

THE DECLARATION OF PRINCIPLES ON EQUALITY:
A CONTRIBUTION TO
INTERNATIONAL HUMAN RIGHTS

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The Principles on Equality are based on legal concepts that have evolved in international, regional and national human rights or equality jurisprudence. Although many of the terms employed in the *Declaration* are sufficiently well established, the resulting conception of equality in its entirety opens a new space for standard development in the international human rights system. The purpose of this note is not to detail the linkages between the Principles and existing jurisprudence. Instead, it provides background and draws attention to some of the strengths of the *Declaration* which would allow it to be described as a step forward in promoting equality and human rights.

The group of signatories to the *Declaration of Principles on Equality* consists of prominent equality and human rights experts and advocates from many countries around the world. The majority of signatories took part in the drafting process facilitated by The Equal Rights Trust, an independent human rights organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. Some signatories decided to endorse the *Declaration* after seeing the final version. The process of drafting lasted for about twelve months. It took the form of consultations, meetings, long-distance communications, an international conference convened by The Equal Rights Trust in April 2008 in London, analysis and incorporation of numerous comments and subsequent consultations

in order to agree every formulation. The staff of The Equal Rights Trust facilitated communication and sought to achieve consensus on every issue, consistent with the mission and approach of the organisation. This was not an easy task, given the gaps and discrepancies between the frameworks of equality law and international human rights law; the differences in the meanings of key legal terms across jurisdictions; and the fragmentation of the global equality movements, broken down into narrower co-existing agendas. In some cases where full consensus could not be achieved, the international Board of Directors of The Equal Rights Trust had the last say. The work benefitted greatly from the guidance provided by a small Advisory Committee, comprising Bob Hepple (Chair of the Board of The Equal Rights Trust), Barbara Cohen, Andrea Coomber, Sandra Fredman, Alice Leonard, Christopher McCrudden, Gay Moon, Colm O'Cinneide, and Michael O'Flaherty.

While the professional profile of the group of endorsers is representative of the field of equality and human rights (academics, activists, experts and practitioners with a diverse set of backgrounds and expertise), the same cannot be said with regard to the group's geographic profile. Signatories from Europe and especially from the United Kingdom prevail. This is because The Equal Rights Trust, based in London, had limited human and technical capacity to involve experts and advocates from regions outside Europe, and reach out to non-English speaking communities. The geographic imbalance, however, reflects solely the limitations inherent in the facilitating organisation, and should not prejudice in any way judgement regarding the potential for experts' and advocates' endorsement from Africa, Asia, the Middle East, or South America. The Equal Rights Trust believes that there is a strong interest and support for equality everywhere, and is committed to doing whatever it can to include experts and advocates from the "global South" in promoting and elaborating further legal standards on equality.

In view of the above, the present publication is the beginning, and not the end of the endorsement process. The *Declaration of Principles on Equality* is open for further endorsements from both individuals and institutions. Everyone who wishes to support the *Declaration* is invited to send a message to info@equalrightstrust.org, or visit the website www.equalrightstrust.org to sign up to the *Declaration* online.¹ The Equal Rights Trust is committed to initiating and coordinating manifold efforts for a universal recognition of the *Declaration*.

The *Declaration of Principles on Equality* proclaims a universal right to equality. It expresses in the terms of general legal principles an integrated view of substantive equality, deriving the right from the universal recognition of equality as a value in itself, as well as a necessary aspect of a fair society. The *Declaration* shares the basic assumptions of human rights philosophy: for example, that as a human right, equality is an entitlement and not a benefit, and must be legally enforceable, like every other human right. The *Declaration* follows a similar logic to that found in numerous pre-existing human rights instruments encoding rights, as regards the content of the right, the definitions of key terms, the scope of the right's application, right-holders, duty-bearers, obligations to give effect to the right, etc.

Throughout the *Declaration*, the concept of equality, as well as its equivalent, "full and effective equality", has a content which is larger than that of "non-discrimination". In Principle 1 [The Right to Equality], the "right to equality" is given a meaning which is richer than the notions of equality before the law and equality of opportunity. Similar general references to full equality are not absent from modern documents setting legal standards: for example, the European Union's equal treatment Directives² refer to "ensuring full equality in practice". But the similarity of terms may be only a rhetorical one, as

the protection against discrimination emerging on the basis of the EC Directives is too limited to fulfil the right to equality as defined in the present *Declaration*. For example, the EC Directives' protection applies only in respect to discrimination on the grounds of racial or ethnic origin, sex, religion or belief, sexual orientation, disability and age, while the present *Declaration* recognises a number of other grounds which should be prohibited.

Principle 1 [The Right to Equality], reaffirms the inter-relatedness of equality and dignity articulated in Article 1 of the Universal Declaration of Human Rights which asserts that: "All human beings are born free and equal in dignity and rights". Principle 1 further implies a vision of a just and fair society as one in which all persons participate on an equal basis with others in economic, social, political, cultural and civil life.

The content of the right to equality includes the following aspects: (i) the right to recognition of the equal worth and equal dignity of each human being; (ii) the right to equality before the law; (iii) the right to equal protection and benefit of the law; (iv) the right to be treated with the same respect and consideration as all others; (v) the right to participate on an equal basis with others in any area of economic, social, political, cultural or civil life.

Defining the right to equality as requiring participation on an equal basis with others in any area of economic, social, political, cultural or civil life is consistent with international human rights law in delineating the areas in which human rights apply. But the *Declaration* defines the areas of application of the right to equality without drawing the distinctions between civil and political rights, on the one hand, and economic, social and cultural rights, on the other hand, which have for so long bedeviled international human rights law. At the same time, the *Declaration* goes beyond the understanding of discrimi-

nation and equality as necessarily related to an existing legal right (or to “any right set out by law”, as Protocol 12 to the European Convention on Human rights puts it). In the drafters’ view, the right to equality (and non-discrimination) can be claimed in any of the listed five areas of social life, even in the absence of certain legal rights within them. In a country where national law does not recognise a right to employment, for example, one should still have the right to equality (and non-discrimination) in access to and conditions of employment. This non-subsidary approach to the definition of equality was preferred in the *Declaration* to the approach taken by international human rights law, the law of the European Convention on Human Rights and other legal systems that understand discrimination as discrimination in the exercise and enjoyment of a legal right. The definition in Principle 1 does not require the right to equality to be based on or related to the enjoyment of any other human right.

Principle 2 [Equal Treatment] requires treating people as equals in respect of their dignity, in light of the purpose “to realise full and effective equality”. The understanding of “equal treatment” in this Principle abandons the framework of formal equality,³ whereby individuals would be treated in identical ways regardless of their relative capabilities for participation in economic, social, political, cultural or civil life. As the right to equality defined in Principle 1 requires ensuring such participation “on an equal basis with others”, non-identical treatment is justifiable and indeed necessary in order to achieve such participation. Principle 2 requires treating people according to their unique circumstances as far as possible, with a view to moving in the direction of equal participation in the sense of Principle 1. Treatment that would be detrimental to those who are the least well-off in society would therefore clearly violate the object and purpose of the *Declaration*.

According to Principle 3 [Positive Action], positive action measures do not constitute discrimination as long as the dif-

ference in treatment is aimed at achieving full and effective equality and the means adopted are proportionate to that aim. Positive action measures are not defined as an exception to the principle of equal treatment but as part of its implementation. The concept of positive action in Principle 3 goes further towards substantive equality than the concepts of special measures related to specific categories of persons found in international and regional human rights instruments.⁴ But it should be noted that the *Declaration* captures the growing tendency of interpreting “special measures” as part of, rather than an exception to equal treatment. For example, the Committee on the Elimination of Discrimination against Women (CEDAW) in its General Recommendation No. 25 states that under the Convention, temporary special measures “should target discriminatory dimensions of past and current societal and cultural contexts which impede women’s enjoyment of their human rights and fundamental freedoms. They should aim at the elimination of all forms of discrimination against women, including the elimination of the causes and consequences of their de facto or substantive inequality. Therefore, the application of temporary special measures in accordance with the Convention is one of the means to realize de facto or substantive equality for women, rather than an exception to the norms of non-discrimination and equality.”⁵ Furthermore, the Committee recommends that States should “give women an equal start and empower them by an enabling environment to achieve equality of results. In pursuit of the goal of substantive equality, States should develop an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women.”⁶

The definition of the right to non-discrimination in Principle 4 as a free-standing right is meant in two senses: (i) in the sense that it is a separate right, which can be violated even if a related right is not: for example, a person’s right to non-discrimination in the enjoyment of the right to education may be violated, while no breach of her right to education has been

found; (ii) in the sense of an autonomous right, not related to any other right set out by law. In this second sense, the free-standing status of the right to non-discrimination means that this right does not depend on whether another legal right actually exists.⁷

It should be noted that, as defined in Principle 1, the right to equality is also a free-standing right in the two senses specified above. It is not dependent on or related to the recognition of any other civil, cultural, economic, political or social right. Accordingly, the definitions of direct and indirect discrimination in Principle 5 do not link discrimination to any other right set out by law. In this respect, therefore, the *Declaration* goes considerably further than international human rights law in proclaiming a free-standing right to equality.

The practical implications of this approach, recognising equality as larger than non-discrimination and as not necessarily related to another legal right, are far-reaching. People are entitled to equality in this understanding without having to construct themselves as victims of direct or indirect discrimination, and without having to rely on the individualistic and reactive nature of enforcing anti-discrimination law. Rather, this understanding entails a strong and serious positive obligation of the duty-bearer (the State) to take steps to realising equality in a proactive way and with societal reform in mind. This approach does not diminish the role of legal enforcement of the right to non-discrimination by individual or group claimants but enables more comprehensive measures of improving the position of disadvantaged groups in society.

In Principle 5 [Definition of Discrimination], the definition's terms "treatment", "provision", "criterion" and "practice", taken together, cover the same or broader range of actions and states of affairs as the aggregate of the terms "distinction", "ex-

clusion”, “restriction” and “preference” used in several definitions of discrimination in the UN International Convention on the Elimination of All Forms of Racial Discrimination (Article 1), the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (Article 2(2)), the UN Convention on the Elimination of All Forms of Discrimination against Women (Article 1), the UN Disability Convention (Article 2) and other instruments.

The definition of discrimination in Principle 5 includes an extended list of “prohibited grounds” of discrimination, omitting the expression “or other status” which follows the list of characteristics in Article 2 of the Universal Declaration of Human Rights.⁸ While intending to avoid abuse of anti-discrimination law by claiming discrimination on any number of irrelevant or spurious grounds, the definition nonetheless contains the possibility of extending the list of “prohibited grounds” and includes three criteria, each of which would be sufficient to recognise a further characteristic as a “prohibited ground”. This approach is inspired by the solution to the open versus closed list of “prohibited grounds” dilemma provided by the South African Promotion of Equality and Prevention of Unfair Discrimination Act (2000).

Legal provisions relating to equality must combine legal certainty with openness to improvement in order to reflect the lived experiences of those disadvantaged by inequality. Grounds which historically have been related to the most egregious forms of discrimination and are significant factors in a society, including race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, association with national minority, belonging to an indigenous people, age, disability, sexual orientation or health status, should be explicitly referred to in legislation. However, when other grounds of discrimination become significant in a society, they should also be explicitly referred to

in legislation, and Principle 5 provides guidance in efforts to legislate to cover new “prohibited grounds”.

The term “characteristic” in Principle 5 as well as Principles 7 and 9, used with reference to people who have been subjected to discrimination, is not meant to denote a metaphysical property of the person. Rather, it denotes the perceptions of others as well as the self-description of the ground on which one has been discriminated against. “Characteristic” should be understood to mean a feature that is not necessarily of a permanent or immutable nature, and can sometimes be short-lived or blend into other characteristics.

According to Principle 6 [Relationship between Grounds of Discrimination], legislation should ensure equal levels of protection against discrimination on each of the prohibited grounds. This means that while exceptions, justifications and limitations to the principle of non-discrimination will certainly differ with regard to different grounds, the victim of discrimination is entitled to an effective remedy irrespective of the ground (or combination of grounds). For example, if any occupational requirements related to race are provided as justifications for direct discrimination in a certain legal system, these requirements and the related exceptions would be very different as compared to those related to language, or age. But once a certain treatment, provision, criterion or practice is found to constitute discrimination, the persons concerned should be entitled to an equally effective remedy, regardless of the prohibited grounds.

In Principle 8 [Scope of Application], the *Declaration* provides the broadest possible scope of application: the right to equality applies “in all areas of activity regulated by law”. This means that it encompasses activities by public and private actors, including transnational corporations and other non-national legal entities. The phrase ‘regulated by law’ covers, in any par-

ticular country, not just the areas that are in fact regulated but also those that under national constitutions or international human rights law are subject to legal regulation. This approach has a solid basis in international human rights jurisprudence. The Human Rights Committee, interpreting the scope of the right to be protected against discrimination, stated that Article 26 of the International Covenant on Civil and Political Rights “prohibits discrimination in law or in fact in any field regulated and protected by public authorities.”⁹ Furthermore, the Human Rights Committee noted that: “the right to equality before the law and freedom from discrimination, protected by Article 26, requires States to act against discrimination by public and private agencies in all fields.”¹⁰ With specific reference to State obligations to protect against human rights violations by private actors, the Human Rights Committee noted that: “the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.”¹¹

The second sentence of Principle 9 [Right-holders] extends the right to equality to “all persons present in or subject to the jurisdiction of a State”. This means that the right to equality is to be freely exercised by all individuals, irrespective of nationality or statelessness, including asylum seekers, refugees, migrant workers, irregular migrants and other persons who may find themselves in the territory or subject to the jurisdiction of a State. The right to equality is also to be freely exercised by those within the power or effective control of the forces of a State acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State assigned to an international peace-keeping or peace-enforcement operation.¹²

The State's duty formulated in Principle 10 [Duty-bearers] should apply also in respect to privatised functions of the State. As a general rule, the State should not be able to escape its positive duties through privatisation. The Inter-American Court of Human Rights, for example, has established this principle with respect to health care and private health care institutions in the case of *Ximenes-Lopes v. Brazil*, Judgment of 4 July 2006. The European Court of Human Rights has also held that where a State relies on private organisations to perform essential public functions, in particular those necessary for the protection of Convention rights, it retains responsibility for any breach of the Convention that arises from the actions of those private organisations.¹³ Secondly, contractual means can be used to enforce positive duties against private contractors entering into procurement arrangements with public bodies.¹⁴ Finally, the State may place the obligation directly on the body carrying out the privatised function. For example, the Human Rights Act 1998 in Great Britain provides that human rights duties should apply to private or voluntary sector bodies when performing functions "of a public nature".¹⁵ A public function is one for which the government has assumed responsibility in the public interest.

Principle 11 [Giving Effect to the Right to Equality] is consistent with the way in which the State's obligations are defined with respect to the range of human rights provided in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. States' obligations are explained, *inter alia*, in General Comment 3 of the UN Committee on Economic, Social and Cultural Rights, entitled "The nature of States parties' obligations", and the Committee's observations are relevant, *mutatis mutandis*, in interpreting this *Declaration*. For example, the Committee observes that the nature of the general legal obligations undertaken by States in respect to the rights provided in the Covenants is understood as containing both "what may be termed (following the work of the International Law Commission) ob-

ligations of conduct and obligations of result.”¹⁶ The same observation applies with regard to the State’s obligation to fulfil the right to equality.

By analogy with the interpretation of States’ obligations set out in General Comment 3 of the UN Committee on Economic, Social and Cultural Rights, States are required to take all necessary steps, including legislation, to give effect to the right to equality in the domestic order and in their international co-operation programmes. The right to full and effective equality may be difficult to fulfil; however, the State does not have an excuse for failing to take concrete steps in this direction. The requirement to take such steps is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to cultural, economic, political, security, social or other factors.¹⁷

Principle 12 [Obligations Regarding Multiple Discrimination], read in the light of Principles 1, 2, 3 and 11, implies that a pattern of discrimination affecting individuals who share a particular combination of grounds of discrimination may require a unique set of specifically targeted positive action measures. This Principle addresses the need for any legal provisions promoting equality to take into account evolving social phenomena that are manifested as discriminatory acts or practices. The law should recognise that individuals have multiple identities and cannot always be classified according to or as defined by a single characteristic. Multiple discrimination is the term used to describe: a) discrimination on more than one ground in a cumulative (additive) sense, e.g. where a woman is discriminated against on grounds of her gender and, separately, also on grounds of her race (disability, age, etc), and in this case the discriminator otherwise discriminates both against women and against racial minorities; b) discrimination on more than one ground in a syncretic sense, based on a combination of grounds, where it is only the combined characteristics of, for

example, gender and race that trigger discrimination, while each of them alone does not.

The concept of reasonable accommodation is well established in equality law, particularly in legislation related to disability rights. The definition of accommodation in Principle 13 [Accommodating Difference] is based on the definition contained in the UN Convention on the Rights of Persons with Disabilities,¹⁸ but it is extrapolated to cover other forms of disadvantage beyond disability, as well as, more generally, differences which hamper the ability of individuals to participate in any area of economic, social, political, cultural or civil life.

Principle 14 of the *Declaration* [Measures against Poverty] recommends that measures to alleviate poverty should be coordinated with measures to combat discrimination. As noted by the UN Independent Expert on the question of extreme poverty and human rights in her report of August 2008 to the General Assembly: "Patterns of discrimination keep people in poverty which in turn serves to perpetuate discriminatory attitudes and practices against them. In other words, discrimination causes poverty but poverty also causes discrimination. As a result, promoting equality and non-discrimination is central to tackling extreme poverty and promoting inclusion. Measures to eliminate poverty and efforts to eliminate all forms of discrimination must be understood as mutually reinforcing and complementary."¹⁹

It is difficult to see how a State would be able to implement the right to equality without comprehensive national legislation and policy. Principle 15 [Specificity of Equality Legislation] affirms that national equality legislation, whether in the form of one unified comprehensive Act or a combination of several pieces of legislation covering specific equality strands or areas of activity, should be sufficiently detailed in order to realise

the right to equality. At the time of adopting this *Declaration*, over 160 States around the world lack adequate and comprehensive national legislation. Many States rely, at best, on constitutional provisions, framework laws or other norms and policies that are so general and abstract that they render the right to equality or the right to non-discrimination illusory.

The approach taken in Principle 21 [Evidence and Proof] has been well established in European Union legislation. For example, Article 8 of *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin* contains identical wording. Additionally, the Preamble to this Directive, at paragraph 15, stipulates that “[T]he appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide in particular for indirect discrimination to be established by any means including on the basis of statistical evidence.”²⁰

In Principle 22 [Remedies and Sanctions], consistent with the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the term “reparation” is used to refer to a number of measures which may be adopted, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.²¹

Principle 24 [Duty to Gather Information] is underlined by the acknowledgement that statistical information plays a decisive role in unmasking discrimination. The duty of the State to collect appropriately disaggregated information is frequently invoked in concluding observations of UN Treaty Bodies when reviewing State compliance with the provisions of human rights conventions. Many acts and patterns of discrimination

cannot be successfully redressed in litigation without appropriate information which only the State or a State-authorised body has collected. Moreover, information collection is imperative for benchmarking and for self-evaluating the progress made in fulfilling the right to equality.

Experience shows that individuals are often badly or insufficiently informed concerning equality and discrimination issues. Effectiveness of the system of public information is indispensable to the protection of the right to equality. The enforcement of Principle 25 [Dissemination of Information] should ensure that laws and policies concerning equality are understood and accepted by the public.

The *Declaration of Principles on Equality*, as its title indicates, provides only the most general and abstract synthesis of legal standards on equality. Those who would be looking for guidance on specific issues and would expect to find more detailed recommendations would be disappointed. Some may see generality as a weakness, and in a sense they will be right. The *Declaration* lacks the richness of normative detail that would be so important in practice, whether in combating domestic violence, or defending stateless persons, or setting out policies within any specific area of social life. But the *Declaration's* significance consists in the fact that it documents a degree of consensus among global experts at the most fundamental level, reflecting both basic values shared by the signatories and a negotiated agreement on exactly how to express these values in the form and the language of universal legal principles. As an established common ground, the *Declaration* can serve as the basis for further elaboration of specific standards related to equality issues. It is the intention of The Equal Rights Trust to promote and facilitate further dialogue towards this goal.

Finally, I must note that the above comments do not bind in any way the signatories of the *Declaration of Principles on Equality*. The moral and professional consensus documented

by the endorsements refers solely to the text of the *Declaration*. I simply had the privilege to author the first published remarks about it.



¹ Both individual and organisational endorsements are welcome. Individual signatories are requested to provide their preferred institutional affiliation, which will be mentioned in publications for identification purposes only.

² Council of the European Union, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2994/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

³ The departure from a formal conception of equal treatment is in progress in present-day international, regional and national legislation and jurisprudence. See, for example, Council of Europe, Explanatory Report to Protocol 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), adopted by the Committee of Ministers of the Council of Europe on 26 June 2000, which states: "While the equality principle does not appear explicitly in the text of either Article 14 of the Convention or Article 1 of this Protocol, it should be noted that the non-discrimination and equality principles are closely intertwined. For example, the principle of equality requires that equal situations are treated equally and unequal situations differently. Failure to do so will amount to discrimination unless an objective and reasonable justification exists."

⁴ See, for example, Article 1, paragraph 4 of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 4, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women; Article 2, paragraph 1(d) of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

⁵ United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation No. 25 on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures, Thirtieth session, 2004, para. 14.

⁶ United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures, Thirtieth session, 2004, para. 8.

⁷ See comment to Principle 1 *supra*.

⁸ United Nations, Universal Declaration of Human Rights, Adopted and proclaimed by United Nations General assembly resolution 217 A (III) of 10 December 1948, Article 2: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

⁹ United Nations, Human Rights Committee General Comment No. 18: Non-discrimination, Thirty-seventh session, 1989, para. 12.

¹⁰ United Nations, Human Rights Committee, General Comment No. 28: Equality of Rights between Men and Women (Article 3), Sixty-eighth session, 2000, para. 31.

¹¹ United Nations, Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Eightieth session, 2004, para. 8.

¹² See Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 10; see also para. 12.

¹³ See *Van der Musselle v Belgium* (1984) 6 EHRR 163 (European Court of Human Rights); see also *Costello-Roberts v UK* (1995) 19 EHRR 112 (European Court of Human Rights).

¹⁴ See C. McCrudden, *Buying Social Justice Equality, Government Procurement, and Legal Change*, OUP 2007.

¹⁵ Human Rights Act 1998, s 6(3b).

¹⁶ United Nations, Committee on Economic, Social and Cultural Rights, General Comment 3: The Nature of States Parties Obligations, Article 2, Paragraph 1 of the Covenant, Fifth session, 1990, para.1.

¹⁷ Compare Human Rights Committee General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 14.

¹⁸ United Nations, Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006, Article 2: "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."

¹⁹ Report of the UN Independent Expert on the question of extreme poverty and human rights, UNGA 63rd Session, 2008, Para. 29-30.

²⁰ See, re. the use of statistics as proof, the European Court of Human Rights' Grand Chamber Judgment in *D.H. and Others v. the Czech Republic of 13 November 2007* (Para. 188): "In these circumstances, the Court considers that when it comes to assessing the impact of a measure or practice on an individual or group, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute the prima facie evidence the applicant is required to produce. This does not, however, mean that indirect discrimination cannot be proved without statistical evidence."

²¹ United Nations, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Adopted and proclaimed by United Nations General Assembly Resolution 60/147 of 16 December 2005.