



# SEMINÁRIO INTERNACIONAL DE CAPACIDADE JURÍDICA E TOMADA DE DECISÃO APOIADA

DEFESA E GARANTIA DE DIREITOS  
APAE DE SÃO PAULO

Apoio:



Realização:



GOVERNO DO ESTADO DE SÃO PAULO  
Secretaria dos Direitos da Pessoa com Deficiência



# Intersectionality and legal capacity. Towards social justice and transformative equality

Social movements: birth.

Social justice: destination.

Lecture concentrated in: women with disabilities.

Goal: see how legal capacity and intersectionality as paradigm shifts can help each other searching social justice and achieving equality.



# Concept of Equality that I will use:

Equality: Transformative understanding of substantive equality that challenges the structures of subordination and disadvantages: Multi-dimensional model of equality (Fredman, 2011).

- (i) break the cycle of disadvantage experienced because of status or other protectionist characteristic,
- (ii) promote respect for dignity,
- (iii) accommodate difference by achieving structural change, removing detriment but not the difference itself and,
- (iv) promote social inclusion and political voice, related directly to participation.



# Commonalities

- Intersectionality

- Paradigm
- Feminism
- The thought arises from the movement
- Guarantee the exercise of other rights
- Denied from different domains of power

- Legal capacity

- Paradigm
- Feminism – Disability movement
- The thought arises from the movement
- Guarantee the exercise of other rights
- Denied from different domains of power



# Differences

- Intersectionality
- It is not a right
- Legal capacity
- It is a right



# Legal capacity

- Inherent to all persons.
- Includes the capacity to be:
  - Holder of rights: full protection by the legal system.
  - Actor under the law (exercise rights): create, modify and/or end legal relationships.
- Ensure the right to equality before the law on an equal basis with others.



# Intersectionality\* as a paradigm

- By using the paradigm of intersectionality we will be able to understand that the context and its critical analysis is crucial, necessary to understand the situation of a person that is being oppressed. This context is made up of many factors that intersect all or several of them at once.

\*has at least 3 faces that complement each other. Thereby, the Black feminist thought developed the intersectionality as a paradigm shift, as an analytical tool and as an approach to non-discrimination.



# Intersectionality as a paradigm

- Works as an interpretative framework to understand a social phenomenon that allows acknowledging that systems of race, social class, gender, sexuality, ethnicity, nationality, disability, age, etc. shape the characteristics of social organizations, which shape the experiences of the oppressed.

This characteristics are converted by the domains of power into patriarchal and ableist stereotypes: ableism, sexism (two axes of subordination).



# Intersectionality as a paradigm

- As a paradigm, also reminds us that oppression cannot be reduced to one fundamental type and that oppressions work together in producing injustice.

Aims to capture the structural and dynamic consequences that arise from the interaction between two or more axes of subordination.



# Intersectionality as an analytical tool

- Explicitly challenges the *status quo* and aim to transform power relations.

core ideas that appears when intersectionality is used:

- social inequality
- Power
- Relationality
- social context
- Complexity
- social justice

shape the context of the social movements emerged between the 60s and the 80s.

Systems operate in a structural and in a cultural way.



# Intersectionality as an analytical tool

With this in mind



- adds additional layers of complexity to understand social inequality, recognizing that it is rarely the product of a single factor.
- understand that social inequality is built on the basis of interactions between various factors.



# Intersectionality as an approach to non-discrimination

- In general, discriminations faced by male persons with disabilities tend to regulate the parameters of the anti-discrimination (on the basis of disability) strategies.
- At national and international levels, the different axes of subordination have been separated by public policies and legislation, mutually excluding these areas over time (although this parallelism is declining).

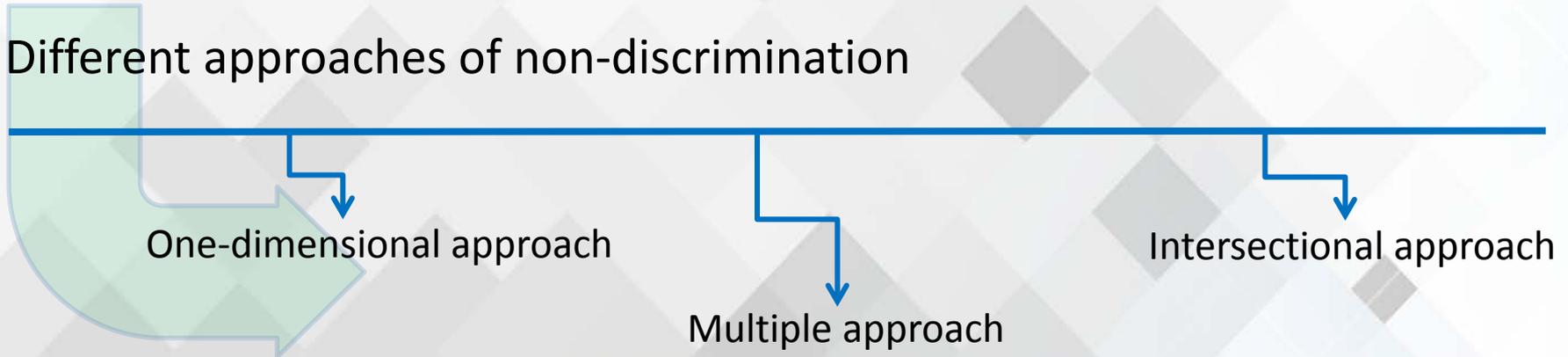


# Intersectionality as an approach to non-discrimination

Crenshaw's goal

To not ignore Black women on the conceptualization, identification and in the provision of remedies against discrimination based on race or sex, limiting these actions to the privileged members of each group.

Different approaches of non-discrimination





# Intersectionality as an approach to non-discrimination

- Multiple approach: The word *multiple* suggests the sum of discriminatory layers: ableism + sexism + (...)

- ✓ CEDAW GC25 (2000)
- ✓ HR Com. GC28 (2000)
- ✓ CRPD, Article 6

- Intersectional discrimination: here, the discriminatory layers connect with each other, provoking a synergy, which creates a unique form of discrimination.

- ✓ CEDAW GR 28 (2010)
- ✓ CRPD GC3 (2016)



# Differences

## Multiple discrimination

- The treatment of the discrimination: in parallel because the layers can be identified individually.
- Law



## Intersectional discrimination

- The treatment should not be separated because that intersection, that synergy causes a single form of discrimination.
- Not in the law

Women with disabilities that are not holders of rights neither actors under the law (not recognized their legal capacity) and not have a guarantee of an adequate remedy in front of an intersectional discrimination: *vulnerable situation. Inequality*



# Case study: exercise motherhood

## Argentina

- Situation: a woman with a psychosocial disability has been a mother.
- Legal context: Ratified the CRPD (Civil Code still without a reform)
- 2013: The Justice system took her son away from her on the basis of her disability, because she was in a situation of poverty and, for the best interest of the child (reasons of the Court)
  - Functional capacity evaluation test: in 5 days present a nurture plan for her son to the Court.
  - The Court institutionalized her son.



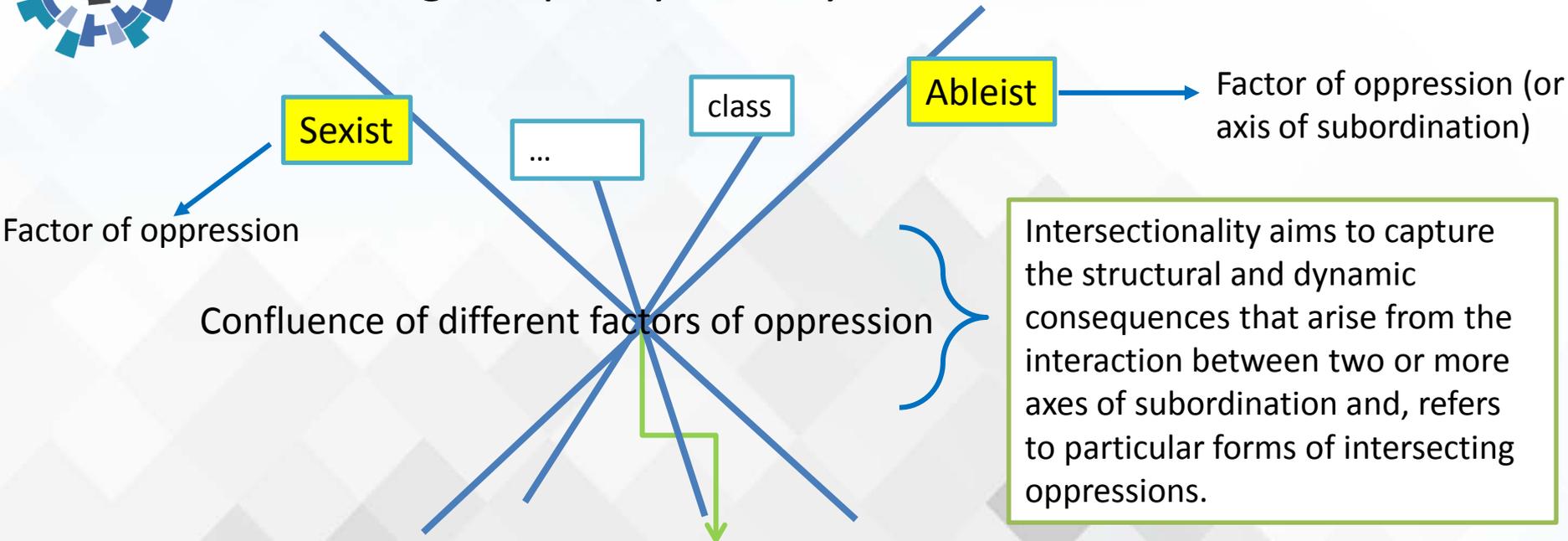
# Case study: exercise motherhood

Argentina

- 2016: The supreme Court with a human rights perspective order to return the child with his mother and give supports to her to exercise motherhood.
- Did the Supreme Court use the paradigm of intersectionality to come to this judgment?



# Denial of legal capacity as 1 layer on intersectional discrimination



Discrimination/oppresion. GC 3 CRPD Committee recognizes that women with disabilities, more often than men with disabilities and than the broader population of women, are denied their right to legal capacity.



## Matrix of domination\*

- Describes the general social organization within which intersectional oppressions originate, develop and are contained.
- The matrix of domination explains the function of domination and how oppressions intertwined.
- After allowing us to understand how oppressions intersect, the matrix of domination helps to understand the function of domination, this is, the matrix of domination refers to how these intersecting oppressions are actually organized.

\*Developed by Patricia Hill Collins (Black feminist thought).

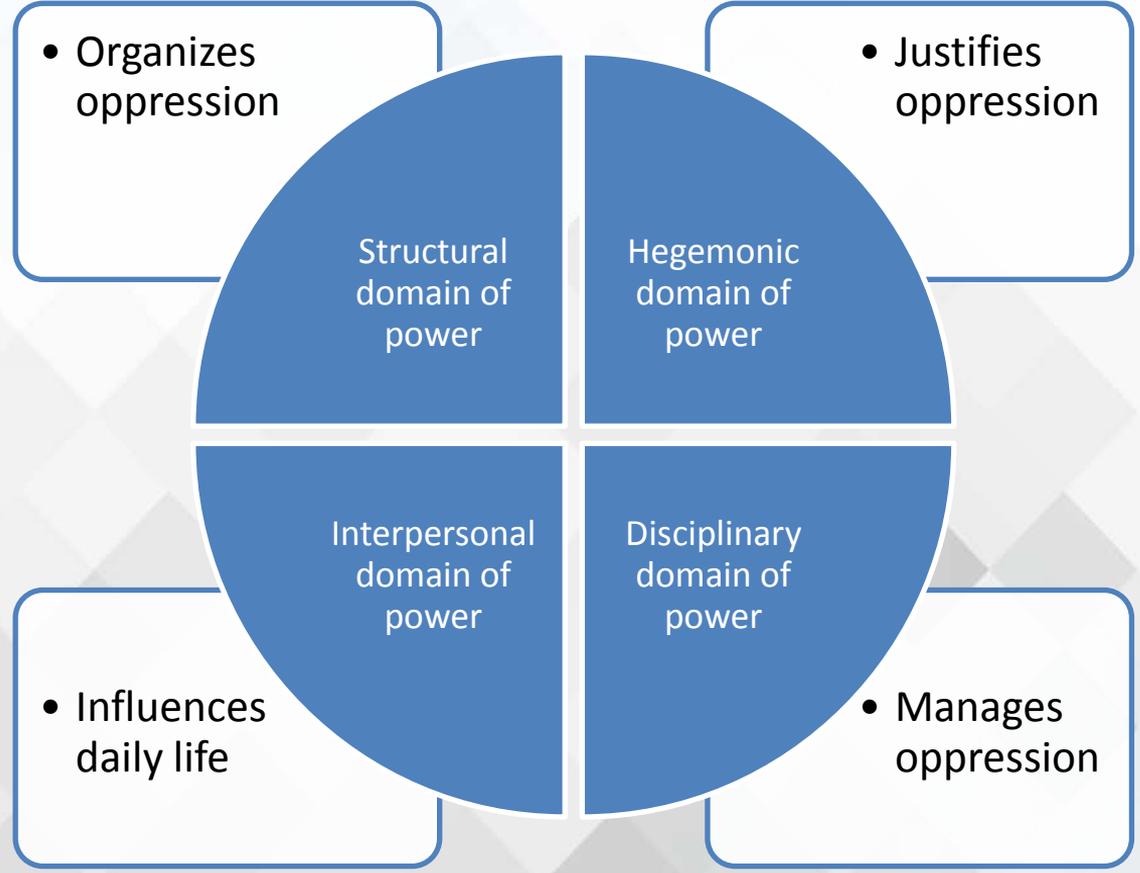


## Matrix of domination

- Any matrix of domination characterized by intersectional oppressions in a specific social location could generate a timeline and history of oppression of a particular social group in a particular society.



# Matrix of domination





## Case study: consent to sex and relationships

### Ireland

- Situation: Maria is a woman with an intellectual disability and she has a boyfriend. She wants to have sex and get married.
- Legal context: Signature but still not ratified the CRPD. Domestic legislation criminalize sexuality and ban marriage on persons with intellectual disability.
  - Maria does not have her legal capacity formally denied.



## Legal capacity and intersectionality. Reflections

- To not exclude factors of oppression one from the other when we analyze a case;
- Identified stereotypes;
- The denial of legal capacity is a predominant factor in violations of rights on the private sphere.



## Legal capacity and intersectionality. Reflections

- Intersectional analysis is useful in order to expose human diversity, give visibility and ensure the interests of people who face these forms of discrimination;
- Legal capacity opens up a space for personal freedom: the fact that women with disabilities have recognized their legal capacity means that they can lead their own destinies from their own bodies.



## Legal capacity and intersectionality. Reflections

- We need to discuss the mechanisms that we can use to respect our common goal and interest: to respect and guarantee a substantive equality for persons with disabilities of all identities in all aspects of life:
  - Mainstreaming intersectionality and legal capacity when it comes to respect human rights of persons with disabilities of different identities.



## One last reflection...

- Movements are more powerful when they begin to affect the way of seeing things and the perspective of those who do not necessarily associate with them.
  - Legal capacity developed by the movement of persons with disabilities has to affect other movements of persons on the margins of society.
  - Intersectionality developed by the Black feminist thought has to affect other movements of persons on the margins of society.
- Feminist and disability movements destabilize reductionist conceptions of liberal theory and society, illustrating the political action in terms of autonomy and human dignity.



## One last reflection...

- We have to deconstruct ideologies that believe only on the white, able, middle class and a heterosexual man as the subject of law and only holder of rights:
  - deconstruct the understanding that human agency should rest in patriarchal, sexist and ableist standards.



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