of Discrimination Act and the Act Prohibiting Discriminatory or Other
Degrading Treatment of Children and School Students.
The paper is based on policy documents from the political process leading up to the enactment of the new consolidated equality legislation and the amalgamation of enforcement bodies. These policy documents include the Swedish Government Official Report on a new Discrimination Act and the merging of equality enforcement agencies (SOU 2006:22 En sammanhållen diskrimineringslagstiftning. Slutbetänkande av Diskrimineringskommittén), the 145 comments submitted by bodies to which the report was referred, including the four Ombudsmen, the government bill (Proposition 2007/08:95. Ett starkare skydd mot diskriminering) and the 53 counter bills, the Committee Report prepared by the Committee of Labour Market (Arbetsmarknadsutskottets betänkande, 2007/08:AU7) as well as the parliamentary debate on the bill, including 65 contributions to the debate.

Intersectionality
There has been growing interest in recent years in the notion of intersectionality, even in feminist theory. In its most basic form, intersectionality refers to the distinguishing categories within a society, such as gender, ethnic background, sexual orientation, age, etc., and the idea that these markers of identity and difference do not function independently of each other. Rather, they act in tandem as interlocking or intersectional phenomena (Crenshaw 1995). The contemporary versions of the term emerged from legal feminist scholarship, in particular Kimberly Crenshaw’s definition of the term as a means of addressing the ways in which women of colour were subjected to both sexism and racism. It was used as a critique of the white feminist movement for excluding the black constituents within the movement and of the anti-racist movement for not addressing the disadvantages of black women (Crenshaw 1991). An intersectional perspective, therefore, recognises the need to consider the interdependencies between different intersecting inequalities. It provides a tool for analysing the ways in which gender, ethnicity, age and other forms of identity in different contexts produce situations in which different groups are exposed to discrimination. It also provides a way to move beyond analyses of these categories as opposing forces or separate systems to studies on the dynamic interplay between multiple forms of difference and the ways in which multiple forms of identity markers and inequalities serve to constitute and reinforce one another (Collins 1998). An intersectional lens, thus, helps in the analysis of the ways in which structural patterns of inclusion and exclusion are shaped and affected by more than one factor.

Anne-Marie Hancock (2007) has taken the intersectional perspective one step further by making a distinction between ‘unitary’, ‘multiple’ and ‘intersectional’ approaches to the study of inequalities. While a unitary approach to the study of inequalities departs from the study of one category, usually gender, multiple and intersectional approaches address several categories. While multiple approaches to inequalities usually address two or more categories in a fixed relation to each other, intersectional approaches address the dynamic interplay between them. Multiple approaches usually consider two categories, such as gender and race, as being of equal salience and as parallel phenomena, which produce an ‘additive’ model of politics.

In this paper, the ways in which intersectionality as a theoretical concept is related to practical politics are analysed. In particular, the paper studies the extent to which intersectionality is used and applied in Swedish policy documents. It is important to stress, however, that theoretical concepts often are applied in an indirect and implicit way. Sometimes concepts, such as intersectionality, are not explicitly referred to, but the content and meaning of them are embedded in the policy documents.

The Swedish gender equality regime and gender equality machinery
Scholars and politicians usually describe Sweden and the Nordic countries as
world leaders and models in terms of gender equality. This can be noted in many of the various ratings and indices, for instance, the number of women in politics, of women executives in public administration, of women professionals, etc. A central element in the gender regime of the Nordic countries has been the dual earner and carer model, encouraging women to take part in paid work and encouraging men to take part in unpaid domestic work. This model has been supported by policies such as individual taxation, public childcare and parental leave rights (Bergqvist et al 1999, Sainsbury 1999). Another central element has been the social democratic welfare regimes, which have promoted equal social rights (Bergqvist et al 2007). Helga Hernes (1987) introduced the terms the ‘women-friendly state’ and ‘state feminism’ as tools for understanding the Nordic gender regime and the new policies that emerged since the 1960s.

During the 1970s and 1980s, gender equality was transformed into a distinctive policy area in Sweden. Historians claim that this period in Swedish history can be seen as a "bloodless revolution", a period when gender equality was politicised and institutionalised (Florin & Nilsson 1999). A new term for gender equality was even invented - jämställdhet - which literally means standing side by side - to distinguish equality between the sexes from jämlikhet, which primarily involved equality between the classes (ibid.). This distinction was important for several reasons. First, one of the conditions for gender equality to be institutionalised was that gender came to be seen as a separate dimension in politics and as a category distinct from others. Second, and very importantly, by establishing a new word for gender equality, the political goal of equality between the sexes could be separated from equality between the classes, jämlikhet. Gender was, thus, separated from the class dimension. By making this distinction, the question of women and men could be dealt with in a new institutional frame, making it easier for consensus-building among political parties. Parties to the left (the Social Democratic Party and the Left Party) could argue that gender equality was a smaller issue within a greater framework of social justice and redistribution, while parties to the right or the middle (the Liberal Party, the Conservative Party and the Centre Party) could claim that gender equality involved equal rights and equal treatment of women and men as individuals. Political parties could, thus, agree on the idea that gender equality was a part of claims for justice and equality while basing this on different notions of individual and social justice.

As pointed out in research, the main ideological inspiration of the gender equality proponents of the 1960s and 1970s came from varieties of socialist feminism based on the New Left and reformist feminism with its liberal feminist focus on equal rights as well as equal status of the sexes and its strategy of institutionalised reforms (Sainsbury 2005). As reformist feminists many of the gender equality proponents of the time endorsed substantive equality and equality of results, thus moving beyond the ideal of formal equality and equal opportunity. Also, as reformist feminists, reforms such as positive actions and state intervention, reforms that are usually seen as in conflict with core liberal principles, were sanctioned.

*Gender equality machinery*

With the first bourgeois government in power in 1976 after 44 years of Social democratic hegemony, the first gender equality machinery was established, including a Gender Equality Minister (1976), the first Gender Equality Law (1979) as well as the Gender Equality Ombudsman (1980). In order for gender to be accepted as a valid dimension, it had be linked to the liberal project of the emancipation of individuals from discrimination and oppression. The concept of gender equality was, thus, largely detached from the notion of equality between the classes and separated from a politics of social justice. The historian Yvonne Hirdman describes this process in the following way: “[W]here equality withered
away and disappeared, gender equality took root.” It is also possible to interpret this development as a consequence of the concept of equality being redirected in a more liberal direction in general.

Ever since the 1970s and 1980s, gender has been seen as a (natural) part of political debates, and gender equality has been established as a societal goal (Lindvert 2002). The Nordic countries have been classified as the most gender equal and “women friendly” with regard to women's welfare and the harmonisation of work and family responsibilities (Hernes 1987, Sainsbury 1999, Siim 2000).

In the mid 1980s the major gender equality institutions were established. The gender equality machinery was organised in accordance with four different functions: the political function, the administrative function, the policy-advisory function and the law-enforcing function (Bergqvist et al 2007). With regard to the political function, the Minister for Gender Equality has had the primary responsibility for gender equality in Sweden since 1976. This minister is staffed with a press secretary, a political adviser and an under-secretary. As Bergqvist et al (2007) point out, the fact that a full fledged minister is in charge signals importance. Administratively, the Minister of Gender Equality is assisted by the Gender Equality Division (Jämställdhetsenheten), which was established in 1982. This division develops principles of gender equality policy, prepares gender equality legislation and coordinates legislation with the other ministers. The division is also responsible for special projects for the promotion of gender equality and for international contacts. Regarding the policy-advisory function, the Minister meets with the Gender Equality Council (Jämställdhetsrådet) four times per year. This is an advisory body, and it consists of representatives from the women’s movement, political parties, NGOs, etc. Here ideas and information are shared, and the Council has been consulted in controversial issues, such as EU membership, quotas, etc. In addition to this body, special ad hoc advisory groups have regularly been set up, such as the ‘daddy group’ and the ‘masculine roles group’. The law-enforcing function has primarily been in the hands of the Gender Equality Ombudsman (JämO) and an Equal Opportunities Commission (Jämställdhetskommissionen). These two bodies were set up in 1980 with the mandate to supervise the Act on Equality between Women and Men at Work (The Gender Equality Act), which was adopted in 1979.

The Gender Equality Minister has often also been the Minister for Integration, as the present Minister for Integration and Gender Equality Nyambo Sabuni (Liberal Party). Likewise, the gender equality machinery has served as a model for ethnic minority issues. For instance, in 1986 the Ombudsman to combat Ethnic Discrimination was established (DO), and in 1999 the Act on Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or Other Religious Faith was enacted.

Since the mid 1990s, changes in the gender equality machinery have been introduced. For instance, in 1994 the policy of gender mainstreaming was introduced, making it clear that the national goals for gender equality are the collective responsibility of the Swedish government. This means that each minister is responsible for gender equality issues within her or his area. The Minister for Gender Equality still has the main responsibility for coordinating and monitoring the government’s work with the assistance of the Gender Equality Division. In the same year, 1994, 21 gender equality officers attached to the county administrative boards were appointed. They serve as the government’s extended arm in the regions, assisting the government in the implementation of national policies.

The most recent change that has taken place is the enactment of the new consolidated Discrimination Act, which entered into force on 1 January 2009. This new act replaced seven separate acts of legislation, including the Act on Equality between Women and Men at Work. As a result of the act, a new enforcement institution was established, the Discrimination Ombudsman (DO), into which the former four separate equality enforcement institutions (the
Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Disability Ombudsman and the Ombudsman against Discrimination due to Sexual Orientation) were merged.

This development marks a significant institutional change in the Swedish gender equality machinery. It also signal a change in equality politics and the concept of equality in itself, i.e. from equality to gender equality and now possibly back to equality again. While the category class exited the equality discourse in the 1970s, giving way to the category of gender, the time may now have come for gender to exit in favour of the new discrimination grounds and the intersections between them. The extent to which this institutional and discursive change will effect the Swedish gender regime is an open question, and it will be further discussed in the conclusion of this paper.

Gender equality, Sweden and the EU

Depending on the starting point, international impulses, such as EU directives and soft laws may be perceived as a threat or a possibility (Bergqvist et al 2008). In the public debates in Sweden at the time of the referendum in 1994 on Sweden’s accession to the EU, many feared that a Swedish EU membership would result in weakened gender equality policies (Jacobsson, 1994, p. 134). Compared to many EU member states, the proportion of women in elected bodies and the share of women in the work force was favourable in Sweden. Swedish women’s possibility to reconcile domestic responsibility with professional work was also comparably stronger than other EU member states via extensive legislation on parental leave and institutionalised child care. In general, women in Sweden as well as women in the other Nordic countries, were sceptical toward the EU and an increased European integration, which could be seen as a threat to the Nordic welfare state model and gender regime. Research shows that if only women had been given the right to vote in the referendum in 1994 on Sweden’s accession to the EU, the result would have been a ‘no’. 52 percent of the female electorate voted ‘no’, while 46 percent voted ‘yes’. Men were more positive. 59 percent of the male electorate voted ‘yes’, while 40 voted ‘no’ (Oscarson, 1996, p. 211).

The legislative process in Sweden

Before the process towards an integrated discrimination act and an amalgamated enforcement body is analysed, a few words on the legislative process in Sweden are needed. The legislative process in Sweden may be divided into three separate processes: the inquiry process, the referral process, and the parliamentary process. Most legislative proposals – bills – laid before the Swedish parliament are initiated by the Government. Before the Government draws up a bill, the issue in question must be analysed and evaluated. This task is usually assigned to officials from the ministry concerned. Some questions the Government has to deal with are more difficult to decide than others and require more extensive analysis before a bill can be drafted. In dealing with these matters, the Government usually appoints a special expert or a special expert group, officially known as a commission or committee of inquiry. This expert or expert group is usually comprised of experts, public officials and politicians and operates independently of the Government. Its task it to examine and report on matters in accordance with a set of instructions, known as terms of reference, determined by the Government. This inquiry process, thus, concerns the process in which inquiry bodies analyse and prepare the matter in question. In this process politicians and specialists cooperate, and the conclusion of their work is published as reports in the Swedish Government Official Reports Series (SOU).

Before the Government comes to a decision on the recommendations of the government commission of inquiry, the report is distributed to relevant bodies for consideration. These bodies may be central government agencies, local government authorities, special interest
groups or advocacy groups that might be affected by the proposals made in the report. By this referral process, the Government gets valuable feedback and the opportunity to measure the support to be expected. Civil society is always contacted whenever a major legislative change is proposed. The committee system, including the inquiry process and referral process, thus, represents a characteristic trait of the Swedish corporate system.

The parliamentary process is the last stage in the process. When the Government has received comments from the referral bodies, the ministry responsible drafts the bill. If the bill has implications for private citizens or the welfare of the public, it is first referred to the Council of Legislation to ensure that it is not in conflict with existing legislation. All legislative proposals, regardless if put forward by the government or by a member of parliament (MP), are sent to one of the parliamentary committees for deliberation. Any of the 349 MPs may table a counter-proposal to a bill proposed by the Government. These counter-proposals, or motions, are sent to the same parliamentary committee as the bill. When the parliamentary committee has completed its deliberations, a committee report is submitted to the chamber for parliamentary debate and final approval. The official decision-making is, thus, made in the chamber.

In this legislative process, the hegemonic discursive framing of the issue at hand is expected to be found in the government bill as well as the committee report. Counter discourses or articulations that deviate from the dominant view of the problem are expected to be found in the comments submitted by the referral bodies, as well as in the parliamentary debate.

The process towards an integrated discrimination act and an integrated enforcement institution

The inquiry process

The process leading to an integrated discrimination legislation and enforcement institution began in earnest in 1999, when the youngest of the equality ombudsmen, HomO (the Ombudsman against sexual discrimination), was established. In the same year, a Government Commission of Inquiry Report (SOU 1999:73 Handikappsombudsmannens framtida förrutsättningar och arbetsuppgifter) presented an analysis of the future conditions of the Ombudsman for Disabilities (HO) and the prospects for merging the four equality enforcement institutions into one. The commissioner rejected the idea on the grounds that disability organisations were concerned that a merger would result in a down-grading of disability questions in favour of the other discrimination grounds. JämO (the Gender Equality Ombudsman) as well as DO (the Ombudsman for Discrimination on Ethnic Grounds) were also sceptical to the proposal, arguing that important expertise would be wasted. HomO had at the time just been established and was, thus, not able to respond to the proposal (SOU 1999:73, p. 152f).

A couple of years later, in 2005, the winds were blowing in another direction, and a new Government Commission of Inquiry Report (SOU 2005:56 Det blågula glashuset – strukturell diskriminering i Sverige) suggested integrated legislation against discrimination and a merged enforcement institution. Intersectionality was presented as a relevant concept, indicating the ways in which different axes of power impact and construct, enhance and weaken, complement and compete with each other. The commissioner argued that discrimination occurs in the dynamic interplay between various axes of power and that a merged enforcement institution could better understand and tackle the complexities involved in the intersections of the various grounds of discrimination (SOU 2005:56, p. 463f., 565ff).

In the same year, however, the Government Commission of Inquiry Report (SOU 2005:66 Makt att forma samhället och sitt eget liv – jämställdhetspolitiken mot nya mål)
presented opposing views, arguing that the promotion of gender equality is best undertaken by JämO (the Gender Equality Ombudsman) as a separate enforcement institution and that an integrated enforcement institution would result in the weakening of gender equality work. Instead, a specialisation of JämO was promoted as well as the establishment of a new administrative agency, a Gender Equality Institute, with the task of coordinating gender equality policy and monitoring its implementation. Intersectionality was not mentioned (SOU 2005:66, p. 508, 516). Thus, the three Government commissions represented different positions with regard to whether or not gender as a dimension would be down-graded or up-graded in a merger of equality enforcement bodies.

The Discrimination Committee and its report

In 2002, a Parliamentary Discrimination Committee was appointed by the Government. The main task of this committee was to review and consider the prospects for integrated anti-discrimination legislation (Committee Directive 2002:11). This review was to be conducted in conjunction with the implementation of two EU anti-discrimination directives: the Racial Equality Directive prohibiting discrimination on the grounds of racial and ethnic origin and the 2000 Employment Equality Directive against discrimination on grounds of religion or beliefs, disability, sexual orientation and age.

The four years of work by the Commission resulted in a Government Commission of Inquiry Report (SOU 2006:22 En sammanhållen diskrimineringslagstiftning. Slutbetänkande av Diskrimineringskommittén) in which it was proposed that new consolidated discrimination legislation be enacted to combat discrimination on grounds of sex, transgender identity or expression, ethnic origin, religion or other belief, disability, sexual orientation and age. In line with the EU directives, two more grounds for discrimination were added: age and transgender identity or expression. It was also proposed that the four existing ombudsmen institutions – the Gender Equality Ombudsman (JämO), the Ombudsman against Ethnic Discrimination (DO), the Disability Ombudsman (HO) and the Ombudsman against Discrimination due to Sexual Orientation (HomO) – be merged into one institution, the Discrimination Ombudsman (DO).

Several arguments in favour an integrated discrimination law and enforcement body were presented in the report. One dominant argument put forward involved the need for a stronger emphasis on the equal values and rights of all humans. Additional arguments in favour of the legislative proposal included the argument that the work against discrimination would be strengthened and receive more weight and credibility. It was also argued that an integrated agency would be a natural domicile for new grounds of discrimination and that it would help to combat both new and older grounds of discrimination. In addition, consolidated legislation and a consolidated enforcement body would make it easier for people who have been exposed to discrimination. A more unified implementation of the legislation would be promoted, and a more efficient supervision of the law in terms of active measures would be promoted (SOU 2006:22, Part 2, p. 214-219).

Furthermore, intersectionality was mentioned as a motive. It was stated that “the interdisciplinary concept intersectionality” is of interest because it “focuses on the ways in which different axes of power interplay and are embedded in each other” (SOU 2006:22, Part 2, p. 216). It was also stated that “of primary interest is not that several grounds of discrimination are ‘placed upon’ each other but rather that there are structures that make a specific combination of individual factors result in discrimination (for instance black, lesbian woman) while a change in any of these factors would possibly lead to another treatment (SOU 2006:22, Part 2, p. 216). Thus, an intersectional view was promoted, and a view that pointed to the gains of focusing on the dynamic interplay between multiple forms of difference, at the expense of an ‘additive’ view of inequalities.
The referral process

Before the Government took up a position on the recommendations of the Commission of Inquiry, the report was, as is customary in Sweden, referred for consideration to relevant bodies. These referral bodies may be central government agencies, special interest groups, local government authorities or other bodies whose activities may be affected by the proposals. In the case of the Government Commission of Inquiry Report SOU 2006:22, 145, agencies and interests groups responded to the report. Of these, three of the four enforcement agencies (DO, HomO and HO) were in favour of an integrated law and enforcement institution, while the forth one, JämO, had a negative view.

Responses by DO, HomO and HO

Among the three enforcement agencies in favour of an integrated institution, only DO explicitly referred to intersectionality, making references to “different types of discrimination that often interact with each other, so-called intersectionality” (DO, Remissvar, p. 17). The other two agencies did not explicitly refer to intersectionality.

The main argument in favour of consolidated legislation and an amalgamated enforcement agency was efficiency. DO referred to “a more efficient struggle against discrimination”, more “accessible legislation both for people who risk discriminating and people who risk being exposed to discrimination”, a “greater acceptance and understanding of legislation”, which will result in “stronger protection for each of the grounds of discrimination,” etc. (DO, Remissvar, p. 17). In a similar vein, HO referred to the current “unclear” pertaining to the division of responsibility between the implementation and supervision of national policy and argued that this unclarity leads to “inefficiency and double work” (HO, Remissvar, p. 4). A precondition for the new institution to be “efficient” was to work more strategically on communication and information campaigns, it argued. Furthermore, while HomO claimed that all discrimination was unacceptable regardless of ground and that integrated legislation and an integrated enforcement agency should “help those who have been exposed to discrimination, particularly to a discriminatory action that can be attributed to more than one ground of discrimination”, the main argument was not about how different axes of power intersect but about how “to contribute to a more efficient protection against discrimination, and a more efficient and coordinated supervision of active measures” (HomO, Remissvar, p. 1).

The argumentation was also posed within a human rights framework. DO, for instance, claimed that one of the main arguments in favour of an integrated enforcement institution was to improve the organisation of the implementation of human rights in Sweden. Similarly, HO proposed that an integrated enhancement institution should not deal with active measures to combat discrimination and to promote equality. This was a task for the ordinary administrative authorities. Rather, the integrated enhancement body should supervise the extent to which human rights conventions and the discrimination law were implemented in Sweden and inform the public about it (HO, Remissvar, p. 1). HomO maintained that the Discrimination Committee should have proposed a “non-exhaustive list of prohibited discrimination” in line with the European Convention for Human Rights (HomO, Remissvar, p. 2).

For these three enforcement agencies, there seems to be an underlying assumption (and hope) that ‘their’ discrimination grounds would be privileged with the new institutional arrangements proposed in the report. For instance, HO constantly referred to the importance of focusing on disability. It stressed disability as a unitary discrimination strand, however, and never in an intersectional perspective. HomO was positive to the proposal of also including gender identity as one of the discrimination grounds. In a similar vein, they seemed to believe
that gender equality had previously been ‘upgraded’ and given priority at the expense of the other discrimination grounds, and now the time had come for the other discrimination grounds to be the focus of greater attention. For instance, DO argued that it did not share the opinion of the Discrimination Committee that the need for regulation was greater for sex than for other grounds for discrimination: “[T]o have different rules for different grounds of discrimination gives an impression that (salary) discrimination for other groups than sex is not as serious” (DO, Remissvar, p. 16). Also, DO made a case for the merging of the two concepts of “harassment” and “sexual harassment”, because otherwise “one highlights sexual harassment and stresses that this is something more serious than harassment based on other discrimination grounds. This contradicts the very aim of integrated discrimination legislation” (DO, Remissvar, p. 21). Moreover, DO questioned why the proposed law explicitly stressed that the Ombudsman should “[p]romote equality between women and men” (ibid., p. 27). Rather than prioritising gender equality, the Ombudsman should even promote equality between different ethnic groups, DO claimed. The idea of equality between women and men was already included in the general formulations about equality, DO maintained.

JämO’s response

JämO differed from the other three enforcement agencies in its negative position toward consolidated legislation and an amalgamated equality enforcement body. One of the main arguments in favour of a separate gender equality body was the idea that the different inequality strands were not similar and that the category ‘women’ could not be compared to ‘minorities’. Existing gender structures discriminated against women as a group, and women could, thus, be seen as a minority. JämO, therefore, questioned the assumption of the similarities between the different grounds of discrimination. A consequence of this assumption of similarity, it was argued, was that “one disregards the differences in the mechanisms and processes as well as the dynamics of inequality, which produce and reproduce these differences in a multidimensional situation (structural intersectionality)” (JämO, Remissvar, En ombudsman). An amalgamation, in JämO’s view, would risk that commonalities might be emphasised at the expense of special aspects.

Another argument in favour of a separate gender equality enhancement body, and against an integrated body, put forward by JämO involved the risk of losing important expertise in the field of gender equality that had been developed over the course of the last thirty years. JämO’s reputation, both in Sweden and internationally, and its successful work in the promotion of gender equality was also mentioned.

JämO also differed from the other enhancement bodies to the extent that it discussed and problematised the notion of intersectionality. While gender was interrelated with other categories, such as ethnic background, sexuality, etc., and while there was a need for a greater coordination between the regulations intended to promote equal opportunities and prohibit discrimination, it does not follow automatically that there should be integrated legislation for “all discrimination grounds” and/or an integrated enforcement agency: “[T]o integrate all active measures for all of the discrimination grounds into one piece of legislation may imply that the active measures in the field of gender equality will be difficult to maintain and that a focus will be redirected towards the other discrimination grounds in order for them to keep up with the improvements made in gender equality” (JämO, Remissvar, Gemensam lagstiftning). Thus, JämO’s comments reflected an apparent fear that gender equality would lose out to the other discrimination grounds.

It was also argued that the trend towards diversity and intersectionality might play into the hands of the opponents of gender equality:
Those who are opponents to gender equality will welcome the proposal to bring an end to JämO as a strong actor in the work toward gender equality. To finish JämO as a separate enforcement agency will be perceived as a wanted dismantling of gender equality policies by those who most of all would like to eliminate all legislation in the field of gender equality, in particular the rules on affirmative action” (JämO, Remissvar, En ombudsman).

In its comments on the Commission Report, JämO also stated that having an unclear diversity perspective, as in the report, could become a politically correct shortcut to being excused from implementing the redistribution of power, as the question of gender equality entails. It was also stated that the prevalence of intersectional discrimination and the application of an intersectional perspective hardly represents an argument in favour of integrated legislation and/or an amalgamated enforcement agency. Thus, JämO disagreed with the argument presented by the Discrimination Committee that an integrated agency would avoid the problem of “dividing people into different categories, in which discrimination grounds are dealt with one at a time” (Chapter 13.4.3). Rather, JämO contended that regardless of legislative organisation and supervision, it would always be necessary (and desirable) to examine the grounds on which a person has been discriminated.

JämO also questioned the arguments that integrated legislation and an integrated enhancement agency would contribute to a more efficient supervision:

“[E]fficient in what way? Economically more efficient to the state or for the employers and other counterparts, who would receive benefits in their promotion of equality by limiting their duty to make equality plans to just one plan? Or more efficient with regard to the goal that regulations on active measures would have a greater impact at the workplaces” (JämO, Remissvar, En ombudsman).

In what way, JämO asked, could integrated legislation, which partly undermined regulations, enhance efficiency in the promotion of gender equality?

Finally, JämO differed from the other equality enforcement institutions in its explicit focus on affirmative action. While the other three bodies based there positions primarily on a purely anti-discrimination perspective in their work, JämO stressed the importance of both anti-discrimination and active promotion of gender equality. In its comments to the report, it stated that having “clear, sharp and well sanctioned requirements for affirmative action in order to promote gender equality” is “the real motor in the transformative work which is required in order to reach the goal – real equality between women and men” (JämO, Remissvar, En ombudsman). Thus, the regulations concerning affirmative actions were not seen as a complement to the regulations on anti-discrimination but as one of two equally important tools of the same legal framework that cross-fertilise each other in practical work.

In a Särskilt yttrande (“special comment”) to the Report, JämO Claes Borgström wrote:

“Due to the gendered power order in all areas and aspects of life, women’s conditions need to be improved. Affirmative action can be an efficient instrument for achieving real equality. In what concrete contexts, to what extent, and during what period of time is dependent on the conditions in society and the concrete situation” (Claes Borgström, Särskilt yttrande, p. 598).

Responses by civil society actors

Among the civil society actors and organisations responding to the Government Commission of Inquiry Report, positions both for and against an integrated approach were taken. Feminist Initiative, founded in 2005, argued that “discrimination due to sex and sexuality takes place everywhere in society. This discrimination may take different expressions and interplay with other axes of power, such as racist and socio-economic structures” (F! För en feministisk politik, section “Politikens organisering). It was maintained, however, that an intersectional perspective did not justify integrated legislation or an integrated enforcement body, since this would most likely damage work towards gender equality. On a website commenting on the Report, its spokesperson Gudrun Schyman, former
leader of the Left Party, claimed that “the gendered power order is the foundation of society, and it does not rest on a minority position. Questions which relate to the discrimination of women can, consequently, not be treated in the same way as the other discrimination grounds. An integration of all equality enhancement bodies would simply mean that the gendered power order would be invisible.” Feminist Initiative, thus, agreed with JämO on gender as a category that differs from the other discrimination grounds and that should be treated in a different way.

Among the more than one hundred organisations that commented, TCO (the Swedish Confederation for Professional Employees) took a similar position, arguing that “there is an obvious difference between, for instance, the category of sex, which comprises half of the population and which is based on the historical inferiority of women and on men’s norms, and the protection of a minority vis-a-vis a majority group in society, eg. transpersons” (TCO, Remissvar, p. 7). In TCO’s response, it was also argued that the structural reasons behind discrimination differ among the various discrimination grounds: “It involves different methods and different types of knowledge when it comes to making visible and combating the structural reasons for why women get lower salaries than men as compared to why persons with ethnic minority background do not get an employment” (TCO, Remissvar, p. 7). In line with JämO’s argumentation, TCO claimed that the work against the discrimination of women is more important than the other grounds, since it concerns a majority group.

Similar positions were taken by the other trade unions, such as LO (the Swedish Trade Union Confederation) and SACO (the Swedish Confederation of Professional Associations). In a joint comment by LO, TCO and SACO, it was argued that a heightened focus on anti-discrimination would shift focus from the preventive work against discrimination conducted at the work places to the trials involving cases of discrimination already committed (LO, TCO and SACO, Remissvar, Särskilt yttrande, page 610). It was also claimed that the commission had a pronounced individualistic perspective. While discrimination legislation is based on providing individuals with effective protection against discrimination, one cannot assume that this individual legal protection alone gives the most effective protection, they argued. If general protection – or the model of collective agreement – is weakened, discrimination will increase, they argued, even if anti-discrimination legislation is improved. Consequently, as JämO, these organisations took a more pro-active view on gender equality than DO, HO and HomO.

As JämO but in contrast to HomO, RFSL (the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights) suggested separate equality enforcement bodies. In its view, it was of symbolic importance to have an ombudsman that explicitly addresses issues of discrimination against sexual orientation. By having a HomO, it claimed, “Sweden illustrated that sexual orientation was a discrimination ground that is taken seriously, which in itself sends an important signal” (Remissvar RFSL, page 7).

The parliamentary process

After the referral bodies had submitted their comments, the Ministry of Integration and Gender Equality drafted the bill to be submitted to the Parliament. In the Government Bill 2007/08:95 A Stronger Protection against Discrimination, the Government proposed integrated discrimination legislation and an amalgamated enhancement body, as suggested in the Government Commission of Inquiry Report. In the bill, it was also suggested that the previous law that companies with more than ten employees be required to draw up an annual

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5 Gudryn Schyman för F! Mandom, mod och morske män. www.feministisktinitiativ.se
6 If the proposed law has important implications for private citizens or the welfare of the public, the Government should first refer the proposal to the Council on Legislation (Lagrådet) to ensure that it does not conflict with existing legislation.
plan for gender equality work as well as a report on and evaluation of how the planned measures were implemented was to be changed. In the proposal, it was suggested that the law should only be applied to companies with more than 25 employees and that these plans be made every three years.7

As in the Commission Report, most of the arguments in the bill were framed within a human rights discourse. The first argument mentioned was the right to be protected against discrimination as a human right. With references to the international legal framework around human rights, including the UN:s General Declaration on Human Rights, the European Convention on Human Rights, the CEDAW Convention, EC 13, etc., it was argued that the “Government works for Sweden to be a tolerant and humane society, permeated with diversity and respect for individual human freedoms and rights. Equality before the law is to be promoted as well as the equal worth of every individual” (Government Bill 2007/08:95 A Stronger Protection against Discrimination). An entire chapter in the bill was devoted to the description of the international human rights framework and the incorporation of this framework into Swedish judisprudence.

Another discursive frame was efficiency. As in the Commission Report, it was claimed that consolidated legislation represented a 'clearer' and 'more efficient' tool against discrimination. It would promote the establishment of similar protection against discrimination regardless of discrimination grounds or fields of society, it would contribute to a more uniform implementation of legal acts and improved supervision. Moreover, consolidated legislation would be more easy to grasp and well structured than the previous seven separate laws, and this would make it easier for persons who had been exposed to discrimination to find and to make use of the law. Furthermore, it was simple and economical from a legal point of view in that common definitions of grounds for discrimination and the concept of discrimination were to be found in the same place. It was also argued that a consolidated law was a natural step, natural since the rules and regulations were so similar. It would also make it easier for future legislators to maintain protection against discrimination similar in relation to all discrimination grounds, and it would make it easier to introduce new grounds of discrimination, if needed. Thus, the buzzword seemed to be ‘simplicity’, which would, in turn, improve ‘efficiency’.

The new act was to combat discrimination on seven grounds: sex, transgender identity or expression, ethnic origin, religion or other belief, disability, sexual orientation and age. While two more grounds for discrimination - age and transgender identity or expression - were added, one – race - was removed. According to the bill, the ground ‘age’ followed directly from EU regulations, in particular Directive EC 2000/78 on the workforce (the 2000 Employment Equality Directive). The category ‘transgender identity or expression’, however, was not regulated by the EU. Nevertheless, it was made clear in the bill that transvestites and other persons within this category, including transsexuals, intersexuals, intergender persons and transgenderists, comprised a “vulnerable group” in society that are often met with distrust and prejudice. Therefore, it was of great concern to include this group in the discrimination legislation.

With regard to ‘race’, a reference to the Swedish parliament (Riksdag) and its statement on the usage of the category ‘race’ was made. According to the views of the Riksdag, there is no scientific ground for dividing people up into races. There is, consequently, no ground from a biological perspective to use the term ‘race’ about people. Uses of the term ‘race’ could instead risk stirring up prejudice and should, therefore, be used in as limited an extent as possible. While the term ‘race’ is used in some Swedish regulations, however, it should be seen as a reflection of international conventions or EC directives. In the bill, it was argued

7 This proposal implied that the current legislation of employers with no less than 10 employees are obliged to make annual plans, are to be changed in two ways: 1, the periodicity and 2, the size of the companies targeted.
that “[I]t is important that the new discrimination regulation reflects present values and perceptions and that it correspond to the high expectations of the legislator” (Prop. 2007/08:95, p. 120). It was also maintained that use of the term race could provide legitimacy to racist perceptions and cement race as an existing category (Prop. 2007/08:95, p. 120). Instead, the formulation “ethnic belonging”, which includes “national or ethnic background, color of skin and other similar relations” was recommended (Prop. 2007/08:95, p. 117).

While including seven grounds of discrimination, no references to ‘intersectionality’ were made in the bill, and no explicit argumentation in relation to combating discrimination across inequalities was made. Rather, the seven discrimination grounds were treated as additive categories, and the interrelation between them was not problematised to any great extent. In contrast, however, many references were made to the diversity within groups, for instance within the categories of transgender identity, ethnic origin, sexual orientation, etc., which indicates an openness (and sensitivity) to breaking down homogeneous and fixed categories.

Several arguments in favour of an amalgamated enforcement agency were presented in the bill, and many of them resonated with the arguments made in the Government Commission Inquiry Report. For instance, it was argued that an integrated enforcement agency was a logical consequence of the proposed consolidated discrimination act and a natural domicile for new discrimination grounds. Many arguments related to efficiency were also made, such as that it would be expensive and time consuming to establish new agencies whenever a new discrimination ground was added and that an integrated agency would contribute to organisational advantages, for instance in terms of cooperation and coordination. By having an integrated agency, expertise and experiences might be shared by all, and this would be particularly beneficial for new discrimination grounds. An integrated agency would also be able to have a greater impact, weight and authority, helping both persons exposed to discrimination and employers that are required to act against discrimination.

The arguments were also framed within a typical liberal discourse, emphasising the role of the individual and stressing knowledge and information as a way of combating discrimination. It was stated that the integrated agency should promote equal rights and opportunities regardless of gender, transgender identity or expression, ethnic belonging, religion or other belief, disability or age and that it should contribute to creating a society in which “human rights and the individual’s opportunities are not limited or hindered by their sex, ethnic belonging, etc.” (Prop. 2007/08:95, p. xx ). It should also act to initiate or contribute to the transmission of knowledge and information and good examples. However, the agency should not be given an explicit assignment in the law to promote gender equality between women and men. Instead, the promotion of gender equality was included in the task of promoting equal rights and opportunities regardless of discrimination ground. This work included “information to the public and other ways of promoting gender equality. It is also about exposing structures that could be a hinder for equal rights and opportunities regardless of sex” (Prop. 2007/08:95, p. 381). However, this section of the bill included a discussion related to intersectionality, recognising that discrimination can take many forms and expressions and may demand different types of measures, depending on who is exposed to it.

The Committee on the Labour Market Report

In Sweden legislative proposals, such as the bill Prop. 2007/08:95 discussed above, are dealt with by one of the parliamentary committees, in this case the Committee on the Labour Market. In its 200 page Committee Report Arbetsmarknadsutskottets betänkande

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8 Any of the 349 members of parliament can table a counter-proposal to a bill introduced by the Government. Such a proposal is called a motion. When the committee has completed its deliberations, it submits a report, and the bill is submitted to the full chamber for approval. If adopted, the bill becomes law.
The arguments made in the bill in favour of consolidated discrimination legislation were more or less repeated in this report. Again, the arguments were framed in a human rights discourse, stating that it is a human right to be protected against discrimination and making references to the UN:s declaration on human rights that all humans are born free and are equal in value and rights. Efficiency arguments were made as well; with integrated legislation there would be clearer protection against discrimination and similar protection regardless of discrimination ground. Furthermore, consolidated legislation would contribute to uniform implementation and common jurisprudence and to improved supervision. Moreover, the law would be clearer and simpler, and this would make it easier for future legislators and for the introduction of new discrimination grounds.

As in the bill, the Committee Report opted for the language of ‘multiple discrimination’ as opposed to ‘intersectionality’. It was stated that the proposed act would protect against discrimination on more grounds than sex and “this without any ‘ranking’ of the discrimination grounds” (Betänkande 2007/08:AU7, p. 40). The committee reports, thus, implicitly reflected an understanding of the equality strands as separate and the dynamic inter-play between them, so important in feminist debates on intersectionality, was not problematised. One reason for this might be the simplicity of multiple discrimination and the perception that different axes of discrimination matter to the same extent and that they can be treated with the same approach – the anti-discrimination approach.

Although many motions in relation to the bill were tabled, few of them were against the introduction of integrated legislation. The Left Party, however, argued that the proposal was very ‘legalistic’. The emphasis was placed on individual violations and rights rather than on structural conditions and discrimination as an expression of power orders in society. At the same time as it was important to have effective legislation and enforcement policy, the Left Party claimed, the struggle for rights and against racism and women’s inferiority could not be reduced to a question of laws against discrimination. In the view of the Left Party, the proposal implied a dismantling of systematic work to prevent discrimination and to promote equality. Given the anti-discrimination perspective in the bill, focus was redirected from political power analyses of superiority and inferiority to a question of what can be solved in a court room. In the view of the Left Party, the problems involved in discrimination were reduced to a question of neutral equal treatment.

In the Committee Report the arguments made in the bill for an integrated enforcement agency were also repeated. The arguments were primarily framed in an efficiency discourse, as in the bill. It was argued that an integrated agency would entail the work of combating discrimination and of promoting equality having a greater impact, weight and authority. Expertise and experience from the separate agencies would be shared in the new integrated one, and this would, in turn, contribute to gains in efficiency and coordination. It would also be to the advantage of both discriminated persons and employers that were obliged to combat discrimination.

The Left Party presented a motion in relation to this proposal, arguing that while it supported the idea of an integrated agency, this support was conditioned upon the acceptance of the establishment of a separate Gender Equality Institute. This institute should be given a broad mandate to work on issues of the gender power order in society and to monitor developments in the field of gender equality (Motion A8, Left Party).[^9]

[^9]: This proposal was to some extent seconded by Carin Hägg, who maintained that an integrated body could result in the weakening of society’s ability to combat discrimination on the basis of sex. It was, therefore, important to have a separate institution that explicitly dealt with gender equality, she argued (Motion A242, Carina Hägg, Social Democratic Party.)
The Green Party also submitted a motion on this issue. While it was in favour of an integrated agency, it proposed the establishment of an ombudsman committee. Such a committee would take a holistic approach without erasing the differences between the different discrimination grounds. “Someone who is exposed to several types of discrimination should not be lost in the shuffle without being met by an administrative agency with an intersectional perspective” (Motion A9, Green Party).

The Committee on the Labour Market concluded, however, that there would be no gender equality institute. The establishment of such an institute, it claimed, could risk undermining gender equality work within other public administrative bodies.

Parliamentary debate

The subsequent parliamentary debate was more or less a show. Since the committees function like a mini-parliament, reflecting the proportion of each party represented in parliament, the committee reports represented the majority (and government) position on the issue at hand. Nevertheless, contributions to the debate were made, and the debate in the chamber took more than eight hours. Of the 65 debate contributions, however, few MPs explicitly discussed the question of the integrated legislation and enforcement agency. Most of them discussed the proposal concerning the gender equality plans, extending the reporting date from annual plans to plans every third year and changing the target from companies with no less than 10 employees to companies with no less than 25 employees.¹⁰

The arguments in favour of the proposal for an integrated discrimination law were, again, framed within a human rights discourse. Several references to the UN general declaration on human rights were made, as was mention that the protection against discrimination was a human right. These debates also show that a re-active anti-discrimination approach was employed, rather than an active promotion of equality. For instance, a female parliamentarian from the Liberal Party argued that “it is important to emphasise that the discrimination law is not about giving rights to certain groups. Rather, the law implies that all individuals will get the same protection, regardless if you were born a man or a woman, born in Sweden or abroad, etc.” (Debattinlägg 6, Eva Flyborg, the Liberal Party). She continued by stating that “all discrimination breaks with the principle of human equal rights and value. When we promote human’s protection against discrimination, we promote human rights” (Ibid.). She also contended that the merging of the equality bodies into a single integrated one signaled that all humans were of equal worth and rights and that there were no hierarchies between the different discrimination grounds (Ibid.). This reference to ‘no hierarchies’ between the different discrimination grounds was repeated by most of the proponents of the bill.

The human rights discourse and anti-discrimination approach was also reflected in the statement by the Minister for Integration and Gender Equality, Nyambo Sabuni. She argued that “all discrimination is a violation of the freedom and dignity of individual human beings and is, therefore, a crime against the respect for human rights founded in international law” (Debattinlägg 100, Nyamko Sabuni, Minister, The Liberal Party). A similar statement was made by a Conservative party female MP, who argued that “discrimination is usually based on an attitude that does not recognise that humans are unique, which does not recognise that all humans have the same value. Many times people are sorted into a collective and are treated on the basis of this belonging./.../this is not what we Conservatives believe is worthy of an open and democratic society” (Debattinlägg 19, Elisabeth Svantesson, Conservative party).

¹⁰ For instance, while government parties argued that the change would result in more qualitative reports, not having to make these reports annually, the opposition parties argued that the prolongation might risk that the current regular and consistent work on gender equality at work places would be replaced by a quick job performed by a consultant every third year.
a similar vein, a female Center Party MP claimed that “the respect for human’s equal worth and rights is the foundation of a society, which is based upon democracy and humanism. All humans have unique, individual traits/.../ We are all different” (Debattinlägg 90, Annika Qarlsson, Center party). All these quotations suggest that harmonised and consolidated legislation is not about promoting social justice among differently situated groups in Swedish society but rather about the promotion of anti-discrimination and a complaints led approach. This approach speaks about individuals rather than group inequalities, and it reacts primarily to problems that may arise rather than actively taking a pro-active approach to equality.

The arguments in favour of an integrated enforcement agency were framed within an efficiency discourse. Many references were made to synergy effects, cost efficiency, accessibility, clarity, etc. In general, the statements made by the parliamentarians displayed a limited knowledge of intersectionality, even if the term was used by some of them. For instance, one MP from the Green Party argued that while an integrated enforcement agency was good, it should be comprised of different ombudsmen for the different discrimination grounds. He stated:

“We believe that it is important that someone who is exposed to several types of discrimination should not be lost in the shuffle, but be met by an administrative body which is capable of applying an intersectional perspective – yes, this is a difficult concept, but it is nice. At the same time [however], it is for most discriminated persons no doubt about which kind of discrimination it is about. The enforcement body should be able to meet both of these groups” (Debattinlägg 5, Ulf Holm, Green Party).

By referring to ‘groups’ in this way, it seems like the MP is referring to multiple discrimination rather than the dynamic interplay between intersecting equalities in line with feminist debates on intersectionality.

Many of the opponents of the legislative proposal expressed a fear that gender equality issues would be placed at the bottom of the agenda. For example, a Social Democrat woman argued that the current gender equality law and JämO had been important in the promotion of gender equality and in the work to combat the “structural inferiority that women meet” (Kammarens protokoll, 2007/08:177, Debattinlägg 3, Ann-Christin Ahlberg). In a similar vein, a woman from the Left Party stated that a risk with the legislative proposal was that the discrimination legislation would target the judicial afterplay of discrimination at the expense of active work to combat and change the structures and power relations that maintain and reproduce discrimination (Kammarens protokoll, 2007/08:177, Debattinlägg 4, Josefin Brink). At the same time as she promoted an integrated enforcement agency, she contended that it was important to use the competence and expertise that the current equality bodies had acquired: “Nevertheless there is a big difference between the different expressions of discrimination and the measures that are needed to combat them. To make a workplace or a dwelling more accessible requires one type of knowledge, while the combating of sexual harassment and homophobia at a workplace requires totally different knowledge” (Ibid). These feminist debate contributions, however, represented a discourse that ran counter to the hegemonic view of the bill, stressing the rights of individuals.

Conclusion

In this paper, the process leading up to the enactment of new consolidated discrimination legislation and the establishment of a new amalgamated enforcement institution, DO, has been studied. The paper shows that, in line with many other European member states, a ‘multiple’ and ‘additive approach’ to inequalities has been developed in Sweden. A previously ‘unitary approach to equality’, in which only one category – in this case gender – was addressed or given priority at the time, has given way to a ‘multiple
approach to equality’, in which several categories matter equally. This multiple approach equates with the different grounds for discrimination.

According to scholars, the multiple approach produces an ‘additive model of politics’, which leads to competition between different categories and marginal groups rather than cooperation (Hancock 2007). This is also reflected in the analysis, showing that proponents of the legislative proposal claimed that there is no ‘hierarchy of equality’ between the different discrimination grounds, while opponents, in particular feminists, feared that gender will be down-graded. This result, thus, deviates from those of other studies in which scholars claim that ‘gender’ would be privileged or up-graded (See for instance Bell 2002). However, as research indicates, the categories of inequality are not similar; they differ in terms of choice, visibility and change (Verloo 2006). For instance, one can choose religion but not age, one can make one sexuality more or less visible but not gender, and while age and sexuality may change, one’s sex is not very easily changed.

While the analysis shows increased attention to multiple discrimination, the documents analysed do not reflect an ‘intersectional approach to inequality’. Even if intersectionality as a concept is mentioned, albeit not very often, there seems to be little understanding of or focus on discrimination taking place at the intersections of discrimination grounds. The extent to which combating discrimination from an intersectional approach is stressed as a motive for institutional reform and change is limited.

The study also shows that three of the four previous equality enforcement institutions - DO, HO, and HomO - were in favour of the integrated legislation and enforcement body, while JämO was against it. While JämO and other ‘gender proponents’, such as Feminist Initiative, were open to the need for tackling the problems related to intersecting inequalities, it was claimed that an integrated approach to equality could be used as an excuse for not expanding the gender equality agenda. An integrated approach could also result in the redirection of attention and resources from gender to the other inequalities. In particular, they claimed, an integrated approach to inequalities could entail gender issues being watered down, and the category ‘gender’ would, thus, not be able to challenge the power relations between women and men. Verloo’s (2006) study shows that the European Women’s Lobby had been critical of the integrated approach to combating multiple discriminations, calling for specific policies that could best tackle the specific dynamics of inclusion and inclusion of each inequality. The diverse positions taken by the Swedish ombudsmen institutions could probably be interpreted in terms of those having the most to win from the legislative proposal (the least powerful) being the most positive and those having the most to lose (the most powerful) being more strongly against it. The extent to which the new Discrimination Ombudsman institution (DO) will successfully tackle issues of multiple inequalities and intersectionality remains to be studied empirically.

The study also shows that the arguments in favour of integrated discrimination legislation and an integrated enforcement agency were framed in an anti-discrimination discourse, a human rights discourse and a cost efficiency discourse. This can be interpreted as an expression of a shift towards a neo-liberal discourse in Sweden, increasingly stressing the role of the individual and equal opportunities as the preferred strategy for treating inequalities.

In terms of equality policy, the anti-discrimination perspective in the policy documents analysed primarily targeted formal equality. Formal equality, or de jure equality, refers to the right not to be discriminated against, the equal rights and values of individuals and the right to equal opportunity and equal treatment. These ideas were consistently mentioned and prioritised in the policy documents. These formal rights emanate from the Aristotelian view that equals should be treated equally (and unequals should be treated unequally). The goal here is equal opportunity, but other than that it has no material content. Formal equality corresponds, thus, with anti-discrimination policies and resistance towards any kinds of
affirmative action. Substantive equality, or *de facto* equality, refers to equality of result or equal outcome, and was only focused on to a limited extent in the policy documents. In contrast to formal equality, the point of departure here is the material conditions of individuals. The goal is, thus, not equal opportunity but equality of results. This type of equality is more positive towards active measures, such as affirmative action, in order to achieve equal results. A major difference between formal equality and substantive equality is that while the former one tends to preserve the prevailing power order between the sexes, the latter one seeks to change it.

Although affirmative actions are still promoted in the new law, their scope has been reduced. In the new Discrimination Act, for instance, the obligation of companies with more than 10 employees to formulate annual gender equality plans was limited to plans every third year and granted exceptions for smaller companies (less than 25 employees) from this obligation. It could be argued, thus, that an anti-discrimination discourse such as this one, focusing primarily on formal equality, rests on a perception/conviction that society is equal. It follows from this discourse that action is required only when someone is discriminated against or treated unequally. However, is society equal? Should we only ‘react’ when something goes wrong? Shouldn’t we also ‘actively’ promote equality and, thus, take a ‘pro-active’ approach to equality and social justice? In my view, a mere anti-discrimination approach risks taking us back to the idea of equal opportunity and not actively promoting a fair society. To depart from ‘equality’ when ‘unequality’ persists will most likely result in the conservation of real inequality. Thus, an anti-discrimination approach might direct our attention towards competing individuals, not towards the structural barriers that create unfair conditions for different groups of people. Also, the obligation to change society in this anti-discrimination approach rests with those who have been exposed to discrimination, not with those who have the political and legislative power to change society (cp. Freidenvall 2007).

The focus on human rights can be interpreted in terms of the shifting focus of equality to include all groups in society. However, the discursive framing around human rights seems to focus more on individuals than on groups and the problems groups might have in the intersections of group identities. This human rights approach, which is of course very difficult to oppose, might in its focus on individual rights be incapable of addressing collective and institutional inequalities.

The study also shows that many arguments in favour of the integrated enforcement body were framed within an efficiency discourse, highlighting the importance of synergy effects, cost efficiency and coordination and coordinated measures. This discursive framing suggests that for equality to gain political acceptance and to be promoted, it needs to be cost efficient or preferably able to generate a profit. It does not, thus, represent a value in its own right to be promoted. This line of argumentation supports the interpretation that the arguments on the need to tackle multiple discrimination could be part of a larger rhetoric on new public management and neoliberal governance.

The institutional changes in Sweden over the course of the past ten years should not be seen in isolation or as solely a consequence of changes in European legislation but also in a longer Swedish historical perspective. The consolidated discrimination legislation and the amalgamated enforcement institution can be seen as an illustration of a transformation of the meaning of the concept of equality in Sweden. The current discursive framings of equality – being based on ideas of human rights, anti-discrimination and economic and administrative efficiency – can be interpreted as an expression of the ideological and discursive transformation taking place in Sweden, from equality as social justice and redistribution to equality as equal opportunity and individualism. The effects of this discursive shift on the Swedish gender regime remain an open question.
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