

DECLARATION OF PRINCIPLES ON EQUALITY

Introduction

The right to equality before the law and the protection of all persons against discrimination are fundamental norms of international human rights law. But in the year which marks the 60th anniversary of the adoption of the Universal Declaration of Human Rights, the recognition and enjoyment of equal rights still remains beyond the reach of large sections of humanity.

In the second half of the 20th Century international human rights law emerged as a major legal framework for the protection of individual rights and freedoms. However, most countries in the world lack effective legal protection against discrimination and legal means to promote equality. Even in countries where such provisions are in force, much remains to be done to ensure the realisation of the right to equality.

In certain national and regional legal systems, equality legislation has evolved in the last few decades. It contains legal concepts, definitions, approaches and jurisprudence, some of which have taken the protection against discrimination and the realisation of the right to equality to a higher level. However, the disparity between international human rights law and national as well as regional approaches to equality hinders progress. Therefore, a major effort is required to modernise and integrate legal standards related to the protection against discrimination and the promotion of equality.

The *Principles on Equality* were agreed by a group of experts in several stages of consultations. They were discussed at a conference entitled “Principles on Equality and the Development of Legal Standards on Equality”, organised by The Equal Rights Trust on 3 - 5 April 2008 in London. Participants of different backgrounds, including academics, legal practitioners and human rights activists from all regions of the world took part in this event. Participants debated a version of the draft that had incorporated their comments on an earlier document. They subsequently contributed comments. A number of further experts participated in various stages of drafting and deliberation.

The result, the *Declaration of Principles on Equality*, reflects a moral and professional consensus among human rights and equality experts. This publication seeks to broaden the consensus, generate interest and debate and thus contribute to reaffirming and developing the right to equality. The principles formulated and agreed

by the experts are based on concepts and jurisprudence developed in international, regional and national legal contexts. They are intended to assist efforts of legislators, the judiciary, civil society organisations and anyone else involved in combating discrimination and promoting equality. They might serve as a compass to orient legislative, judicial and policy efforts towards a more progressive set of equality norms and policies in the 21st century. Ultimately, it is hoped that the formulation of universally applicable principles on equality will encourage further efforts to fulfil equality as a fundamental human right enjoyed by everyone.

Bob Hepple, Chair
Dimitrina Petrova, Executive Director
The Equal Rights Trust

WE, THE UNDERSIGNED HUMAN RIGHTS ADVOCATES AND EXPERTS IN
INTERNATIONAL HUMAN RIGHTS LAW AND EQUALITY LAW

Preamble

Recalling the principles proclaimed in the Charter of the United Nations which recognise the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world;

Recalling Article 1 of the Universal Declaration of Human Rights proclaiming that all human beings are born free and equal in dignity and rights;

Recalling that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on human rights and other universal treaties, has proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, committing States to take all possible measures to ensure non-discrimination in the enjoyment of all human rights;

Noting the recognition, in Article 26 of the International Covenant on Civil and Political Rights, of the right to non-discrimination as an autonomous human right and the correlative obligation of States to realise this right;

Observing that discrimination by its nature harms human capabilities in unjust ways, creating cycles of disadvantage and denials of freedom which hinder human development;

Recognising the importance of combating every form of discrimination, including the need to take appropriate action to enable people who are disadvantaged to realise their full potential, and contribute to their full participation in economic, social, political, cultural and civil life;

Convinced that comprehensive anti-discrimination legislation and its effective enforcement are necessary to promote equality and eliminate discrimination;

Concerned that the vast majority of States do not have effective legal protection, including comprehensive legislation, to promote equality and combat discrimination;

Understanding that States may need guidance and assistance in introducing effective legal protection, including legislation, to promote equality and combat discrimination;

Noting that while legal provisions relating to equality should provide legal certainty, those responsible should be willing to improve and interpret legislation in order to reflect the changing experiences of all people disadvantaged by inequality;

Resolved to take further steps to promote the equality of all persons through the effective enforcement of prohibitions of discrimination in international human rights law as well as in national legislation;

Aiming to eliminate unjust inequalities and to promote full and effective equality;

HAVING PARTICIPATED IN A MEETING HELD IN LONDON, IN THE UNITED KINGDOM, FROM 2 TO 5 APRIL 2008 AND/OR IN SUBSEQUENT CONSULTATIONS FACILITATED BY THE EQUAL RIGHTS TRUST, HEREBY ADOPT THE FOLLOWING

DECLARATION OF PRINCIPLES ON EQUALITY

PART I EQUALITY

1 THE RIGHT TO EQUALITY

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.

2 EQUAL TREATMENT

Equal treatment, as an aspect of equality, is not equivalent to identical treatment. To realise full and effective equality it is necessary to treat people differently according to their different circumstances, to assert their equal worth and to enhance their capabilities to participate in society as equals.

3 POSITIVE ACTION

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.

PART II NON-DISCRIMINATION

4 THE RIGHT TO NON-DISCRIMINATION

The right to non-discrimination is a free-standing, fundamental right, subsumed in the right to equality.

5 DEFINITION OF DISCRIMINATION¹

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.

Discrimination based on any other ground must be prohibited where such discrimination (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.

Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception, whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.

Discrimination may be direct or indirect.

Direct discrimination occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.

Indirect discrimination occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

¹ Throughout this Declaration the term "discrimination" is used as defined in this Principle and the term "prohibited grounds" refers to the grounds or combination of grounds described in this Principle.

Harassment constitutes discrimination when unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

An act of discrimination may be committed intentionally or unintentionally.

6 RELATIONSHIP BETWEEN THE GROUNDS OF DISCRIMINATION

Legislation must provide for equal protection from discrimination regardless of the ground or combination of grounds concerned.

7 DISCRIMINATION AND VIOLENCE

Any act of violence or incitement to violence² that is motivated wholly or in part by the victim having a characteristic or status associated with a prohibited ground constitutes a serious denial of the right to equality. Such motivation must be treated as an aggravating factor in the commission of offences of violence and incitement to violence, and States must take all appropriate action to penalise, prevent and deter such acts.

PART III SCOPE AND RIGHT-HOLDERS

8 SCOPE OF APPLICATION

The right to equality applies in all areas of activity regulated by law.

9 RIGHT-HOLDERS

The right to equality is inherent to all human beings and may be asserted by any person or a group of persons who have a common interest in asserting this right.

The right to equality is to be freely exercised by all persons present in or subject to the jurisdiction of a State.

² Certain signatories have endorsed the Principles on the basis that “incitement to violence” means “incitement to imminent violence”.

Legal persons must be able to assert a right to protection against discrimination when such discrimination is, has been or would be based on their members, employees or other persons associated with a legal person having a status or characteristic associated with a prohibited ground.

PART IV OBLIGATIONS

10 DUTY-BEARERS

States have a duty to respect, protect, promote and fulfil the right to equality for all persons present within their territory or subject to their jurisdiction. Non-state actors, including transnational corporations and other non-national legal entities, should respect the right to equality in all areas of activity regulated by law.

11 GIVING EFFECT TO THE RIGHT TO EQUALITY

States must take the steps that are necessary to give full effect to the right to equality in all activities of the State both domestically and in its external or international role. In particular States must

- (a) Adopt all appropriate constitutional, legislative, administrative and other measures for the implementation of the right to equality;
- (b) Take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that conflict or are incompatible with the right to equality;
- (c) Promote equality in all relevant policies and programmes;
- (d) Review all proposed legislation for its compatibility with the right to equality;
- (e) Refrain from adopting any policies or engaging in any act or practice that is inconsistent with the right to equality;
- (f) Take all appropriate measures to ensure that all public authorities and institutions act in conformity with the right to equality;

(g) Take all appropriate measures to eliminate all forms of discrimination by any person, or any public or private sector organisation.

12 OBLIGATIONS REGARDING MULTIPLE DISCRIMINATION

Laws and policies must provide effective protection against multiple discrimination, that is, discrimination on more than one ground. Particular positive action measures, as defined in Principle 3, may be required to overcome past disadvantage related to the combination of two or more prohibited grounds.

13 ACCOMMODATING DIFFERENCE

To achieve full and effective equality 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.

Accommodation means the necessary and appropriate modifications and adjustments, including anticipatory measures, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others. It should not be an obligation to accommodate difference where this would impose a disproportionate or undue burden on the provider.

14 MEASURES AGAINST POVERTY

As poverty may be both a cause and a consequence of discrimination, measures to alleviate poverty should be coordinated with measures to combat discrimination, in the pursuit of full and effective equality.

15 SPECIFICITY OF EQUALITY LEGISLATION

The realisation of the right to equality requires the adoption of equality laws and policies that are comprehensive and sufficiently detailed and specific to encompass the different forms and manifestations of discrimination and disadvantage.

16 PARTICIPATION

All persons, particularly those who have experienced or who are vulnerable to discrimination, should be consulted and involved in the development and implementation of laws and policies implementing the right to equality.

17 EDUCATION ON EQUALITY

States have a duty to raise public awareness about equality, and to ensure that all educational establishments, including private, religious and military schools, provide suitable education on equality as a fundamental right.

PART V ENFORCEMENT

18 ACCESS TO JUSTICE

Persons who have been subjected to discrimination have a right to seek legal redress and an effective remedy. They must have effective access to judicial and/or administrative procedures, and appropriate legal aid for this purpose. States must not create or permit undue obstacles, including financial obstacles or restrictions on the representation of victims, to the effective enforcement of the right to equality.

19 VICTIMISATION

States must introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with equality provisions.

20 STANDING

States should ensure that associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality, may engage, either on behalf or in support of the persons seeking redress, with their approval, or on their own

behalf, in any judicial and/or administrative procedure provided for the enforcement of the right to equality.

21 EVIDENCE AND PROOF

Legal rules related to evidence and proof must be adapted to ensure that victims of discrimination are not unduly inhibited in obtaining redress. In particular, the rules on proof in civil proceedings should be adapted to ensure that when persons who allege that they have been subjected to discrimination establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination (*prima facie case*), it shall be for the respondent to prove that there has been no breach of the right to equality.

22 REMEDIES AND SANCTIONS

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.

23 SPECIALISED BODIES

States must establish and maintain a body or a system of coordinated bodies for the protection and promotion of the right to equality. States must ensure the independent status and competences of such bodies in line with the UN Paris Principles, as well as adequate funding and transparent procedures for the appointment and removal of their members.

24 DUTY TO GATHER INFORMATION

To give full effect to the right to equality States must collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures

to promote equality. States must not use such information in a manner that violates human rights.

25 DISSEMINATION OF INFORMATION

Laws and policies adopted to give effect to the right to equality must be accessible to all persons. States must take steps to ensure that all such laws and policies are brought to the attention of all persons who may be concerned by all appropriate means.

PART VI PROHIBITIONS

26 PROHIBITION OF REGRESSIVE INTERPRETATION

In adopting and implementing laws and policies to promote equality, there shall be no regression from the level of protection against discrimination that has already been achieved.

27 DEROGATIONS AND RESERVATIONS

No derogation from the right to equality shall be permitted. Any reservation to a treaty or other international instrument, which would derogate from the right to equality, shall be null and void.



To see the 128 individual original signatories of the Declaration, go to:
<http://www.equalrightstrust.org/ertdocumentbank/declaration%20signatories%20no%20page%20numbers.pdf>

To see further individual signatories as of 15 December 2008, and all endorsing organisations, go to:
<http://www.equalrightstrust.org/ertdocumentbank/2008-11-13%20Endorsers.pdf>

To see news on the Vote for Equality campaign, go to:
<http://www.equalrightstrust.org/campaign/index.htm>