A Right to Equality Integral to Universal Human Rights

Editor’s Welcome to The Equal Rights Review

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I am pleased to introduce the inaugural issue of The Equal Rights Review. By means of this biannual publication, The Equal Rights Trust (ERT) will provide a forum for debate on equality and non-discrimination. We will facilitate the free exchange of ideas, and encourage opposing opinions.

As authors’ views will not necessarily reflect the ERT’s official position or advocacy agenda, I am taking this opportunity to present the organisation’s background and philosophy.

The Equal Rights Trust opened office in London in January 2007 following a preparation period of approximately two and a half years. My previous work as the Director of the Budapest-based European Roma Rights Centre, an organisation which had attempted to use anti-discrimination law to defend the rights of the Roma in Europe, had led me to the realisation that something important was missing from the international struggle against discrimination. I had begun to identify certain needs and to come across people who shared similar thoughts. In November 2004, in response to my proposal to build a new international NGO to advance the right to equality, a small group of equality advocates and donors met at the invitation of Lord Lester of Herne Hill QC, to discuss ways in which to re-think and revitalise anti-discrimination work. I subsequently worked with Lord Lester, Professor Sir Bob Hepple and others toward the establishment of ERT. A
The Equal Rights Trust’s long-term objectives are:

1. To document, expose and help eliminate violations of the fundamental right to non-discrimination formulated in the Universal Declaration on Human Rights and in subsequent international treaties.

2. To ensure greater accountability of states and non-state actors regarding their obligation to protect individuals against discrimination and to promote equality.

3. To empower the victims of discrimination in combating abuses.

4. To improve the public understanding of equality as a value on which broader consensus is needed in all societies.

5. To contribute to developing the substantive and procedural aspects of the universal human right to equality.

6. To promote effective enforcement of existing anti-discrimination law and policies.

7. To promote and facilitate the adoption of comprehensive anti-discrimination law and policies without which the right to non-discrimination is not adequately protected.

feasibility study, recommended by the participants of the November 2004 meeting, was conducted between January and August 2005. The purpose of the study was to assess the need for building an organisation that would work to develop the general, overarching and cross-identity aspects of the right to equality and non-discrimination. The results of the study were encouraging and we incorporated ERT in September 2005.

The establishment of The Equal Rights Trust was a response to two major problems: the drifting apart of the fields of equality and human rights; and the fragmentation of equality. The first problem may be obscured somewhat by the rhetoric and ritual practice of mentioning non-discrimination among the first principles underlying human rights. In point of fact, however, non-discrimination is an underdeveloped human right. Its relationship to a right to substantive equality is unclear. Equality and human rights are not integrated well together either in law or in practice. This is demonstrated by the fact that equality lawyers and activists and human rights lawyers and activists are hardly cognizant of their respective fields of expertise. Furthermore, in spite of the fact that most states around the world are party to international and regional human rights treaties that guarantee equality of rights and prohibit discrimination, national anti-discrimination legislation is often disparate, weak and/or non-existent. Public understanding of the concept of discrimination is generally vague and inadequate. Many policymakers and ordinary people do not
know what conduct or policy amounts to a violation of equal rights provisions and thus are similarly ignorant of the various remedies that are, or ought to be, open to victims of such violations. Legal definitions of discrimination are not consolidated in international jurisprudence and are rarely found in national legislation. Finally, non-discrimination jurisprudence has come to be associated mostly with employment, education, housing, and provision of goods and services but not with matters related to civil and political rights. The European Union’s equality Directives of the last decade played a double role: on the one hand, they enhanced the progressive development of the right to equality but, on the other hand, reflecting the limited sphere of application of EU law, they had the negative effect of perpetuating the lacuna between universal human rights and equality as distinct bodies of law. Indeed, the normative de-coupling of international human rights and European equality law has been aggravated further by the institutional structure of the European Commission insofar as human rights and equality fall under different Directorates. Hopefully, the creation of the Fundamental Rights Agency, embracing both agendas, will work in the direction of re-locating back together the fields of human rights and equality.

The second problem to which the creation of ERT was a response concerns the fragmentation of equality law and, in a parallel dimension, the corresponding fragmentation of the global movements for equality. In the last few decades, anti-discrimination advocacy has been pursued in different parts of the world predominantly within the framework of isolated single-identity agendas related to gender, race, ethnicity, religion, language, sexual orientation, disability, age, etc. At present, the space of non-discrimination struggles is complex and fragmented, broken down into more or less closed boxes from which other boxes are not perceived as inter-related in their relevance to equality. Indeed, some groups have pressed for ground-specific non-discrimination norms or even for norms covering single groups. Very few organisations have advocated comprehensive, multi-ground anti-discrimination law and policy. The following legal aspects of the fragmentation problem should be recalled:

- Different grounds of discrimination (gender, race, religion, sexual orientation, language, disability, age, etc.) are regulated differently within the same jurisdictions. The issue of equality is thus entangled within the fragmentation, hierarchies and inconsistencies of the prohibited grounds.

- Rigid lists of grounds leave out cases of discrimination on other grounds and create boxes or “strands” of equality. The relationships between the different forms of discrimination are thus left vague and
ill-defined and multiple discrimination is not adequately reflected in the law.

- Protections against discrimination are not spread across all relevant sectors of social life such as the administration of justice, employment, education, provision of goods and services, or healthcare. Thus, it is not inconceivable for there to be protection against religious discrimination in the field of employment, for example, but not in education or in housing.

Notwithstanding that detailed anti-discrimination provisions and policies covering specific grounds of discrimination or specific groups may be effective, it is necessary to ensure coherence and consistency in the levels and modes of protection across identities. The next agenda in the field of equality is the development of an integrated approach. For example, it should not be necessary for a disabled ethnic minority woman to choose the correct pigeonhole in which to put her case, whether on the ground of her race, or gender or disability. Instead, account ought to be taken of her multi-faceted identity.

At this stage, it is imperative to stress that while we, as an organisation, take a unified approach to discrimination, this should not be understood as seeking to impose uniform solutions on very different groups in tackling very different types of discrimination. Rather, it involves developing and strengthening key legal concepts concerning equal rights and finding practical solutions across different cultures, geographical regions and social groups.

The fragmentation problem is also evident in the dynamic of particular struggles in their relatedness to an overarching anti-discrimination agenda. On one hand, it is not possible to eliminate discrimination, particularly historically entrenched systemic discrimination, without singling out certain identity groups. The struggle for Roma rights, for instance, would not have achieved much without singling out the Roma. On the other hand, the representation of these groups as perpetual victims and the exclusive focus on their difference can, over time, begin to undermine the understanding of equality as a universal right. Identity politics, driven too far, begins to threaten not only social cohesion, but the legitimacy of the universal human rights framework. Difference is celebrated, but one major human “sameness” -- that of equality in dignity -- is suppressed. A preferable approach lies in striking a balance between the identity silence of those who deny that discrimination has affected disproportionately certain groups and the essentialist

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tendency to forget the universal humanity of the individual in the name of a group identity.

The Equal Rights Trust pursues its goals through advocacy, documentation of discriminatory practices and legal and policy research. These strategies, in conjunction with consultations and training, will remain in place for the foreseeable future. The Trust gives priority to addressing the most serious patterns of discrimination and to providing redress to victims of systemic or multiple discrimination. The organisation is predicated on the principles contained in the Universal Declaration of Human rights and in subsequent international and regional treaties and provisions relative to equality and non-discrimination. Building on the highest achieved levels of protection against discrimination, ERT promotes a holistic, unified approach to equality and human rights.

In this and subsequent issues, our aim is to highlight the relationship between general non-discrimination principles and binding anti-discrimination legislation and policy. Progress in ensuring protection against discrimination has been hampered by the general and abstract nature of the positive obligation of states to give effect to the principle of non-discrimination. Furthermore, states have been constrained by the lack of clear guidance on legal standards to be internalised in their domestic laws. Minimum standards set out in the Europe-

an Union Article 13 Directives have created an agenda for legislative advocacy that can be useful for many countries outside the European Union. This journal encourages discussion on the elaboration of legal standards, as well as on the principles on which such standards should evolve. We are convinced that it is time to seek and to find moral and professional consensus regarding the basic principles of equality. Indeed, one of our priorities currently is to enlist a broad range of experts and activists in an attempt to distil a set of such principles.

Finally, let me formulate the vision for this journal. The Equal Rights Review is intended as neither an academic peer-review journal, nor an NGO activist newsletter. Its genre will be somewhere in the middle: ERR will combine features of both, seeking a synthesis of deep, innovative and original theory, policy oriented analysis and more immediate advocacy effects. Especially welcome are new or controversial ideas that generate debate or fundamentally rethink established concepts and approaches.

Thematically, The Equal Rights Review will be an interdisciplinary journal on equality: an encounter between legal, philosophical, sociological, and other social science, practice and movement discourses. Its special focus will be on the complex and complementary relationship between the different forms of discrimination, and on developing strategies for translating the
principles of equality into practice. Not limited geographically, it will be a medium of exchange on equality issues between different national and regional experts, policy makers and practitioners. Some of the publications will zoom into the detailed landscape of one country, allowing lessons from different jurisdictions and cultures to be shared and absorbed. Others will be addressing general and fundamental aspects of equality. Each issue will include analytical articles, testimony by victims of discrimination, interviews, activity reports and assorted other materials, all related to equality and non-discrimination.

The ERT team is determined to do its best in order to ensure that The Equal Rights Review makes its mark on the equalities debate. Privileged to be the Review’s first editor, I enjoy the challenge.