

# Equal Rights at the Heart of the Post-2015 Development Agenda

## Position Paper in Response to the Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda

### The Equal Rights Trust

*The Equal Rights Trust published this position paper in September 2013, as a response to one of the key documents that mark the pathway to adopting, in September 2015, the post-2015 Sustainable Development Goals (SDGs) which will supersede the current Millennium Development Goals. Since then, the process of formulating the SDGs has moved on, through a thicket of complex operational modalities at many levels. In July 2014, another key document on this pathway was agreed by the UN Open Working Group – a proposal known as the “zero draft”, which serves as the basis of negotiations that started in September 2014. We are pleased to note that our central recommendation has materialised in this document: the formulation of a specific goal envisaging government action of the adoption of equality and non-discrimination legislation. But we believe that our position contains analysis and further recommendations which remain valid at present (in September 2014). For this reason, we found it important to reiterate our principled position, which is reproduced here.*

### Introduction

1. Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. It is the only international human rights organisation which focuses exclusively on the rights to equality and non-discrimination as such. Established as an advocacy organisation, resource centre, and think tank, it focuses on the complex relationship between different types of discrimination, developing strategies for translating the principles of equality into practice.
2. The Equal Rights Trust welcomes the publication of “A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development:

The Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda". We particularly welcome the Panel's recognition of the importance of ensuring that "no person – regardless of ethnicity, gender, geography, disability, race or other status – is denied universal human rights and basic economic opportunities".<sup>1</sup> We endorse the Panel's conclusion that a commitment to "leave no one behind" is a critical transformative shift towards greater equality which is required to ensure the success of any post-2015 development agenda.

3. We believe that, if this commitment is to be made effective, the post-2015 framework must be adapted to take account of the role which the denial of equal rights plays in creating and perpetuating cycles of poverty and disadvantage. Such an approach necessitates a shift of focus away from aspirations and towards obligations to prevent discrimination and ensure substantive equality. We consequently echo the position of the UN High Commissioner for Human Rights, who recently stated that:

"[T]he imperative of equality must underpin the entire framework. Doing so will require the replacing of now widely-discredited approaches that focus on narrowly-conceived notions of economic growth, with a dedicated focus on remedying the gross disparities that characterise our societies, and that undercut true development."<sup>2</sup>

4. The Equal Rights Trust's central recommendation is that **the post-2015 framework should include adoption of comprehensive national equality legislation as a specific development goal in and of itself. Such legislation should reflect principles on equality developed on the basis of a unified human rights framework, some of**

**which were formulated in the 2008 Declaration of Principles on Equality.**

5. This central recommendation is further concretised through four specific recommendations for improving the framework recommended by the High Level Panel to ensure that the specific goal of adopting comprehensive national equality legislation can be effectively met:

(i) The replacement of Illustrative Target 1(c) ("Cover x% of people who are poor and vulnerable with social protection systems") with a new target to "Establish positive action programmes to accelerate progress towards equality of a minimum of x% of the population, comprised of particular groups identified as being most exposed to poverty";

(ii) The inclusion of a specific target to "Ensure effective and comprehensive protection from discrimination" in the five goals associated with income poverty, education, health-care, employment and participation in public life (Illustrative Goals 1, 3, 4, 8 and 10);

(iii) The strengthening of the commitment to ensure that "Targets will only be considered 'achieved' if they are met for relevant income and social groups", by improving the disaggregation of data; and

(iv) The expansion of Illustrative Target 10(a) ("Provide free and universal legal identity, such as birth registrations") to include the words "and eliminate statelessness".

**The Development Agenda and the Rights to Equality and Non-Discrimination**

6. As noted by a wide range of researchers and development actors, failure to address inequality has been one of the undeniable shortcomings of the Millennium Develop-

ment Goals (MDG) agenda. For example, in a paper prepared for the Institute of Development Studies and the MDG Achievement Fund, Professor Naila Kabeer points out that the MDG's focus on average and aggregate targets, without a commitment to addressing inequalities, has led to uneven progress and in some cases distorting effects. She concludes:

"The failure to retain an explicit commitment to equality, tolerance and solidarity in the formulation of the MDG agenda has led to an uneven pace of progress on achievements, with persisting inequalities between different social groups. Unless the MDGs are adapted to the realities of intersecting inequalities and social exclusion within the different regions, they may not only fail to provide a pathway to a more just society, but may even exacerbate existing inequalities. Using national averages to measure progress encourages going for the 'low hanging fruit' – that is, helping those who find it easiest to graduate out of poverty."<sup>3</sup>

7. The Equal Rights Trust has undertaken research and analysis in many countries which confirms the above conclusion. Our research in Kenya, for example, has found that MDG targets which focus on aggregate or average outcomes have tended to obscure failures to change the lives of the most marginalised. Our analysis of data produced by the Kenyan Government indicates that despite good progress at a national level towards reducing child mortality by two-thirds (MDG 4),<sup>4</sup> outcomes for certain regions – which in Kenya also means certain ethnic groups – are poor.<sup>5</sup> Our analysis also indicates that even where MDG targets are absolute – for example, ensuring that all children receive basic primary education (MDG 2) – regional disparities mean that despite being classed as “on track”, Kenya is likely to miss its goal.<sup>6</sup>

8. Importantly, our research and analysis has demonstrated both that *status-based discrimination can lead directly to income poverty*, and that *status-based discrimination can prevent or limit enjoyment of social and economic rights*, such as the rights to education, healthcare and employment.

9. Testimony gathered by the Equal Rights Trust in Kenya identified diverse examples of direct and indirect *discrimination with direct consequences in terms of income poverty*. Widows, daughters and sisters are deprived of land ownership by discriminatory application of customary succession laws, with poverty being an immediate consequence.<sup>7</sup> Discriminatory development policies divert public resources away from regions occupied by ethnic minority communities, resulting in lower levels of education, fewer jobs and poorer infrastructure, which in turn contribute to higher levels of absolute poverty in these areas.<sup>8</sup> Inadequate supply of assistive devices and failure to make reasonable accommodation prevent disabled persons from accessing education and employment, with a direct consequence for their ability to generate an income.<sup>9</sup>

10. That *status-based discrimination can also lead to a lack of enjoyment of social and economic rights* is also well-established. In *Case of the Yean and Bosico Children v the Dominican Republic*,<sup>10</sup> for example, the two complainants were unable to enrol in school, as, though they were born in the Dominican Republic, their mothers had emigrated from Haiti and as such, they were denied birth certificates. Discrimination on the basis of nationality was preventing the two girls (and others in the same situation) from accessing education. In deciding the case, the Inter-American Court of Human Rights held that the State had, by refusing to issue birth certificates, violated the children's rights to

protective measures, equality and non-discrimination, nationality, legal status and a name. The court required the State to adopt measures to address the historical discrimination caused by the birth record and education system, and to guarantee access to free education for all children regardless of background or origin. A range of other cases identified by the Equal Rights Trust illustrates the causal link between discrimination and the enjoyment of access to education,<sup>11</sup> healthcare<sup>12</sup> and housing.<sup>13</sup>

11. Our research and analysis has also identified that discrimination in respect to social and economic rights – such as the denial of access to education for children from marginalized ethnic groups, for example – in many cases has direct consequences on their income poverty. Thus, our analysis supports the overarching approach of the development agenda – that access to education, healthcare and other social and economic rights is key to human development – while also underlining the critical role which discrimination plays in creating and perpetuating both income poverty and deprivation in its wider sense.

12. This link between different forms of status-based discrimination, poverty and deprivation in areas such as education and healthcare has also been identified by, for example, the UN Independent Expert on the question of extreme poverty and human rights,<sup>14</sup> and the UN Committee on Economic, Social and Cultural Rights.<sup>15</sup> More recently, the UN High Commissioner for Human Rights, in an open letter, stressed the need for the post-2015 framework to address three distinct concepts:

“The new framework must advance the three closely-related but distinct concepts of equity (fairness of distribution of benefits and opportunities), equality (that is,

substantive equality of both opportunity and result, under the rule of law), and non-discrimination (prohibition of distinctions that are based on impermissible grounds and that have the effect or purpose of impairing the enjoyment of rights).<sup>16</sup>

13. We welcome the Panel’s Report position that “[t]he new agenda must tackle the causes of poverty, exclusion and inequality”.<sup>17</sup> However, we believe that if the commitment to tackling the causes of *inequality* is to be effective, it must strongly recognise and address the role which discrimination plays in creating and perpetuating structural inequalities. It ought to be recognised that *legal protections from discrimination* – as in the cases identified above – can provide an important mechanism to alleviating poverty and its consequences.

**Central Recommendation: The Post-2015 framework should include adoption of comprehensive national equality legislation as a specific development goal in and of itself. Such legislation should reflect principles on equality developed on the basis of a unified human rights framework.**

14. In our view, a State’s obligation to enact comprehensive national equality legislation must be a specific development goal *in and of itself* in the post-2015 framework. Such legislation – which may take the form of either an individual law or a system of laws – must require that states take positive action measures to accelerate progress towards equality for particular groups, and provide comprehensive and effective protection from discrimination. We believe that the adoption of such legislation is essential if the new framework is genuinely to “leave no one behind”.

15. Such legislation should reflect principles on equality developed on the ba-

sis of a unified human rights framework. The Declaration of Principles on Equality<sup>18</sup> developed and launched in 2008 by 128 prominent human rights and equality advocates and experts convened by The Equal Rights Trust sets out the essential elements of a comprehensive and effective system of equality law. The Declaration is a document of international best practice on equality, which has been described as “the current international understanding of Principles on Equality”<sup>19</sup> and has been endorsed by the Parliamentary Assembly of the Council of Europe.<sup>20</sup> Principle 1 of the Declaration states that:

“The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.”

16. The Declaration recommends *inter alia* that States adopt and implement positive action measures, and that they enact legislation to prohibit direct discrimination, indirect discrimination, harassment and failure to make reasonable accommodation. It states that discrimination should be prohibited on an extensive list of grounds and in all areas of life regulated by law.

17. In our opinion, in order to ensure that the new development framework leaves no one behind, States must establish **legislation**, such legislation must be **comprehensive** and it must be **effective**. We therefore recommend the inclusion in the post-2015 Development framework of a standalone development goal requiring the adoption of comprehensive and effective national equality legislation.

### ***The requirement to adopt national equality legislation***

18. States are already required to respect, protect and fulfil the right to non-discrimination as part of their existing legal obligations. Most States are party to one or more instruments providing a right to non-discrimination on a number of grounds.<sup>21</sup> Similarly, many States have constitutional guarantees to equality or non-discrimination which, if properly interpreted in the spirit of international human rights law and enforced, could provide extensive protection from discrimination.

19. Participation in international treaties containing equality provisions and constitutional protections of equality are necessary, but not sufficient. The Equal Rights Trust believes that effective protection of equal rights is best achieved through the adoption of comprehensive national equality legislation. Without legislation which provides legal definitions of key terms (such as “right to equality”, “equal treatment”, “positive action” and “discrimination”), sets out rights and obligations, establishes mechanisms to ensure access to justice and provides remedies and sanctions, those subject to discrimination will be unable to bring their rights to bear. The enactment of legislation protecting the right to non-discrimination is an established requirement in international law, as interpreted by the United Nations treaty bodies. The Committee on Economic, Social and Cultural Rights has said, in relation to the right to non-discrimination in Article 2(2), that: “Adoption of legislation to address discrimination is *indispensable* in complying with article 2, paragraph 2” (emphasis added).<sup>22</sup> The Human Rights Committee, in relation to Article 2(1) and 26, frequently recommends the adoption of comprehensive equality legislation in order

to ensure compliance with those provisions, recently recommending to Iceland, for example, that “[t]he State party should take steps to adopt comprehensive anti-discrimination legislation, addressing all spheres of life and providing effective remedies in judicial and administrative proceedings”.<sup>23</sup>

***The requirement that national equality legislation be comprehensive***

20. While recognising the established international legal obligations of States to adopt legislation prohibiting discrimination, the Declaration of Principles on Equality goes further, requiring the establishment of a comprehensive system of equality law. Comprehensiveness means that such a system should be aimed at substantive equality through positive action, and that it should prohibit discrimination on a number of grounds and in all areas of activity regulated by law.

21. The Declaration of Principles on Equality, in unison with the growing international expert consensus, regards positive action as a necessary condition for the realisation of the right to equality, not as an exception, or exemption from complying with the right to non-discrimination:

“To be effective, the right to equality requires positive action.

Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.”<sup>24</sup>

22. To ensure comprehensiveness, equality legislation should further define and prohibit the most important forms of dis-

crimination, including direct and indirect discrimination, as well as harassment and the denial of reasonable accommodation. A similar requirement is contained in the General Comment made by the Committee on Economic, Social and Cultural Rights in 2009.<sup>25</sup> In respect to reasonable accommodation, the Declaration of Principles on Equality indicates that “it may be necessary to require public and private sector organisations to provide reasonable accommodation for different capabilities of individuals related to one or more prohibited grounds”.<sup>26</sup> This position is consonant with the view of the Committee on Economic, Social and Cultural Rights, which requires that “the denial of reasonable accommodation should be included in national legislation as a prohibited form of discrimination on the basis of disability”,<sup>27</sup> but, reflecting best practice, extends to other protected characteristics the obligation of reasonable accommodation articulated in the Convention on the Rights of Persons with Disabilities.<sup>28</sup>

23. In terms of personal scope, the Declaration recommends that the prohibition on discrimination covers a range of characteristics.<sup>29</sup> In addition, the Declaration recommends that States prohibit discrimination on any other ground which meets one of the following three criteria:

- (i) causes or perpetuates systemic disadvantage;*
- (ii) undermines human dignity; or*
- (iii) adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.*<sup>30</sup>

24. In addition, discrimination should be prohibited where it is on the basis of an association with a particular protected ground, or on the basis of a perception – accurate

or not – that an individual possesses a particular protected ground or characteristic.<sup>31</sup> This approach has also been adopted by the Committee on Economic, Social and Cultural Rights in its interpretation of the right to non-discrimination.<sup>32</sup> Finally, States should prohibit multiple discrimination (that is, discrimination arising on a combination of two or more grounds), something which has been recognised in a wide range of international instruments and recommendations by UN treaty bodies.<sup>33</sup>

25. Comprehensive protection from discrimination also requires that the material scope of any anti-discrimination law be broad. The Declaration states that “[t]he right to equality applies in all areas of activity regulated by law” and calls for both States and non-state actors to respect the right to equality.<sup>34</sup> The obligation on States to prohibit discrimination by private actors is well-established in international law: the Human Rights Committee has interpreted Article 26 of the International Covenant on Civil and Political Rights as “prohibit[ing] discrimination in law or in fact in any field regulated and protected by public authorities”,<sup>35</sup> while a number of other UN treaty bodies have recognised that the obligation not to discriminate applies to both state and non-state actors.<sup>36</sup>

26. Thus, in order to provide a *comprehensive* system of equality law in line with international law and best practice, States must provide for positive action measures to be compulsory in cases where it is necessary to accelerate progress towards equality for particular groups. Further, such a system must prohibit direct discrimination, indirect discrimination, harassment and failure to make reasonable accommodation. Discrimination must be prohibited on all grounds recognised by international law, and the law should also provide the opportunity for new

grounds of discrimination to be recognised. The law should prohibit discrimination on the basis of association and perception, and multiple discrimination. The prohibition on discrimination should apply to both state and non-state actors, in all areas of life regulated by law.

***The requirement that national equality legislation be effective***

27. The system of equality law must be effective, in that the requirement to take positive action is complied with in practice and discrimination victims are empowered to access justice, and to challenge discrimination in anticipation of remedy and sanction. International law requires States to provide effective access to justice for victims of human rights violations, including discrimination.<sup>37</sup> Thus, laws should ensure that victims of discrimination can access justice through, *inter alia*, setting out rules of access to judicial or administrative procedures, establishing legal aid systems, removing obstacles, including financial hurdles, and ensuring that investigating bodies are impartial and independent. The Declaration also recommends that victims of discrimination be protected from victimisation,<sup>38</sup> that legal standing in discrimination cases be extended to “associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality”,<sup>39</sup> and that “[l]egal rules related to evidence and proof must be adapted to ensure that victims of discrimination are not unduly inhibited in obtaining redress”.<sup>40</sup> Finally, the legal system should provide effective sanctions and remedies. Principle 22 states:

"Sanctions for breach of the right to equality must be effective, proportionate and dissuasive. Sanctions must provide for appropriate remedies for those whose right to

equality has been breached including reparations for material and non-material damages; sanctions may also require the elimination of discriminatory practices and the implementation of structural, institutional, organisational, or policy change that is necessary for the realisation of the right to equality."

28. A comprehensive and effective system of protection from discrimination is an important means by which those in poverty can challenge the discrimination which has created or contributed to their poverty. Working effectively, such protections can also ensure that resources are directed to those most in need, by requiring state actors to consider the discriminatory effect of resource allocation decisions. Thus, establishing a specific development goal requiring the adoption of comprehensive national equality legislation would provide a key tool to tackling poverty and ensuring sustainable development. Such a goal would also translate commitments entered into voluntarily by States into legal actionable rights, and would ensure that poverty alleviation efforts are aligned to existing international law obligations held by States.

**Specific Recommendation 1: Illustrative Target 1(c) ("Cover x% of people who are poor and vulnerable with social protection systems") should be replaced with a new target to "Establish positive action programmes to accelerate progress towards equality of a minimum of x% of the population, comprised of particular groups identified as being most exposed to poverty"**

29. Illustrative Target 1(c) represents a laudable aim on the part of the Panel, and reflects the depth of the commitment to "leave no one behind". As the Panel notes, social assistance programmes are a "potential game changer

that can directly improve equality". However, as the Report itself recognises, through classifying it as one of the targets which "require[s] further technical work to find appropriate indicators", this target lacks precision.

30. This target could be improved by adapting it to reflect approaches which have developed and become well-established in international human rights law on the rights to non-discrimination and equality. Our proposal is that States be required to identify those groups which are most disadvantaged, including through exposure to systemic discrimination, to adopt as quantitative target a percentage of the population comprised of such groups, and to institute *effective positive action programmes to accelerate their progress towards equality*. By redefining this target as an obligation to establish positive action programmes, States will have greater clarity about the nature of the target and there will be greater potential to measure outcomes and monitor progress. In addition, redefining this target in this way would represent a shift in focus from ideas of vulnerability, charity and goodwill to an approach centred on human rights obligations, because positive action is a necessary element of the *right* to equality.

31. In practical terms, such a target will require steps to identify those who are disproportionately exposed to deprivation in any particular area of life. Thus, the implementation of this target would need to work in conjunction with the obligation to collect, disaggregate and analyse data on multiple grounds, as discussed below in respect of our specific recommendations 3(1), 3(2) and 3(3).

32. Positive action can take a variety of forms, including legislative, administrative and policy measures, but these measures

should meet certain criteria, including that they are legitimate, necessary in a democratic society, respect the principles of fairness and proportionality, and are time limited.<sup>41</sup>

**Specific Recommendation 2: the framework should incorporate a new target to “Ensure comprehensive and effective protection from discrimination” in the five goals associated with income poverty, education, healthcare, employment and participation in public life (Illustrative Goals 1, 3, 4, 8 and 10)**

33. As noted above, The Equal Rights Trust believes that the commitment to “leave no one behind” can only be realised if States provide effective protection from discrimination on all grounds and in all areas of life. This would reflect the cross-cutting nature of the equality element of the entire framework. However, ensuring effective protection from discrimination also requires detailed legislation and policies in respect of some of the proposed goals, notably those concerned with income poverty, education, healthcare, employment and participation in public life (Illustrative Goals 1, 3, 4, 8 and 10). Indeed, as the evidence presented above indicates, without taking steps to ensure *effective protection from discrimination* in these areas of life, it will not be possible for States to make progress towards these goals at the aggregate level, far less at the level of “all relevant social and income groups”.

34. The Equal Rights Trust therefore recommends that a new target be set under each of these five goals, requiring States to provide effective and comprehensive protection from discrimination in the respective area of life: resource allocation for alleviating poverty, education, healthcare, employment and participation in public life.

**Specific Recommendation 3: The commitment to ensure that “Targets will only be considered ‘achieved’ if they are met for relevant income and social groups” should be strengthened by improving the disaggregation of data**

Specific Recommendation 3(1): States should be required to disaggregate data on the basis of *income, gender, location, disability, age, race and ethnicity, religion, citizenship status, and sexual orientation, together with such further grounds as are identified as particularly relevant to experiences of discrimination and deprivation in the country context.*

35. As the research cited above indicates, one of the most important ways in which the MDGs failed to account for inequality was through the use of average or aggregate targets which at best provide little insight into impact on the lives of the most marginalised, and at worst can exacerbate inequalities. The Equal Rights Trust is therefore pleased to note that the High Level Panel has recognised the need to monitor progress towards goals and targets for different social and identity groups, through disaggregation of data. The Report recommends that:

“To ensure equality of opportunity, relevant indicators should be disaggregated with respect to income (especially for the bottom 20%), gender, location, age, people living with disabilities, and relevant social groups. Targets will only be considered “achieved” if they are met for all relevant income and social groups.”<sup>42</sup>

36. The Equal Rights Trust wholeheartedly supports this approach, and in particular the proposal to consider targets achieved only if they are met for all “relevant” groups. Disaggregation of the data based on indicators related to various impermissible grounds of discrimination would enable States to identify

groups which are not benefitting from previous or current policies and take appropriate corrective measures. Further, the identification of groups vulnerable to discrimination is a necessary pre-requisite to the adoption of comprehensive national equality legislation, as – in addition to certain groups which require protection under international law due to their universal vulnerability to discrimination – each State may have its own unique groups of persons vulnerable to discrimination and whose status will therefore require inclusion in any equality legislation.

37. The Equal Rights Trust notes that the Panel has identified six grounds on which data must be disaggregated: income (especially for the bottom 20%), gender, location, age, disability, and “relevant social group”. However, while we welcome the commitment to disaggregation of data, and to measuring progress for different groups rather than only at the aggregate level, we are concerned that the selection of groups which are listed in the Panel’s Report may be interpreted too narrowly to ensure that all those at risk of discrimination and associated poverty are included. We are also concerned that the expression “relevant social group” is too vague. The Equal Rights Trust supports the Panel’s recommendation that data must be disaggregated on all of the five of the specific grounds, given the extensive evidence of poverty connected to discrimination on these grounds. However, it is well established that there are several other grounds of discrimination which are closely connected to poverty.

38. In our view, the best way to ensure that any new framework leaves no one behind would be to require States to disaggregate data on all grounds of discrimination from amongst those that are recognised in international human rights law which are relevant to the country context, as well as in respect

to further country-specific groups that are not covered by international non-discrimination provisions. The Declaration of Principles on Equality includes the following list of grounds of discrimination: “race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness”. This list in turn reflects the grounds incorporated by international treaties or by the treaty bodies with responsibility for interpreting them.

39. In each country, a selection of the above grounds, as well as others, potentially, would be specific to the country context and would require desegregated data in order to allow related patterns of discrimination to be properly addressed. In order to identify the country-specific groups that are most at risk of poverty resulting from discrimination, governments should identify the major discrimination and inequality patterns affecting the population, as reflected in objective research; or commission such research where it does not exist. The Equal Rights Trust recommends that, in addition to the grounds recognised by the Panel, most States should be required to disaggregate data on the basis of *race and ethnicity, religion, citizenship status and sexual orientation*.

Specific Recommendation 3(2): States should be required to ensure that non-citizens benefit from the realisation of the post-2015 framework, through collecting and analysing data on their situation, and targeting development resources at them.

40. Non-citizens, be they asylum seekers, refugees, stateless persons, irregular mi-

grants or migrant workers, are most frequently excluded from development processes in comparison with other sections of the population, and are vulnerable to human rights abuse. It has been observed that:

The special vulnerability of migrants stems from the fact that they are not citizens of the country in which they live. (...) This dissociation between nationality and physical presence has many consequences. As strangers to a society, migrants may be unfamiliar with the national language, laws and practice, and so less able than others to know and assert their rights. They may face discrimination, and be subjected to unequal treatment and unequal opportunities at work, and in their daily lives. They may also face racism and xenophobia. At times of political tension, they may be the first to be suspected – or scapegoated – as security risks.<sup>43</sup>

41. In an increasingly globalised world, migration of all types continues to change and shape national demographics. The MDGs did not adequately address the development needs and rights of non-citizen populations, and this has led to an approach in which, contrary to principles of international law, States have largely excluded vulnerable migrant communities from development processes. Discriminatory attitudes towards non-citizens – in addition to entrenching poverty for this group – are expressed in the failure of a number of States to tackle the development needs of communities with large migrant populations. One example was the refusal in 2011 of Bangladesh to accept a US \$33 million grant to alleviate poverty in the Cox’s Bazar district of the country. While the grant would have also benefitted Bangladeshi citizens, the government rejected it on the grounds that “the actual aim of the UN initiative is to rehabilitate (Rohingya) refugees in Cox’s Bazar district under the pretext of poverty reduction for locals”.<sup>44</sup>

42. The UN High Commissioner for Human Rights, in her recent open letter on the post-2015 development agenda, stated that “marginalized, disempowered and excluded groups, previously locked out of development, must have a place in the new agenda. This includes (...) migrants”. The Equal Rights Trust strongly agrees with this position and emphasises that among non-citizens, *stateless persons* are particularly vulnerable to discrimination, exclusion and poverty. The Equal Rights Trust’s research on statelessness has confirmed that life as a stateless person is often characterised by poverty, insecurity, uncertainty and vulnerability.<sup>45</sup>

43. The lack of a legal status and documentation that are integrally linked to statelessness create massive barriers which prevent stateless persons from enjoying their human rights, including those relevant to poverty alleviation. For example, stateless persons without personal documents have difficulties accessing education (Illustrative Goal 3), healthcare (Goal 4) and work (Goal 8); are consequently at higher risk of income poverty (Goal 1) with limited access to food and nutrition (Goal 5) and water and sanitation (Goal 6). They are also more likely to be excluded from political processes and to face barriers in access to justice (Goals 10 and 11). While all stateless persons are vulnerable, those in protracted situations of statelessness which impact large communities over many generations, such as the Rohingya of Myanmar, Kuwaiti Bidoon, and the Hill tribes of Thailand, are most likely to be excluded from development processes. The impact of such exclusion over many generations is that such groups are at the very bottom of development indices.

Specific Recommendation 3(3): States should be required to analyse data disaggregated on different grounds in order to identify those

groups of persons who are at higher risk of discrimination due to a combination of two or more grounds.

44. In addition to disaggregating data on a list of grounds, and taking account of the particular needs of non-citizens, the commitment to measuring progress for “all relevant social and income groups” can only be effective if data is analysed to assess the impact of multiple discrimination (that is, discrimination on more than one ground) on poverty and deprivation. We therefore recommend that, in addition to disaggregating data on the grounds listed above, this data should be analysed to identify whether groups of persons who share two or more of the protected characteristics are at greater risk of not achieving a given target.

45. The provision of effective protection from multiple discrimination is an emerging obligation in international human rights law. The UN Committee on Economic, Social and Cultural Rights has stated in its General Comment No. 20 that:

“Some individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying.”<sup>46</sup>

46. Both the UN Committee on the Elimination of Racial Discrimination<sup>47</sup> and the UN Committee on the Elimination of Discrimination against Women<sup>48</sup> have also highlighted the particular problem of multiple discrimination, and stressed that states parties to the relevant Conventions have obligations to provide protection for groups exposed to multiple discrimination.

47. The link between multiple discrimination and poverty is also well evidenced, with numerous examples of groups or individuals exposed to poverty because of a combination of two or more characteristics which increase their marginalisation. For example, there is extensive evidence that women from ethnic minorities<sup>49</sup> and indigenous communities<sup>50</sup> experience greater deprivation compared to both their male counterparts and women from other ethnic groups. Similarly, a review of poverty and disability in low- and middle-income countries found that disabled women experience greater difficulties in accessing employment and services.<sup>51</sup>

**Specific Recommendation 4: Illustrative Target 10(a) (“Provide free and universal legal identity, such as birth registrations”) should be expanded to include the words “and eradicate statelessness”**

48. The Equal Rights Trust welcomes the inclusion of Illustrative Target 10(a): “provide free and universal identity, such as birth registration”. We believe that this target is a necessary pre-requisite for the upholding of the commitment to leave no one behind. Persons who do not have a legal identity (including birth registration), are all too often excluded from society and nation-building processes and denied access to, and enjoyment of, human rights. Furthermore, the difficulties that undocumented persons face in securing documentation and access to human rights for their children is widely recognised as a significant barrier to development. Thus, the universal provision of legal identity will increase the sustainability of the post-2015 goals beyond their implementation period and will serve to arrest the inter-generational inequalities that are so destructive to poverty-stricken and marginalised communities.

49. There exists a strong link between “legal identity” and “legal status”. Those without a legal identity are often denied legal status, and this in itself at times results in statelessness. Similarly, those born into statelessness are often denied both a legal identity and a legal status. The impact that statelessness has on the individual in development terms is similar (but more exacerbated) than that of the lack of a legal identity. Stateless persons – who lack a legal status in most contexts – are disproportionately vulnerable to discrimination, exclusion and poverty. As mentioned above, stateless persons face significant barriers in accessing, among other things, education, health and work. Those in protracted situations of statelessness are most vulnerable in this regard.

50. Consequently, it is evident that Illustrative Goal 10(a) would have a greater impact, if it were extended beyond the provision of universal legal identity such as birth registrations, to also include a commitment to eradicate statelessness. Such an approach would bring the post-2015 agenda in line with the position of the UN High Commissioner for Refugees, within whose mandate the identification and protection of stateless persons and the prevention and reduction of statelessness falls. Recently, the High Commissioner on Refugees has stated that there should be a concerted effort to eradicate statelessness within the next decade. The Equal Rights Trust welcomes this statement and urges those responsible for developing the post-2015 agenda to not lose sight of the stateless: they are among the most vulnerable persons in the world. While our specific recommendation 2(2) emphasised the need to ensure that no stateless person (or other non-citizen) is left behind, there is a need for an explicit commitment to eradicating statelessness.

## Conclusion

51. The recognition by the High Level Panel that the post-2015 development agenda must reflect a commitment to “leave no one behind”, and that such a commitment would represent a transformative shift from the equality-blind approach of the MDGs is particularly welcome.

52. However, we are concerned that this commitment is not sufficiently substantive, does not reflect the current expert understanding of accepted principles on equality, and that it could be better expressed in the framework in Illustrative Goals and Targets. If the commitment to leave no one behind is to be effective in practice, it must rely on the rights to equality and non-discrimination, the violation of which plays a significant role in creating and maintaining cycles of poverty and deprivation. To be effective, the framework must place approaches grounded in the rights to equality and non-discrimination at its centre. **In our opinion, this necessitates the adoption of comprehensive national equality legislation, which reflects principles on equality developed on the basis of a unified human rights framework.** The four specific recommendations made in this paper pursue this ultimate goal.

53. Our recommendations to adjust the Panel’s framework – the enactment of comprehensive national equality legislation, the grounding of such legislation on positive action, the collection and analysis of data on groups exposed to discrimination, and the eradication of statelessness – are all critical to eradicating poverty. These recommendations are motivated by our desire to see the post-2015 framework reflecting the needs of the most marginalised in society.

54. Furthermore, our recommendations reflect the hope of many stakeholders, including the participants in the Rio+20 process, the UN System Task Team on the Post-2015 Agenda, and many of those engaged through the thematic consultation process which preceded the Panel's Report, that the post-2015 agenda would have human rights at its centre. In her recent response to the Report, the UN High Commissioner for Human Rights stressed that:

"[T]he Post-2015 Agenda must be built on a human rights-based approach, in

both process and substance. This means (...) a focus on non-discrimination, equality and equity in the distribution of costs and benefits (...) The imperative of equality must underpin the entire framework."<sup>52</sup>

55. The approach which we advocate would place existing international human rights obligations related to equality at the heart of the new development agenda. If adopted, it would take the post-2015 development agenda to a new level and bring realities closer to the ideals embraced by the peoples of the United Nations.

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- 1 United Nations, *A New Global Partnership: Eradicate Poverty and Transform Economies Through Sustainable Development: The Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda*, 2013, Executive Summary, available at: <http://www.post2015hlp.org/the-report/>.
  - 2 UN High Commissioner for Human Rights, *Open Letter on Human Rights and the Post-2015 Agenda*, June 2013, p. 3, available at: <http://www.ohchr.org/EN/Issues/MDG/Pages/MDGPost2015Agenda.aspx>.
  - 3 Kabeer, N., *Can the MDGs provide a pathway to social justice? The challenge of intersecting inequalities*, Institute of Development Studies and the MDG Achievement Fund, 2010, p. 39, available at: <http://www.ids.ac.uk/files/dmfile/MDGreportwebsiteu2WC.pdf>.
  - 4 Kenya Central Bureau of Statistics, *Kenya Demographic and Health Survey 2009*, 2009, p. 104, available at: <http://www.measuredhs.com/pubs/pdf/FR229/FR229.pdf>.

- 5 The Equal Rights Trust's comparison of the statistics produced for the Kenya Demographic and Health Surveys 2003 and 2009 also indicates that slow progress in certain regions – such as Coast and Western Provinces – means the target will not be met unless targeted measures are put in place. See: Kenya Central Bureau of Statistics, *Kenya Demographic and Health Survey 2003*, 2003, Table 8.2, p. 116, available at: <http://www.measuredhs.com/pubs/pdf/FR151/FR151.pdf>; and Kenya Central Bureau of Statistics, *Kenya Demographic and Health Survey 2009*, 2009, Table 8.2, p. 107, available at: <http://www.measuredhs.com/pubs/pdf/FR229/FR229.pdf>.
- 6 Since the introduction of free primary education in 2003, Kenya has made rapid progress towards meeting MDG 2, with net enrolment in primary education rising to over 90%. Yet significant regional disparities indicate that Kenya will not achieve universal primary education by 2015 unless resources are diverted towards marginalised areas. See Uwezo Kenya, *Are Our Children Learning: Annual Learning Assessment Kenya 2010*, 2010, p. 17, available at: [http://www.uwezo.net/wp-content/uploads/2012/08/KE\\_2010\\_AnnualAssessmentReportSummary.pdf](http://www.uwezo.net/wp-content/uploads/2012/08/KE_2010_AnnualAssessmentReportSummary.pdf).
- 7 The Equal Rights Trust and the Federation of Women Lawyers – Kenya, *Baseline Survey on Community-Based Legal Assistance Schemes Partnerships – (LASPS)*, December 2012.
- 8 The Equal Rights Trust, *In the Spirit of Harambee: Addressing Discrimination and Inequality in Kenya*, 2012, pp. 58–66, available at: [http://www.equalrightstrust.org/ertdocumentbank/In\\_the\\_Spirit\\_of\\_Harambee.pdf](http://www.equalrightstrust.org/ertdocumentbank/In_the_Spirit_of_Harambee.pdf).
- 9 *Ibid.*, pp. 134–139.
- 10 *Case of the Yean and Bosico Children v the Dominican Republic*, Inter-American Court of Human Rights, Judgment of September 8, 2005, (Ser. C) No. 130 (2005).
- 11 See, for example, *Unni Krishnan J.P. & Others v State of Andhra Pradesh & Others*, 1993 AIR 217, Supreme Court of India, February 1993, and *San Antonio Independent School District v Rodriguez*, 411 U.S. 1 (1973), March 1973.
- 12 See, for example, *Alyne da Silva Pimentel v Brazil (Communication No. 17/2008)*, UN Doc. CEDAW/C/49/D/17/2008, August 2011; and *European Roma Rights Centre v Bulgaria*, No. 46/2007, European Committee of Social Rights, December 2008.
- 13 See, for example, *International Movement ATD Fourth World v France*, No. 33/2006, European Committee of Social Rights, December 2007; and *Ms L. R. et al. v Slovakia (Communication No. 31/2003)*, UN Doc. CERD/C/66/D/31/2003, March 2005.
- 14 Report of the UN Independent Expert on the question of extreme poverty and human rights, UNGA 63<sup>rd</sup> Session, 2008, Paras 29–30.
- 15 Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 35.
- 16 See above, note 2.
- 17 See above, note 1, p. 7.
- 18 *Declaration of Principles on Equality*, the Equal Rights Trust, London, 2008.
- 19 *Naz Foundation v Government of NCT of Delhi and Others* WP(C) No.7455/2001, Para 93.
- 20 Parliamentary Assembly of the Council of Europe, *Resolution and Recommendation: The Declaration of Principles on Equality and activities of the Council of Europe*, REC 1986 (2011), 25 November 2011, available at: [http://assembly.coe.int/ASP/Doc/ATListingDetails\\_E.asp?ATID=11380](http://assembly.coe.int/ASP/Doc/ATListingDetails_E.asp?ATID=11380).
- 21 In total, 167 States are party to the International Covenant on Civil and Political Rights, which provides a free-standing right to non-discrimination at Article 26, while 160 States are party to the International Covenant on Economic, Social and Cultural Rights, Article 2(2) of which requires States to guarantee that all of the economic, social and cultural rights contained therein can be exercised without discrimination.
- 22 See above, note 15, Para 37.
- 23 Human Rights Committee, *Concluding Observations: Iceland*, UN Doc. CCPR/C/ISL/CO/5, 31 August 2012, Para 6.
- 24 See above, note 18, Principle 3, p. 5.

- 25 See above, note 15, Paras 10 and 7.
- 26 See above, note 18, Principle 5, p. 6.
- 27 See above, note 15, Para 28, repeating, in part, Committee on Economic, Social and Cultural Rights, *General Comment 5: Persons with disabilities*, UN Doc. E/1995/22, 1995, Para 15.
- 28 Convention on the Rights of Persons with Disabilities, G.A. Res. A/RES/61/106, 2006, Article 5(3).
- 29 See above, note 18, Principle 5, p. 6, which states: “Discrimination must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds.”
- 30 *Ibid.*, Principle 5. The Declaration of Principles on Equality contains a closed list of prohibited grounds complemented by a set of criteria for determining whether a characteristic should be regarded as a prohibited ground. Although many international human rights instruments provide open lists, in that they include “any other status” as a protected ground, they do not specify what the criteria are for further grounds to be considered as protected under this heading. The approach of the Declaration instead reflects that of the principal anti-discrimination legislation in South Africa, the Promotion of Equality and Prevention of Unfair Discrimination Act, section 1.
- 31 *Ibid.*
- 32 See above, note 15, Para 16.
- 33 See above, note 18, Principles 5 and 12. Multiple discrimination is explicitly prohibited under Article 6(1) of the Convention on the Rights of Persons with Disabilities. The UN Committee on Economic, Social and Cultural Rights has stated, in its *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, that multiple discrimination may be considered as a prohibited ground falling within “other status” in Article 2(2) of the International Covenant on Economic, Social and Cultural Rights. The Committee on the Elimination of Racial Discrimination referred to the need to prohibit intersectional discrimination in its *General Recommendation No. 25: Gender Related Dimensions of Racial Discrimination and General Recommendation No. 27: Discrimination against Roma*. The Committee on the Elimination of Discrimination against Women stressed the need to provide effective protection from intersectional discrimination in its *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*.
- 34 See above, note 18, Principles 8 and 10.
- 35 Human Rights Committee, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.1 at 26, 1994, Para 12.
- 36 See, for example: Committee on Economic, Social and Cultural Rights, *General Comment 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 11; and Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 28: On the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/2010/47/GC.2, 2010, Para 17.
- 37 See, for example: International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 1966, Article 2(3)(a); International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), 1965, Article 6; and Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 1979, Article 2(c).
- 38 See above, note 18, Principle 19, p. 12.
- 39 *Ibid.*, Principle 20, pp. 12-13.
- 40 *Ibid.*, Principle 21, p. 13.
- 41 See, for example, Committee for the Elimination of Racial Discrimination, *General Recommendation No. 32: The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination*, UN Doc. CERD/C/GC/32, 2009, Para 16. It should be noted that the Committee, in this General Recommendation, is dealing with the concept of special measures under the Convention on the Elimination of all forms of Racial Discrimination, rather than the broader concept of positive action established in the Decla-

ration of Principles on Equality. Nevertheless, many of the same considerations apply.

- 42 See above, note 1, p. 29.
- 43 Grant, S., "International Migration and Human Rights", *Policy Analysis and Research Programme of the Global Commission on International Migration*, 2005, pp. 1-2.
- 44 Allchin, J., "Bangladesh refuses UN aid for Rohingya refugees", *One World South Asia*, May 2011, available at: <http://southasia.oneworld.net/news/bangladesh-refuses-un-aid-for-rohingya-refugees#.Ufj7R6yHPxU>.
- 45 See the Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons*, June 2010, available at: <http://www.equalrightstrust.org/ertdocumentbank/UNRAVELLING%20ANOMALY%20small%20file.pdf>
- 46 See above, note 15, Para 17.
- 47 Committee on the Elimination of Racial Discrimination, *General Recommendation No. 25: Gender Related Dimensions of Racial Discrimination*, UN Doc. A/55/18, annex v. at 152 (2000); Committee on the Elimination of Racial Discrimination, *General Recommendation No. 27: Discrimination against Roma*, UN Doc. A/55/18, annex v. at 154, 2000, Para 6; Committee on the Elimination of Racial Discrimination, *General Recommendation No. 32: The meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination*, CERD/C/GC/32, 2009, Para 7.
- 48 Committee on the Elimination of Discrimination against Women, *General recommendation No. 25: On article 4, paragraph 1, on temporary special measures*, UN Doc. HRI/GEN/1/Rev.7 at 282, 2004, Para 12.
- 49 See, for example: Minority Rights Group International, *Poverty Reduction Strategy Papers: failing minorities and indigenous peoples*, 2010, p. 18, available at: <http://www.minorityrights.org/10140/reports/poverty-reduction-strategy-papers-failing-minorities-and-indigenous-peoples.html>.
- 50 See, for example, Hall, C., "Latin America's Indigenous Women", *Human Rights, Human Welfare, Topical Research Digest: Minority Rights*, p. 40, available at: <http://www.du.edu/korbel/hrhw/researchdigest/minority/Indigenous.pdf>.
- 51 Leonard Cheshire Disability and Inclusive Development Centre, *Poverty and disability – a critical review of the literature in Low and Middle-Income Countries*, Working Paper Series: No. 16, 2011, p. 17, available at: [http://www.ucl.ac.uk/lc-ccr/centrepublishations/workingpapers/WP16\\_Poverty\\_and\\_Disability\\_review.pdf](http://www.ucl.ac.uk/lc-ccr/centrepublishations/workingpapers/WP16_Poverty_and_Disability_review.pdf).
- 52 See above, note 2.