The Declaration of Principles on Equality: A New Covenant for the 21st Century

On 21 October 2008, in London, The Equal Right Trust (ERT) launched the Declaration of Principles on Equality, a document signed by 128 experts from 44 countries, which establishes, for the first time, general legal principles on equality as a basic human right. The Declaration is intended to assist efforts of legislators, the judiciary, civil society organisations and anyone else involved in combating discrimination and promoting equality, setting the ground for a more progressive set of equality norms and policies in the 21st century.

Speaking at the launch, Professor Sir Bob Hepple Q.C., Chair of the ERT Board of Directors, emphasised the timeliness and relevance of this document. Noting that the Declaration was being launched in the midst of a global financial crisis and the ensuing economic turmoil, he warned that the emerging political, economic and social conditions could “lead to exclusion and, at worst, persecution of the most vulnerable groups within society”. Appealing to all states to adopt the Principles and harmonise relevant laws and policies with them, he said: “Nations must act now to ensure that everyone – regardless of wealth, ethnicity, sex or religion – has the same rights and that these rights are enshrined in laws at the time they are made.” (See the full text at http://www.equalrightstrust.org/hepple-universal-recognition/index.htm)

Drafting the Declaration: The Equal Rights Trust’s First Milestone

The launch of the Declaration marked the completion of the first stage of ERT’s long-term project, Legal Standards on Non-discrimination and Equality. The project is a frontal attack on some of the major problems that ERT was established to address: (i) the pervasiveness of discrimination and the weaknesses in the protection of the right to equality at both international and national levels, including the absence of comprehensive equality legislation in over 160 countries around the world; (ii) the drifting apart of the fields of equality and human rights; (iii) the fragmentation of the anti-discrimination struggle.

Work on this core project began in July 2007. ERT reviewed existing normative standards
related to the protection against discrimination and the promotion of equality scattered across international and regional law, with a view to push in the direction of harmonising, streamlining and modernising existing international and national legal standards. Rather than formulating and advocating its own views, ERT sought to work towards articulating a common ground on which to base a set of basic principles, bringing into this process experts and advocates from a broad range of professional and geographic backgrounds. Hence, the preferred strategy was facilitation of dialogue and building of consensus among prominent experts and advocates, both from the fields of human rights and equality law. The work was guided by an Advisory Committee composed of prominent experts in the field of equality and human rights.

In early February 2008, a draft document was prepared under the guidance of the project’s Advisory Committee, and circulated to experts who had been invited to participate in this process. Having incorporated numerous subsequent comments and suggestions, a new draft of the Principles on Equality was prepared for a conference organised by ERT, which was held on 3-5 April 2008 in London. The aim of the conference “Principles on Equality and the Development of Legal Standards on Equality” was to help make progress towards two separate though interrelated goals: (i) finalising the Principles on Equality; and (ii) discussing selected issues to enable further work on legal standards related to equality.

At the conference, 75 participants from 35 countries reviewed the Principles in two plenary sessions and four working groups. The debates provided invaluable comments, suggestions and agreements on how to finalise the Principles.

Regarding the second goal of the conference, the participants took part in lively debates - in six thematic sessions - on some of the most complex and controversial issues that would arise in any attempt to systematise equality standards in the future. The first session discussed concepts of discrimination and equality. Participants were encouraged to draw on their different legal, policy and practical experiences in responding to the question of how the right to non-discrimination relates to the right to equality. The session also considered the grounds on which discrimination must be prohibited: should the right to non-discrimination apply
to a closed list of grounds? Are new grounds emerging that should command equal protection? How should multiple discrimination be reflected in the law?

The second thematic discussion concerned positive action and positive duties and explored whether it is possible to formulate universally applicable standards related to positive action and positive duties. This session took account of the existing concepts of affirmative action, positive action, special measures and related notions. In the third session exploring the nexus between non-discrimination and equality and international law, participants considered how equality and non-discrimination are presented in legal fields other than international human rights law, including humanitarian law, international criminal law, international trade law, law related to development, security and anti-terrorism, environmental law and climate change, and migration law.

The fourth theme concerning the balance between non-discrimination and other human rights inspired a discussion on whether it was possible to formulate a principle, a standard or a test on how to balance competing human rights when one of these is the right to non-discrimination. The participants also examined what other aspects relating to the conflicts of rights would benefit from a general formulation. The fifth thematic session addressed the question of standards related to enforcement and the role of specialised bodies. The discussion was initiated by four speakers, each from a different jurisdiction, who provided an overview and personal insight into the function and effectiveness of national mechanisms in implementing equality.
Lastly, the discussion on the unified perspective on equality and standard development focused on the practical aspects of advancing the harmonisation and modernisation of legal standards on equality from an integrated perspective. The speakers and interveners discussed opportunities to bridge the gap between the fields of equality and human rights on the one hand, and to overcome fragmentation within the equality and non-discrimination field on the other, with a view to exploring the potential for taking a unified approach to equality.

At every stage, all suggestions were carefully considered and incorporated, as appropriate, into updated versions. Maximum efforts were made to achieve consensus on every issue. In cases where full consensus could not be achieved, the ERT Board of Directors had the last say.

The Campaign: Vote for Equality!

In November, ERT launched the campaign “Vote for Equality!”, aimed at achieving universal recognition of the Declaration of Principles on Equality. ERT appealed to individuals and organisations to endorse the Declaration online and to send electronic links to the Declaration to others. (See: http://www.equalrightstrust.org/endorse/index.htm). A web-page was created to keep track of the campaign. (See: http://www.equalrightstrust.org/campaign/index.htm). Spanish, Russian and other language translations of the Declaration are already available on the ERT website and translations into further languages are expected in the near future. Individuals and organisations from different parts of the world are signing up every day. In the forthcoming period ERT will avail itself of every opportunity to promote the Principles and to engage as many people as possible.