Positive action and Statistics:
From formal to effective equality

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The EU Directives and the antidiscrimination agenda

- ☐ Moving from *formal equality* to *effective equality* or equity: positive action as the second generation of rights

- ☐ Transposed in all State members' domestic laws, but there are **large implementation gaps** and **different interpretations** of the kind of schemes and policies that should be implemented.

- ☐ Comprehensive protection for a wider list of grounds: race and ethnicity, but also age, sexual preferences, disability and religion. However, **all grounds are not equally protected**.

- ☐ Statistics are not explicitly required to support positive action in the directives

Anti-discrimination paradigm and statistics

- Indirect discrimination or systemic discrimination refer to group, or more precisely to *categories*, which are exposed to stereotyping, prejudice and thus unfair treatment (comparison and assessment)

- Protection of National Minorities (Framework Convention) relies on a *substantive* approach of ethnicity (language, culture, political rights)

- Most if not all Human Rights and Equality international bodies ask for more statistical data collection (CERD, ECRI, FRA, etc)

- A survey done for ECRI in 2007 shows that most Equality bodies in Europe consider that statistics are not only useful but necessary for implementing effective equality

Key concepts in Antidiscrimination policies

- Going beyond intentional discrimination, discrimination is detected by its consequences: ***disparate or adverse impact or treatment***

- Screening selection processes, practices, formal and informal procedures to identify biases based on protected criteria

- Duty to promote equality and accountability for equal treatment

- Outreach

- Reasonable accommodation

- under-representation, uneven distribution, disparities, proportionality

The role of statistical monitoring

- Statistics provide facts on discrimination : they make visible the invisible
- Awareness raising in public opinion and decision makers
- Measuring the extent and impact of discrimination
- Identifying targets, setting goals, evaluating policies
- Equality policies : monitoring is not only a tool, but the policy itself
- Providing evidence in courts
- Implementing diversity management

⟹ Good practice: Gender equality programmes

Monitoring systems

- Statistics gathered by a central system (census or register of population)
- Registration in administrative files (compulsory or voluntary)
- Monitoring by employers or public authorities : accountability and awarness
- Audit testing
- Lawsuits collection, complaint registers and reports of activity
- Reporting, enforcement and controls

Building indicators in equal opportunity policies on the labor market

- The "four-fifth rule" and the *Job Area Acceptance Range* (US, EEOC and OFCCP)

- Impact ratio analysis, underutilization as a double standard deviation (US, EEOC and OFCCP)

- Rating company's performance in equal opportunities (Canada) :
  - representation of the designated groups
  - professional concentration
  - wage differentials
  - recruitment, promotions and terminations

Why statistics a sensitive issue ?

- Statistics reflect and emphasize the diversity of the population : a threat to unity
- Statistics can be used to reveal discrimination or to discriminate
- Reification of identities through categorization and data collection
- Statistics collection use a huge engineering of categories, questionnaire, files, which bring these categories at the heart of everyday life
- Methodological shortcomings: defining identities and collecting data
- Data protection provisions

Data protection: « Special categories of data »

Convention ETS 108 Article 6 - Special categories of data

Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions.

Directive 95/46/EC Article 8 – The Processing of special categories of data

1. Member States shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life.

« Special categories of data »

- No definition of what covers « data revealing racial or ethnic origin ». The survey shows that no national laws provide definition of « ethnicity » or « ethnic affiliation »

- A prohibition with exception (« unless ») or a conditionnal authorization

- Special protection to avoid misuses and dissemination of sensitive data

Exemptions to the prohibition

- Prior check : a power given to the data protection authority
- Explicit consent, vital interest, Public interest, legal provisions, security reasons
- Legal provisions may derive from antidiscrimination laws or may fall under the protection of national minorities
- Authorizations may be given case by case or in a general agreement
- Arrangement in census taking : sensitive questions are optional, whereas answering is mandatory

Conclusions on data protection and motives of discrimination

- Prohibition to collect sensitive data is a political choice, not a legal challenge
- It should be possible to find a compromise between information on sensitive issues and a high level of privacy and protection for the individuals
- Legal incentives should be given in antidiscrimination laws to collect data
- A standardisation of equality data could be developed at an international level (Eurostat for the EU, Population division for the UN) to avoid improper classification

Categories and classification: the case of ethnicity and race

Legal, political and methodological issues behind ethnic categorization

- Data protection and privacy : confusions between misuses and sensitive data
- Revealing racial and ethnic divisions or keeping them in the shade : universalism, reification and "groupness"
- A methodological challenge :
  - Subjective *vs* objective definition
  - Moving identities
  - Multiple identities

Ethnic and racial classifications

- For policy purpose, categories can be specified by laws and policies:
  - guidelines and standards, CRE, UK
  - standards of classification, OMB, US
  - list of visible minorities in the Employment equity law, Canada
  - Definition of "non Western allochtons" in the Dutch antidiscrimination law

- In censuses :
  - huge disparities of categorisation in a cross-national perspective
  - Ethnicity and race are optional topics, conversely to citizenship and place of birth
  - Each country have its own list of categories : a reflection of the history (slavery, colonisation, immigration, national minorities), the composition of the population and the political model of integration

Recommandations of UN for the 2010 census round (2nd revision 2006)

- "Ethnicity can be measured using a variety of concepts, including ethnic ancestry or origin, ethnic identity, cultural origins, nationality, race, colour, minority status, tribe, language, religion or various combinations of these concepts.(...) The subjective nature of the term (not to mention increasing intermarriage among various groups in some countries, for example) requires that information on ethnicity be acquired through self-declaration of a respondent and also that respondents have the option of indicating multiple ethnic affiliations. "

Ethnicity and Race in Census around 2000

- 87 countries in 138 are collecting data on « ethnicity » (A.Morning, 2008)
- Most common terminology (a selection) :
  ◦ Ethnicity 49
  ◦ Nationality 20
  ◦ Race 13
  ◦ Color 2
  ◦ Ancestry/origin 6
- In 42 countries of the Council of Europe, ethnicity/nationality is collected in 22 countries, religion in 24 and country of birth of the parents in 6 (Simon, 2007).

Methods of collection

- **Self-declaration** :
  - Open question (11 countries)
  - Pre-coded list of categories (11 countries)
- **Third party identification**
  - Employers in the US (until 2008)
  - Claims from Roma organisations in central and east Europe
- **Group recognition**
- **By proxy**
  - Country of birth and citizenship of parents Sweden, Norway, Denmark, The Netherlands), spoken or mother language, name and surname

16 What is your ethnic group?

↪ Choose **one** section from A to E, then tick **one** box to best describe your ethnic group or background

A White

☐ English / Welsh / Scottish / Northern Irish / British

☐ Irish

☐ Gypsy or Irish Traveller

☐ Any other White background, write in

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

B Mixed / multiple ethnic groups

☐ White and Black Caribbean

☐ White and Black African

☐ White and Asian

☐ Any other Mixed/multiple ethnic background, write in

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

C Asian / Asian British

☐ Indian

☐ Pakistani

☐ Bangladeshi

☐ Chinese

☐ Any other Asian background, write in

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

D Black /African / Caribbean / Black British

☐ African

☐ Caribbean

☐ Any other Black /African/Caribbean background, write in

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

E Other ethnic group

☐ Arab

☐ Any other ethnic group, write in

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Ethnic group, UK, 2011

15 How would you describe your national identity?

↻ Tick all that apply

☐ English

☐ Welsh

☐ Scottish

☐ Northern Irish

☐ British

☐ Other, write in

Hungary, 2011, optional questions

34. Which nationality do you feel you belong to?

Hungarian	Armenian	Arabian
Bulgarian	Romanian	Chinese
Gipsy (Roma)	Ruthenian	Russian
Greek	Serbian	Vietnamese
Croatian	Slovakian	
Polish	Slovenian	
German	Ukrainian	

other, namely:

do not wish to answer

38. Which religious community or denomination do you feel you belong to?

do not belong to any religious community or denomination

atheist

do not wish to answer

36. What is your mother tongue? (Please mark two answers maximum!)

Hungarian	Armenian	Arabian
Bulgarian	Romanian	Chinese
Gipsy (Romani, Beas)	Ruthenian	Russian
Greek	Serbian	Vietnamese
Croatian	Slovakian	
Polish	Slovenian	
German	Ukrainian	

other, namely:

do not wish to answer

Romania, 2011

23 WHAT ETHNIC GROUP DOES THE PERSON CONSIDER HE/SHE BELONGS TO? ....

24 WHAT IS THE PERSON'S MOTHER TONGUE?...

25 WHAT RELIGION DOES THE PERSON CONSIDER HE/SHE BELONGS TO? ....

Albania, 2011

39 **To which ethno-cultural group do you belong?**

Self-declaration, not obligatory

1 ☐ I belong to ethno-cultural group:

Specify

2 ☐ Prefer not to answer

Reproduction of the Questions on Hispanic Origin and Race From the 2010 Census

→ **NOTE: Please answer BOTH Question 5 about Hispanic origin and Question 6 about race. For this census, Hispanic origins are not races.**

5. Is this person of Hispanic, Latino, or Spanish origin?

☐ **No,** not of Hispanic, Latino, or Spanish origin

☐ Yes, Mexican, Mexican Am., Chicano

☐ Yes, Puerto Rican

☐ Yes, Cuban

☐ Yes, another Hispanic, Latino, or Spanish origin — *Print origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.* ↙

[   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ]

6. What is this person's race? *Mark [X] one or more boxes.*

☐ White

☐ Black, African Am., or Negro

☐ American Indian or Alaska Native — *Print name of enrolled or principal tribe.* ↙

[   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ]

☐ Asian Indian   ☐ Japanese   ☐ Native Hawaiian

☐ Chinese   ☐ Korean   ☐ Guamanian or Chamorro

☐ Filipino   ☐ Vietnamese   ☐ Samoan

☐ Other Asian — *Print race, for example, Hmong, Laotian, Thai, Pakistani, Cambodian, and so on.* ↙   ☐ Other Pacific Islander — *Print race, for example, Fijian, Tongan, and so on.* ↙

[   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ]

☐ Some other race — *Print race.* ↙

[   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ][   ]

Source: U.S. Census Bureau, 2010 Census questionnaire.

Brazil 2010

6.06 - A SUA COR OU RAÇA É:

1 - BRANCA 　　2 - PRETA 　　3 - AMARELA 　　4 - PARDA 　　5 - INDÍGENA

(SE TERRA INDIGENA NO TIPO DE SETOR E CÓDIGOS 1 A 4 NESTE QUESITO SIGA 6.07)
(SE TIPO DE SETOR DIFERENTE DE TERRA INDÍGENA E CÓDIGOS 1 A 4 NESTE QUESITO PASSE AO 6.12)

(Passe ao 6.08)

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Visible Minorities

19. Is this person:

Mark more than one or specify, if applicable.
This information is collected to support programs that promote equal opportunity for everyone to share in the social, cultural and economic life of Canad

- q   White
- q   Chinese
- q   South Asian *(e.g., East Indian, Pakistani, Sri Lankan, etc.)*
- q   Black
- q   Filipino
- q   Latin American
- q   Southeast Asian *(e.g., Vietnamese, Cambodian, Malaysian, Laotian, etc.)*
- q   Arab
- q   West Asian *(e.g., Iranian, Afghan, etc.)*
- q   Korean
- q   Japanese
- q   Other — *Specify*

Religion and sexual orientation

- Ethnicity is often used as a proxy for religion
- Religion in the census (believers, practicants, cultural identification)
- Sexual orientation as same sex couple
- Personal belief and identity, or visible markers: coming out to be discriminated against
- Question mark about the use of monitoring in anti-discrimination schemes for these motives

Conclusion

- Statistics are crucial for implementing positive actions
- They should be collected not only in experimental surveys or in social science research but mainly in institutions, administrations and censuses
- A fair trade off between data protection, self-identification and availability of information should be obtained
- Issues in definitions of categories (race, ethnicity, sexual orientation, disability, religion) and methodology of data collection