



The Integrated Approach to Equality in Kenya

This issue of *The Equal Rights Review* is devoted to recent equality developments in Kenya, where The Equal Rights Trust is working with its partners towards a comprehensive equality law reform. The Trust pursues its goals from the unified perspective on equality, expressed in the 2008 Declaration of Principles on Equality. We have made the unorthodox decision to devote this issue to equality in one particular country, rather than to a specific theme related to equality, in an attempt to illustrate how our approach works in practice at the national level, and how the theoretically well established advantages of the unified framework translate into practical project activities.

The unified (integrated) framework on equality is a holistic approach which, while keeping in view the specificities of the different strands of equality and the different types of discrimination, seeks more effective implementation of the right to equality through strengthening also the overarching aspects of these different strands and types. The unified framework brings together: a) the types of inequalities based on different grounds, such as race, gender, religion,

nationality, disability, sexual orientation and gender identity, among others; b) the types of inequalities in different areas of life, such as the administration of justice, employment, education, provision of goods and services, etc. The unified framework resolves the tensions and inconsistencies between international human rights and equality law approaches to non-discrimination. It also embraces progressive efforts to bridge the gaps between legal approaches to reducing status inequalities on one hand and socio-economic disadvantages on the other.

As an organisation based in the UK, ERT is encouraged by developments at home, where the Equality Act 2010 was passed last April, following 14 years of campaigning by equality and human rights advocates and experts. The Equality Act shortens the distance between the current British status quo and the values enshrined in the Declaration of Principles on Equality. In this issue, Professor Sir Bob Hepple QC analyses the new Equality Act, showing how it builds on several generations of previous equality legislation, and how the key concepts of equality law have been slowly developed through jurisprudence, pushed forward

by real and urgent needs of disadvantaged groups. The wisdom of his historic perspective contains a cautionary tale, however. If it took decades in Britain to arrive at today's version of modern, progressive equality legislation, in a society which does not tolerate wide rifts between a law and its practical implementation, why should we believe it will take less time in Kenya, or any other country? And even if Kenya adopts an equality law as good as that of Britain, what will be the impact on people's lives? Kenya already has some strong fragments of the otherwise missing mosaic of equality law. If it completes the mosaic, will the law translate into policies and practice?

It can be argued that the unified perspective on equality, if utilised sensitively and strategically, can itself serve as a catalyst and accelerator in the development of a comprehensive national equality regime in some countries. There are positive examples. In the new members of the European Union such as Bulgaria and Hungary, for example, where the unified approach was adopted by lawmakers and politicians when internalising the EC equality Directives, progress towards effective realisation of the right to equality has been much faster than it would have been if these countries had replicated the long stages of development of equality law in Britain. It appears that many countries around the world, and notably Kenya, can benefit from putting the concept of an integrated equality regime at the foundation of reform, rather than arriving at it through assembling dozens of

pieces that do not match, and modelling them to fit in the ever evolving puzzle of making equality identical with justice. Indeed, Kenya has already gone quite far toward a fragmented, patchy model of non-discrimination provisions. But the earlier these are integrated and upgraded, the better for everyone in Kenya. And in that country, the best time is now.

ERT could not have wished for a better timing to be working in Kenya together with its partners, the Kenyan Human Rights Commission and FIDA. Following a thorough and inclusive constitutional review process, on 4 August the Kenyans voted in a referendum and said "yes" to a new Constitution. Over the last year, ERT and its partners' advocacy has been advancing step by step against the backdrop of these developments, gaining strength from the winds of pro-reform sentiment felt at most quarters. Under our current project, a report on which is presented in the Special section, we have pushed for a comprehensive legal reform in the field of equality and non-discrimination, enhancing the capabilities of civil society to shape change. ERT Consultant Barbara Cohen, a senior expert on discrimination law, assisted by Kenyan lawyer Jacqueline Mogeni, has trained several groups of advocates in different cities across Kenya. The project brings together, in the format of various initiatives, disparate groups representing different sections of the disadvantaged public: women with specific agendas and issues, ethnic and religious minorities, LGBTI persons, and persons with different types of disability,

including the stigmatising condition of albinism. They are encouraged to articulate the areas of common interest and work out a common agenda for legal and policy reform. With regard to LGBTI persons, this has not always been a smooth process, as David Kuria, the Chair of the Gay and Lesbian Coalition of Kenya, hints in the interview published in this issue. But at the same time, projects of this type, pursuing equality from a unified perspective, have been seen as particularly beneficial by exactly those groups that have been most marginalised. Sexual orientation issues, including the continued criminalisation of homosexual conduct, have been brought to the centre of the debate and can no longer be ignored. At this stage, this is no longer just an LGBTI agenda item but a legitimate pressing concern for all groups who purport to promote equality in Kenya. The unified perspective has certainly played a key role in achieving this. Under two or three new projects which are currently

at an inception stage, ERT will continue to support aspects of that progressive change.

In the previous issue of *The Equal Rights Review* Wan Yanhai, the most prominent health rights activist of China and one of the original signatories of the Declaration of Principles on Equality described his work for equal rights of people living with HIV/AIDS, hepatitis and other disabling conditions in China. In this issue, he recounts the last chapter of this work and how it came to an end. Wan has been forced to leave China, as the authorities have chosen to spend limitless funds from the public purse to stifle independent human rights organisations, and have made Wan's life and work inside China impossible. ERT expresses its solidarity with Wan Yanhai and his colleagues, and wishes them to find ways to continue their human rights work, and – one day in the not too distant future – to find the way back home open and waiting.

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