

Together for Equality

Why and how a comprehensive approach to challenging discrimination works



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Foreword

In incorporating the comprehensive international framework into national legislation, very few States parties to the different international human rights treaties take the option of enacting comprehensive anti-discrimination legislation that would provide the overarching legal architecture for a coherent non-discrimination environment and integrated policies to ensure substantive equality. There are, in a number of countries, regulations against discrimination in specific areas, with legal avenues for complaints and redress, but the absence of comprehensive legislation that tackles the problem across the board allows for huge implementation gaps.

The most important of these gaps lie in the lack of recognition by States of intersectional discrimination and the particularly negative and long lasting effects it has on women and persons belonging to vulnerable groups as well as of systemic discrimination based on deeply rooted societal prejudices. Governments are reluctant to recognise such forms of discrimination because it amounts to the failure of the measures they have taken to try to combat discrimination without really addressing its root causes.

However, positive changes are gradually coming into effect. The Equal Rights Trust and its partners, whether organizations or individuals, are to be commended for this well-researched document that sheds light on how a comprehensive approach to combat direct and indirect discrimination on an increasing number of grounds, is taking shape in different countries and contexts. If effectively implemented, such an approach enables governments to put in place positive discrimination measures to overcome traditional and emerging inequalities. It also provides real participation channels for civil society organizations that have risen to the challenge. Coordinated and collaborative advocacy efforts have further empowered these organisations to give visibility to discriminated persons and groups that remained off the radar, to build broad based coalitions, and better discharge their essential function of watchdogs.

The relevance of Equality Courts in South Africa; statutory human rights codes that supplement the constitutional guarantee of equality in Canada; the open list of protected grounds in the Buenos Aires Anti-Discrimination Law; the role of independent equality bodies such as the Moldovan Council for Equality in adjudicating discrimination cases relating to a wide range of grounds; and the application of the Public Sector Equality Duty to combat discrimination in the field of education in the UK, are thought provoking examples that reflect the comprehensive anti-discrimination approach. They are certainly not without flaws but they do set the right direction and can lead to multiplier effects.

However, the picture is still sombre! As times evolve, discrimination is increasingly interwoven with contemporary trends. Inequalities grow within and between countries, not the least during and in the aftermath of the pandemic. For old reasons and new ones, the achievement of substantive equality has never ceased to be a challenge. The open invitation from the Equal Rights Trust for us all to join the network of equality defenders is the next step in the on-going struggle.



Virgínia Brás Gomes

Former Chair of the UN Committee on Economic, Social and Cultural Rights
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Introduction

For almost fifteen years, the Equal Rights Trust has worked to support the adoption of comprehensive equality laws – laws which prohibit all forms of discrimination, on all recognised grounds, in all areas of life regulated by law, which provide the procedural safeguards to enable victims to secure effective remedy, and which require and provide for the adoption of positive action measures.

At the international level, we have sought to build understanding that the adoption of such laws is the only way in which states can discharge their obligations to eliminate all forms of discrimination and deliver their commitments to leave no one behind. Starting with the launch of our *Declaration of Principles on Equality* in 2008, we have supported the adoption of these principles by UN bodies such as the Committee on the Rights of Persons with Disabilities, helping to develop a consensus about the need for, and content of, comprehensive equality laws. This consensus is codified in a forthcoming *Practical Guide on the Development of Comprehensive Anti-Discrimination Legislation*, developed in partnership with the Office of the UN High Commissioner for Human Rights, which will set clear standards for states on their obligations and how to meet them.

At the domestic level, we have worked in partnership with equality defenders – activists, advocates, academics, and others using the law to promote equality – supporting them to develop and advocate for the adoption of comprehensive equality laws. From Armenia to the Philippines and from Cabo Verde to Kyrgyzstan, we have supported equality defenders to document discrimination and to evidence the need for equality law reform, to draft legislation and to develop advocacy strategies, to engage with decision-makers and to inform and mobilise the public. Through a combination of technical, strategic and practical assistance,

we have worked to support those on the frontline of the fight against discrimination to advocate collectively for laws which prohibit all forms of discrimination and guarantee equal participation.

Underpinning all of this work has been our belief that comprehensive equality laws are essential if we are to ensure complete and effective protection from discrimination and that they are – as such – required by international law. Our focus has been on the adoption and implementation of comprehensive equality law as a legal obligation, a necessity and a requirement, and – to some extent – as an end in itself.

In the process, however, we have learned a host of lessons from those with whom we have worked – about the need for collective advocacy, about the immediate benefits of collaboration between those working to combat discrimination and about the societal impacts of equality law reform. This publication is our first attempt to document these important lessons and to share them.



In order to understand why and how a comprehensive approach to addressing discrimination works, we have spoken with those from whom we ourselves have learned. This publication is drawn from interviews, written testimony and case studies provided by some of the many equality defenders across the globe whom we have been privileged to work with. These individuals – people at the forefront of efforts to combat discrimination and promote equality – are the ones best placed to identify and articulate how and why a comprehensive, collaborative approach works.

Hearing directly from these individuals, a compelling picture emerges about the need for those working to combat discrimination to act together for equality.

Those involved in advocacy efforts which led to the adoption of comprehensive equality laws in the last decade speak powerfully about the **importance of collective action and joint advocacy**. Equality defenders coming together to develop and advocate for a single, comprehensive equality law have greater resources, a more powerful voice and a better chance to overcome opposition and inertia. Whether in Bolivia or Bosnia and Herzegovina, comprehensive equality laws have been adopted in response to the collective action of dozens – hundreds – of civil society organisations, each focused on addressing discrimination on a particular ground, but each recognising the need for a comprehensive, unified approach.

This message is reiterated powerfully by those currently working towards the adoption of comprehensive equality laws. Yet these individuals also speak about the wider **value and benefits of collaboration**. Partners from countries as diverse as Armenia, India and the Philippines speak about the way in which coalition working breaks down siloes and improves understanding among those working on different aspects of discrimination. These partners explain how the process of establishing coalitions to develop and advocate for comprehensive laws has led to increased resources, shared

expertise and growing understanding that we do not “lead single issue lives”.

In the final part of this study, a series of case studies from countries where comprehensive anti-discrimination laws have been adopted explore some of the many ways in which these laws are remedying and eliminating discrimination. A clear thread emerges about the **need for comprehensive equality laws** to address systemic and systematic patterns of discrimination. Whether through the work of the Equality Courts in South Africa, the operation of the public sector equality duty in the United Kingdom, or the remarkable progress made by the Council for Equality in Moldova, a consistent pattern emerges of the effectiveness of a legal system which address discrimination holistically, rather than on the basis of specific grounds, or in specific areas of life.

Linking all of these lessons together is an overarching truth: that there is **strength in diversity** and that the elimination of discrimination requires us to work **together for equality**. It is this reflection which inspires the next step in the Equal Rights Trust’s mission.

Over the last decade, it has been my great privilege to work alongside many of those who have kindly contributed to this publication. Whether in Cabo Verde or Kyrgyzstan, I have witnessed first-hand the ways in which equality defenders working to tackle discrimination on different grounds can inform and support each other; how activists, lawyers and academics can each benefit from sharing and exchanging information, experience and expertise; and how collaboration not only amplifies voice but results in better outcomes. It is for this reason that helping to establish, strengthen and support national equality coalitions has become an increasingly central part of the work of the Equal Rights Trust.

It is also why I believe in the absolute value of promoting greater collaboration between equality defenders at the global level. In working with those profiled in this study and many others, I have seen how much those working to combat different forms of discrimination or using the law in different ways have to offer to each other. This study demonstrates the myriad benefits of enabling equality defenders to share knowledge and expertise, exchange resources and work collectively and collaboratively. This is just as – maybe even more – true at the global level as it is at the local, national and regional level.

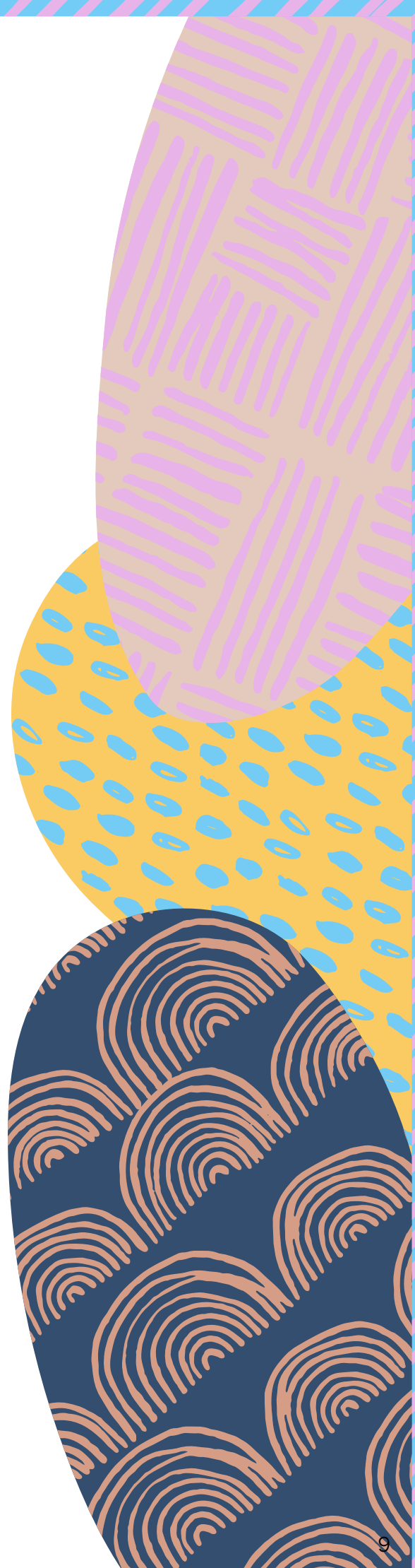
This is why the Equal Rights Trust is dedicating itself to the development of a global network of equality defenders, in order to enable our different partners around the world to share with, learn from, and support each other.

We hope that you will join us as we take this next step, together for equality.

Jim Fitzgerald

Director, Equal Rights Trust

August 2021



The Obligation to Adopt Comprehensive Equality Law

The rights to equality and non-discrimination are the foundations of international human rights law. Article 1 of the Universal Declaration of Human Rights (UDHR) proclaims that all human beings are “born free and equal in dignity and rights”, while Article 2 states that everyone is entitled to human rights and freedoms “without distinction of any kind”. Respect for human rights and the principles of equality and non-discrimination are interdependent and underpin the UDHR and all international human rights treaties. UN treaty bodies have recognised that fulfilment of the rights to equality and non-discrimination is an essential condition for the promotion and protection of all human rights.¹ This reflects the fact that human rights must, by definition, be enjoyed by all humans equally.

Through ratification of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), almost every state in the world has accepted non-discrimination obligations. In total, 173 states are party to the ICCPR,² Article 2(1) of which requires them to “respect and guarantee” the civil and political rights provided therein without discrimination, and Article 26 of which provides a free-standing right to non-discrimination, while 171 states are party to the ICESCR, Article 2(2) of which requires them to guarantee that all the economic, social and cultural rights which the Covenant provides can be exercised without discrimination. In addition, many states – including some of the small number which have acceded to



**FREE AND EQUAL IN DIGNITY AND IN RIGHTS,
ARTICLE 1, UNIVERSAL DECLARATION OF HUMAN RIGHTS**

neither the ICCPR nor the ICESCR – have accepted obligations to guarantee the rights to equality and non-discrimination under the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD).

The Human Rights Committee, the body with responsibility for interpreting the ICCPR, has stated that to fulfil their non-discrimination obligations under the ICCPR, states are required to adopt comprehensive anti-discrimination legislation.³ The Committee on Economic, Social and Cultural Rights has emphasised that adoption of legislation to address discrimination is “indispensable” in complying with non-discrimination obligations, and has elaborated on the necessary content of comprehensive equality law.⁴ The Committee on the Rights of Persons with Disabilities has stated unambiguously that the duty to ensure “equal and effective legal protection against discrimination on all grounds” entails a discrete “obligation to enact specific and comprehensive anti-discrimination legislation.”⁵ The other two primary UN treaty bodies adjudicating the right to non-discrimination have similarly recommended the adoption of comprehensive equality law in observations to states on how to fulfil their obligations.⁶

The *Declaration of Principles on Equality* is a document of international best practice on equality law derived from international law, and reflecting an international expert consensus on the interpretation of the legal framework governing the right to equality.⁷ The *Declaration* sets out the principles to be followed when developing equality legislation to ensure compliance with international human rights law obligations. It provides that equality legislation must (*inter alia*):

- (i) Define and prohibit all forms of discrimination, including direct and indirect discrimination, harassment and failure to make reasonable accommodation;⁸
- (ii) Cover the whole list of grounds of discrimination recognised at international law, and provide a means to recognise new grounds over time;⁹
- (iii) Apply in all areas of life regulated by law, governing the actions of public bodies and private actors;¹⁰
- (iv) Establish the procedural safeguards necessary for the effective functioning of equality law, including provision for the transfer of the burden of proof;¹¹
- (v) Provide remedies and sanctions which are effective, proportionate and dissuasive;¹² and
- (vi) Require the adoption of positive action measures to accelerate progress towards equality for particular groups.¹³

The adoption and effective implementation of comprehensive equality laws is also essential if states are to ensure that “no one is left behind” and meet their obligations under the Sustainable Development Goals (SDGs).¹⁴ This view has recently drawn the support of the UN Special Rapporteur on the Right to Development, who – in their recent *Guidelines on the Practical Implementation of the Right to Development* – has urged states to “adopt and implement comprehensive laws on equality”, as a necessary means “to achieve a number of the SDGs and related targets.”¹⁵ The Rapporteur has emphasised that such legislation “should contain proper definitions of discrimination and grounds for discrimination, including on all grounds prohibited under international human rights law” and “should also be effectively implemented”.¹⁶

Part 1:

Adopting Comprehensive Equality Law

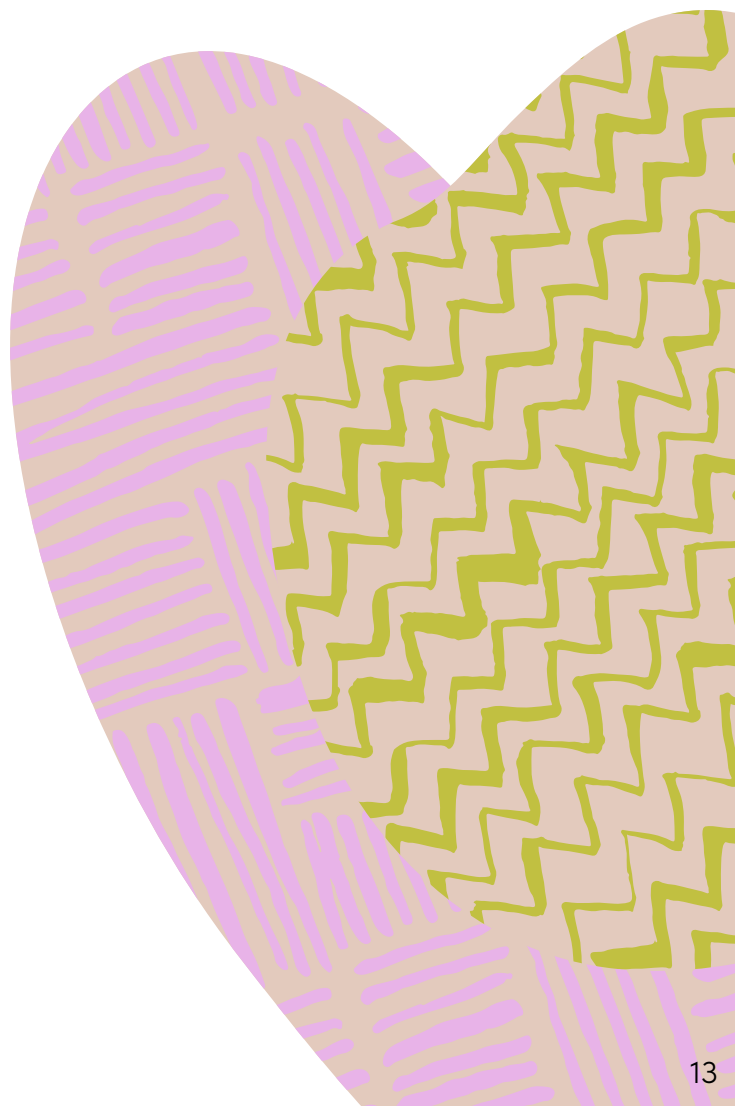


Part 1: Adopting Comprehensive Equality Law

This part of the publication spotlights experiences from five countries which have recently adopted comprehensive anti-discrimination legislation: Bolivia, Bosnia and Herzegovina, Georgia, Serbia and Ukraine. Like the entirety of this publication, the approach taken to part 1 was genuinely collaborative: we engaged with the Equal Rights Trust's civil society partners from each of the five countries, who generously gave their time to either participate in interviews or provide information in writing, in response to questions devised by the Equal Rights Trust team. Input was provided by:

- Mónica Bayá, Technical Secretary (Secretaria Técnica) of Comunidad de Derechos Humanos, a leading human rights organisation in Bolivia, which is, amongst other things, a member of Bolivia's National Committee against Racism and All Forms of Discrimination (Comité Nacional contra el Racismo y toda forma de Discriminación), and the former chair of the country's equality coalition.
- Adnan Kadribašić, an Independent Equality and Non-Discrimination Expert in Bosnia and Herzegovina who was, amongst other things, involved in the drafting of the country's comprehensive equality legislation and in the development of amendments to it.
- Ketevan Shubashvili, currently Head of Equality Department in the Office of the Public Defender of Georgia, and formerly a lawyer at the Georgian Young Lawyers' Association (GYLA), a founding member of the country's Equality Coalition.
- Kosana Beker, former Assistant to the Commissioner for the Protection of Equality in Serbia from 2010 to 2016, who was involved in the CSO movement which effectively campaigned for the adoption of the country's anti-discrimination law.
- Iryna Fedorovych, currently Director of the Social Action Centre (NGO) and formerly member of the Ukrainian Coalition against discrimination and national informational campaign, "Stop discrimination! Act now!"

Each of these respondents shared their thoughts and experiences on: (i) the key events leading to the adoption of their country's anti-discrimination legislation and the main actors that influenced the process; (ii) the extent to which civil society worked collaboratively to advocate for the development and adoption of comprehensive anti-discrimination legislation and the extent to which such collaboration was a factor in the adoption of the law and its content; and (iii) the impact of the adoption of comprehensive equality laws on the protection and opportunities afforded to groups exposed to discrimination. This first-hand evidence was reviewed by the lead authors and contextualised with the wider literature to identify patterns and build a picture of the process which led to – and the outcomes of – the adoption of comprehensive equality legislation in the five countries featured.



Influencing Factors

In all the countries profiled, key events provided windows of opportunity to influence the legislative and political environment and secure equality law reform. While on the one hand, testimonies collected demonstrate the specificities of the national contexts surveyed, they also show the extent of the convergence between pathways taken to the adoption of comprehensive equality legislation. Across **Bosnia and Herzegovina, Georgia, Serbia and Ukraine**, the prospect of European integration provided a major – if not the most significant – lever to ensure the enactment of national anti-discrimination legislation.

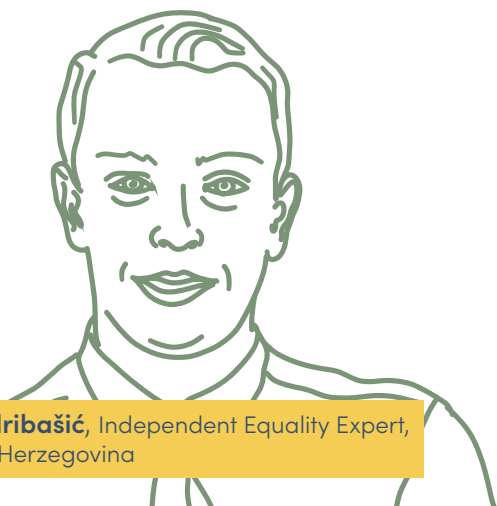
Bosnia and Herzegovina adopted its comprehensive equality legislation – the Law on the Prohibition of Discrimination ('the Law') – in 2009. Prior to the adoption of Bosnia and Herzegovina's comprehensive legislation, there were a number of constitutional and legislative provisions which provided a certain degree of protection from discrimination, including specific anti-discrimination legislation aimed at ensuring the equality of particular groups in society, most notably: women, minorities, and conflict veterans and conflict veteran families.¹⁷ The adoption of the Law was driven in part by the drive to converge with European Union (EU) standards, as the enactment of national anti-discrimination legislation was one of the prerequisites for entry to the EU's visa free travel regime.¹⁸ In light of the EU's influence, Adnan Kadribasić describes how the expert working group responsible for the development of the country's equality legislation decided that its main approach would be to ensure compliance with EU

directives and international standards.¹⁹

In **Ukraine**, Iryna Fedorovych assesses that political will for EU integration created a hitherto absent political commitment to equality law reform.²⁰ Prior to 2012, Ukraine's equality legal framework consisted of the Constitution, specific anti-discrimination laws, and non-discrimination provisions in other areas of law.²¹ As a prerequisite for lightened visa travel requirements, the EU necessitated that Ukraine develop and adopt national anti-discrimination legislation. In 2012, Ukraine adopted the Law "On Principles of Prevention and Combatting Discrimination" which – following amendments two years later – prohibits discrimination on a wide range of grounds and in many areas of life.²² Fedorovych considers that:

VLAP²³ obligations succeeded in becoming a real driver of comprehensive anti-discrimination policy reform — the first framework law (...) This proves the thesis that, despite internal resistance to anti-discrimination reform, Ukraine's international obligations are the most effective tools for ensuring that human rights protection is embedded into Ukrainian legislation.²⁴

In **Bolivia**, a new Constituent Assembly was convened in 2006 with many indigenous members among the representatives. Soon after, the Assembly commenced deliberations to elaborate a draft new Constitution. These deliberations took place in the context of several outbreaks of racially motivated discriminatory violence targeting indigenous and rural organisations, as well as some indigenous members of the Assembly.²⁵ These events – which took place in a wider context of persistent "manifestations of racism against indigenous people"²⁶ – provided further impetus for legal reform, and resulted in a meeting between the President of the Human Rights Commission of the Chamber of Deputies, Marianela Paco ('Deputy Marianela Paco'), and the victims to develop a work plan to promote a draft law against racism.²⁷ We describe below how this initial meeting provided the starting-point for the elaboration of Bolivia's comprehensive anti-discrimination legislation, leading eventually to the adoption in 2010 of Law No. 045.



Adnan Kadribasić, Independent Equality Expert,
Bosnia and Herzegovina

Stronger Together

Testimonies from across the countries surveyed demonstrate how the process of advocacy for these laws served to foster and – at times – formalise a framework for collaborative civil society advocacy. In the context of **Ukraine**, Fedorovych writes: “before 2011, the CSOs did not even consider the need for joint efforts to stand up for equality and protect discrimination”.²⁸ Whereas civil society previously took a siloed approach – with CSOs “often representing only certain groups of people and campaigning not for equal rights, but rather for particular services” – civil society increasingly recognised that a “one-man show” will not work.²⁹ In 2011, the Anti-Discrimination Coalition was founded by a group of 32 NGOs who signed the Memorandum of the Coalition on Discrimination in Ukraine.³⁰ Fedorovych observes that, since then, many coalitions working on different issues have emerged.³¹

In **Georgia**, Ketevan Shubashvili describes how this was a reciprocal process, with the prospect of equality law reform generating new forms of collaboration, and with joint advocacy by civil society further advancing the agenda for this reform. During the governmental hearings surrounding the development of the comprehensive anti-discrimination law, five NGOs collaborated to submit a joint statement before the Parliament and campaigned together on the content of the law.³² This collaboration initially took an informal character but following the adoption in 2014 of the Law on the Elimination of all Forms of Discrimination (‘the Law’), the Coalition for Equality (‘the Coalition’) was established. The Coalition united a group of 10 NGOs, each litigating on discrimination across a number of grounds, with the purpose of ensuring effective collaboration to support the monitoring and implementation of the Law.³³

Responding to the paucity of legal protections against discrimination in **Serbia**,³⁴ in 2005, the Serbian Coalition Against Discrimination (‘the Coalition’) was established. Originally consisting of a small number of core members working on behalf of a broad constituency of discriminated groups (including women, persons with disabilities, and LGBTQI+ persons), the Coalition became the driving force behind the development of the Serbian anti-discrimination law framework.³⁵ Kosana Beker views that while working with a diverse range of stakeholders came with its own challenges, the collaborative approach adopted by Serbian CSOs was overwhelmingly positive.³⁶ Beker explains how members of the Coalition shared “common values and a human rights approach” and how in their collective advocacy, everything was dealt with “as a single sector”.³⁷ By virtue of working collaboratively, members of the Coalition learned about the unique experiences of other discriminated groups, each of which could be addressed through a unified, comprehensive legal framework: “it was good to have different perspectives and knowledgeable people with different problems.”³⁸

The Role of Collective Advocacy

In the countries examined, coalitions of civil society actors played an active role in priming the political and legislative environment for equality law reform. In **Serbia**, the adoption in 2009 of the Law on the Prohibition of Discrimination ('the Law') stands as one of the most significant achievements of the Coalition to date. The Coalition lobbied, drafted media releases, and participated in interviews to advocate for the adoption of the law.³⁹ The Coalition were consulted throughout the drafting process, and the Law itself was drafted by Coalition members, headed by the Center for the Advancement of Legal Studies – a NGO and academic research institute.⁴⁰

In **Bolivia**, civil society organisations were able to effectively leverage their initial engagement with government actors into sustained participation and consultation in the development of the Law No. 045. Following the work-plan elaborated by Deputy Marianela Paco at her meeting with the survivors of acts of discriminatory violence of 24 May 2008, in April 2010 a meeting of CSOs was held in La Paz in which technical groups were established to work on the draft law on racism.⁴¹ The National Committee against Racism and All Forms of Discrimination ('the Committee') played a vital role as a strategic convenor in this process, inviting other civil society organisations working on different protected characteristics – including those representing women and LGBTQI+ persons – to take part in the technical tables. Mónica Bayá describes how soon, what had initially started as a draft law against racism expanded to become a comprehensive anti-discrimination law, benefitting from the shared expertise of this wider grouping of civil society actors.⁴² The Committee also promoted the organisation of departmental workshops to discuss technical issues relating to the draft anti-discrimination law, and to guarantee the inclusion of regional perspectives.⁴³ Participants in the workshops proceeded to send their contributions directly to Deputy Marianela Paco, creating a constant dialogue between

political and civil society actors about the more technical aspects of the draft law. Bayá reflects that the government was supportive throughout the process, enabling the Law to be enacted without interference.⁴⁴

In **Bosnia and Herzegovina**, civil society played a catalytic role in realisation of the country's anti-discrimination legislation. Inspired by the Europe-wide Starting Line Group's work to improve anti-discrimination protection,⁴⁵ in 2007 a group of over 100 NGOs conducted country-wide consultations on the content and scope of a future draft anti-discrimination law.⁴⁶ Consequently, an expert group was formed to draft the Anti-Discrimination Act ('the NGO Draft Law'). The NGO Draft Law was later presented to the Parliamentary Joint Committee on Human Rights, Rights of Children, Youth, Immigration, Refugees, Asylum and Ethics ('the Committee'). In what Kadribašić describes as an unprecedented co-operation between members of the Parliamentary Assembly in Bosnia and Herzegovina, the MPs declared their support and sponsorship of the NGO Draft Law.⁴⁷



This is an illustration of an image of the first same-sex civil union recognised by the Civil Registry in La Paz, Bolivia. The image was taken by Comunidad de Derechos Humanos, who worked on the legal action which preceded the civil union. The image was shared with the Equal Rights Trust by Comunidad de Derechos Humanos as a depiction of equality in Bolivia.

While the NGO Draft Law was not adopted on the basis that it had not followed the regular legislative procedure,⁴⁸ the activism of civil society contributed to ensuring the development and adoption of a comprehensive anti-discrimination law. Following the NGO Draft Law, the government established an inclusive working group to develop a draft law on non-discrimination. The engagement of civil society in the process was sustained: over 100 representatives of NGOs took part in the general public discussions and were nominated to join the expert working group responsible for producing the draft law.⁴⁹

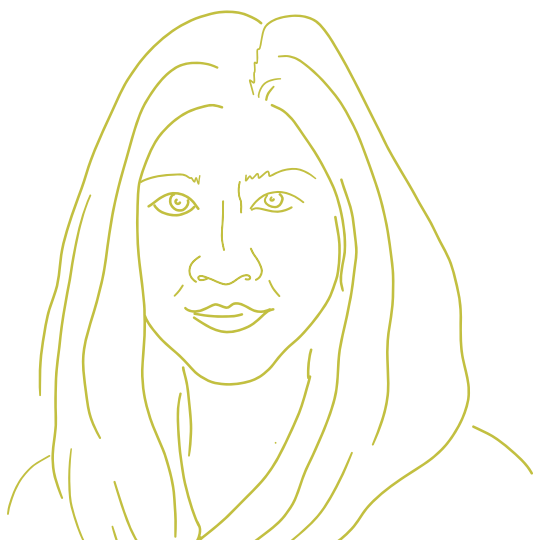
The wider expert working group which resulted from these discussions included representatives from the Ministry for Labour and Social Welfare, the Ministry of Justice, the OSCE Mission in Bosnia and Herzegovina, the free legal aid NGO Vasa Prava, trade unions and religious communities.⁵⁰ The new working group worked to ensure the draft was in line with the Race Equality Directive 2000/78/EC,⁵¹ Employment Equal Treatment Directive 2002/73/EC,⁵² and the Recast Directive,⁵³ as well as the relevant international standards.



This is an illustration of an image of the first pride march to take place in Bosnia and Herzegovina. The march took place on the 8th of September 2019 in Sarajevo, Bosnia and Herzegovina. The image was shared with the Equal Rights Trust by Adnan Kadribašić as a depiction of equality in Bosnia and Herzegovina.

Increasing Protections and Opportunities for All

Across all the countries surveyed, comprehensive equality laws have proven essential to challenging the full range of patterns of discrimination affecting groups exposed to discrimination. In **Bolivia**, for example, despite the challenges relating to the implementation of the Law No. 045, Bayá considers the increased participation of indigenous peoples in public life and the redistribution of land as major successes of the Law.⁵⁴



Monica Bayá,
Comunidad de Derechos Humanos, Bolivia

In **Georgia**, Shubashvili evaluates that – since the adoption of the country’s comprehensive legislation – the issue of equality is actively discussed in society at large and discriminated groups have become more publicly visible.⁵⁵ Shubashvili noted that the Office of the Public Defender of Georgia (‘the Public Defender’) has played a powerful function in monitoring compliance with the Law and assisting discriminated groups. The Public Defender has adjudicated on cases which have resulted in positive outcomes for a number of discriminated groups, including, illustratively: ensuring the inclusion of foreign prisoners in a state program focused on the elimination of Hepatitis C, and mandating the removal of age-based limitations on travel insurance policies.⁵⁶ The Public Defender has also enforced recommendations which have: (i) ensured the accessibility of the system of complaints to the government administration

for persons with visual impairments; and (ii) established a special unit to monitor the effectiveness of the investigative process into hate-motivated crimes.⁵⁷

In **Ukraine**, there have been a number of positive developments resulting from the adoption of near comprehensive equality legislation (‘the Law’). The state has introduced several plans and policies focused on the situation of groups exposed to discrimination – including women, Roma, and persons with disabilities – while the National Human Rights Strategy of 2020 (‘the Strategy’) is the country’s first national-level policy platform which sets out duties for a range of actors relevant to ensure the right to non-discrimination.⁵⁸

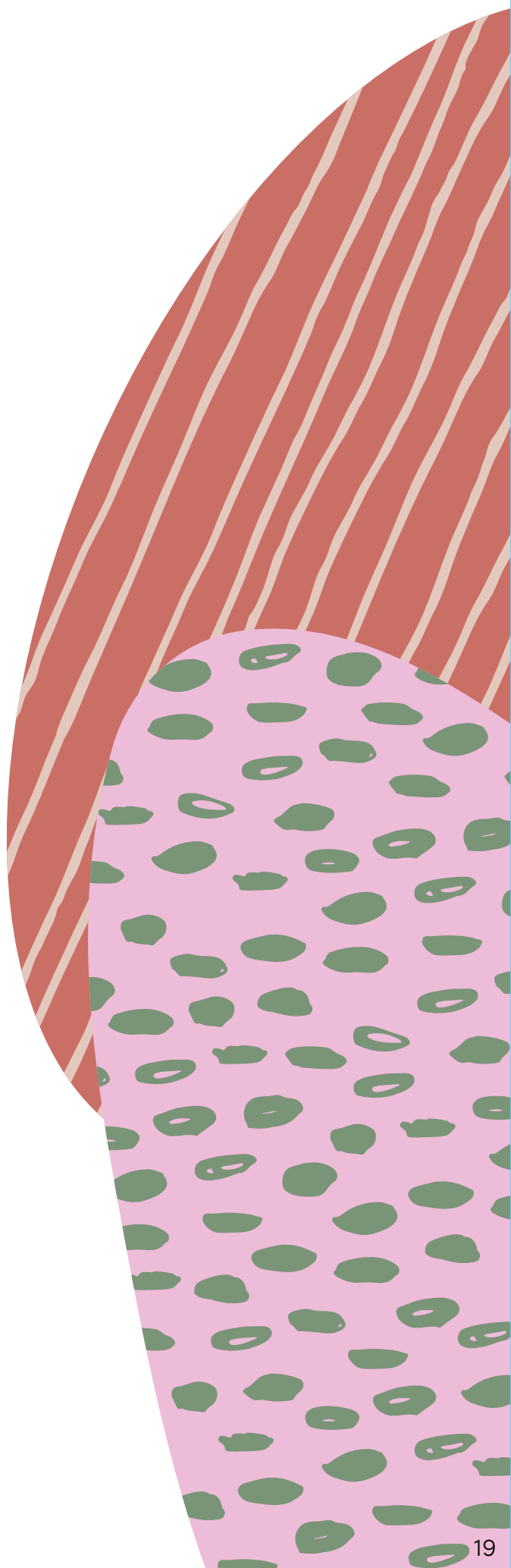
In **Serbia**, while the Law requires improvement in some areas, Beker believes that it sends a clear message that discrimination is prohibited and provides crucial mechanisms through which individuals may assert their rights.⁵⁹ She adds that by codifying a set of core legal principles on equality, the Law also makes the prospect of a regression in standards more difficult.⁶⁰

Likewise, in **Bosnia and Herzegovina**, the Law on the Prohibition of Discrimination (‘the Law’) has opened a new chapter in the area of equality and non-discrimination. Kadribašić views the Law as setting the standard for future legislative developments in Bosnia and Herzegovina, given its value in expanding upon, and subsuming into one comprehensive law, standards developed over the years across several specific anti-discrimination laws.⁶¹ Litigation under the Law has had a societal impact and has led to important policy responses.⁶² One example relates to a case before the Supreme Court which challenged the practice of “two schools under one roof”.⁶³ The case concerned one school attended by ethnic Croats and the other by ethnic Bosniak children operating in the same building. The Court found that the authorities had discriminated on ethnic grounds, and the case resulted in the adoption of guidelines

for school integration by the Ministry of Education and Science. While Kadribašić notes that the guidelines did not have their full desired impact, the judgment of the Court was used to prevent a new segregated school from opening.⁶⁴ Kadribašić also cites other significant cases relating to using the definitions of discrimination in the Law to address the failure by the state to include children with disabilities in primary education, and to adopt state-funded parental leave allowance schemes.⁶⁵

In certain countries, comprehensive equality laws mandate the adoption of proactive measures to ensure the equality of discriminated groups. In **Ukraine**, for example, the Action Plan of the Strategy identifies areas for improvement and shows where positive actions can be introduced – although there have been issues related to the implementation of the non-discrimination aspects of the Strategy.⁶⁶ Likewise, as part of its comprehensive equality legislation, **Serbia's** Law permits the adoption of positive measures designed to “achieve full equality” for individuals or groups in an “unequal position” in Serbian society.⁶⁷

The evidence collected from across these five countries underline the fact that comprehensive equality laws provide the only effective legislative basis to challenge the full range of discriminatory patterns affecting all groups at risk of discrimination. Testimonies from our partners show how such laws have been used to effect structural change across a range of grounds and areas of life. They also testify to the fact that the development and adoption of these laws – and their comprehensiveness – was assured to a large extent through sustained and collective action of civil society and other actors.



Sustaining a Comprehensive Anti-Discrimination Framework

The evidence collected also highlights that the effective implementation of these laws is hampered in practice by a number of factors. The challenges experienced include, illustratively: in **Bolivia**, the limited resources assigned to the implementation of the legislation;⁶⁸ in **Serbia**, the lack of public confidence in the Court system to ensure an efficient and independent mechanism for redress;⁶⁹ and in **Georgia**, the absence of state policy on equality and non-discrimination,⁷⁰ among many others.

In all countries reviewed, civil society has a continued role to play in ensuring the full and effective protection against discrimination. An example from **Serbia**, where the non-discrimination legal framework has recently come under threat, provides a case in point. On 14 February 2019, without a public debate and key stakeholder consultation, the Serbian government drafted a proposed Amending Act on the Law and referred it to the National Assembly for adoption. In May 2019, 56 Serbian CSOs and Coalition members addressed the Commissioner for the Protection of Equality asking for support in seeking the withdrawal of the proposed amending legislation.⁷¹ The Commissioner agreed and on 30 May submitted an official request to the government to withdraw the proposed Act and organise a public debate. The amendments were eventually withdrawn by the government, in the wake of widespread CSO opposition.⁷²

Likewise, in **Georgia**, civil society has sustained collaboration to advocate for the improvement of the country's anti-discrimination framework. The Public Defender and other actors have advocated since 2015 for a number of legislative amendments focused on strengthening the mandate of the Public Defender. Resulting from the sustained, collective action of the Public Defender, alongside CSOs and international actors, in 2019 the Georgian government adopted the proposals, providing the Public Defender with the necessary leverage to study cases of discrimination in the private sector, and strengthening enforcement mechanisms relating to cases of sexual harassment.⁷³

The examples of Serbia and Georgia make clear that civil society collaboration should not elapse at the adoption of the country's anti-discrimination legislation. To the contrary – that is when the real work begins. As Beker notes in the case of Serbia:

*Civil society organizations play a crucial role not only in raising awareness on the presence of discrimination in the Serbian society but also in providing protection from discrimination for more than twenty years. The authorities should recognize that role and ensure meaningful participation of CSOs in the ongoing improvement of anti-discrimination legislation.*⁷⁴

Key takeaways

While the evidence presented here is – necessarily – focused on the specific experience of the five countries profiled – Bolivia, Bosnia and Herzegovina, Georgia, Serbia and Ukraine – it nevertheless provides common insights which are of relevance to equality defenders in countries where civil society is coming together to form equality coalitions to advocate for the development and adoption of comprehensive equality laws or where such laws have recently been adopted.

In particular, the following key takeaways can be identified:

- **There is not a one-size-fits-all approach to advocacy for comprehensive equality laws.** In each of the countries examined, civil society actors analysed the context in which they were working and identified and then effectively leveraged key events and actors to maximise the opportunities available to them to advocate for equality law reform. While in each case the approach adopted was context-specific, in all countries, this process of context analysis and strategy development was key.
- **At the same time, certain windows of opportunity were common to multiple national contexts.** One example of this was political will for EU integration which was a major catalyst for reform in several of the countries featured. Such commonalities underline the immense value of civil society coming together to share expertise, exchange resources and collaborate to strengthen their collective advocacy.
- **Civil society collaboration was both necessary for equality law reform and beneficial in other ways.** The process of civil society coming together to advocate for the development and adoption of comprehensive equality laws demonstrated both the need for-, and the value of-, future collaboration. In some cases, informal equality movements grew into formalised coalitions.
- **Civil society actors were the architects, agents or drivers of equality law reform.** In all the countries examined, civil society organisations and actors, working together, were a driving force first in the development and enactment of equality laws and then in their enforcement and implementation.
- **Comprehensive equality laws are the only effective legislative basis to challenge the full range of discriminatory patterns affecting all groups exposed to discrimination.** Experience from across the countries shows the ongoing need for sustained and coordinated monitoring, documentation, advocacy and litigation to ensure that such laws are effectively implemented, and the full scope of their protection is realised.

Part 2:

Building Equality Movements



Part 2: Building Equality Movements

The second part of this publication is based on evidence collected from partners in countries that are yet to adopt comprehensive equality law, but where civil society is coming together to advocate for the development and adoption of such legislation: Armenia, Botswana, Cabo Verde, India, Kyrgyzstan, and the Philippines. As with part 1, the development of this part was a collaborative effort. Civil society and academic partners provided written testimony or were interviewed by the Equal Rights Trust team or by our legal Fellows, with input provided by:

- Lusine Karamyan and Nvard Piliposyan, respectively the President and Legal Specialist of the Non-Discrimination and Equality Coalition (NDEC), Armenia's national equality coalition.
- Dumiso Gatsha, Founder of Success Capital Organisation, a grassroots youth, queer and feminist led organisation in Botswana working to safeguard and strengthen young women and LGBTQI+ youth by linking human rights and sustainable development.
- Dionara Anjos, an Independent Consultant on Equality and Non-Discrimination in Cabo Verde. Anjos provided written testimony based on interviews with a number of civil society actors: Vicenta Fernandes, President of Associação Cabo-verdiana de Luta contra VBG (ACLCVBG); Eloisa Cardoso, Secretary Executive of Organização das Mulheres de Cabo Verde (OMCV); Paulino Moniz, Board Member of Laço Branco Cabo Verde; Idrissa Djolo, President of Associação Bafata XXI; Carlos Silva, member of Associação LGBTI da Praia and Laço Branco Cabo Verde; Arminda Fortes, President of Associação Chã de Matias; Carlos Bartolomeu, Permanent Secretary of Sindicato Livre dos Trabalhadores de Santo Antão.
- Jayna Kothari, Executive Director of the Centre for Law and Policy Research (CLPR), a civil society organisation in India which works to combat discrimination and other human rights abuses and is taking a leading role in advocacy for comprehensive equality law in the country.
- Tarunabh Khaitan, Professor of Public Law and Legal Theory, and Head of Research, Bonavero Institute of Human Rights, University of Oxford
- Nadira Masiumova, Head of Advocacy and Human Rights Department at Kyrgyz Indigo, the former chair of the Kyrgyz Coalition for Equality, the country's national equality coalition.
- Wilnor Papa, Human Rights Officer at Amnesty International Philippines, and the Co-Convenor of the Stop the Discrimination Coalition (STDC), the country's national equality coalition.



Wilonor Papa, Amnesty International
Philippines, The Philippines

We asked these respondents: (i) what has prompted them to focus on the development and adoption of comprehensive equality legislation, as opposed to advocating for specific anti-discrimination laws; (ii) what they see as the benefits of coalition building and whether joint advocacy provides more opportunities to engage with decision-makers for groups exposed to discrimination and/or an increase in resources and expertise available; and (iii) what impact adopting a strategy to advocate for the adoption of comprehensive equality legislation has had or can have on the wider implementation of the rights to equality and non-discrimination.

Based on the contributions provided, the lead authors highlight commonalities among civil society movements at different stages of the development and implementation of joint advocacy strategies. In Cabo Verde and Botswana, civil society actors are in the process of developing integrated and collaborative campaigns; in Kyrgyzstan and India, civil society organisations have played an instrumental role in overseeing the development of draft legislation, while in Armenia and the Philippines, executive and legislative bodies are actively considering draft laws, in response to the collective action of equality coalitions. Insights from across the countries spotlighted aid understanding of the common causes and benefits of adopting collaborative and intersectional campaigns for the adoption of comprehensive equality laws.

The Need for a Comprehensive Approach to Equality

Insights from across the interviews and testimonies provided demonstrate a growing recognition of the necessity to advocate for the adoption of comprehensive equality laws as the only effective mechanism to ensure protection of all groups at risk of discrimination, and, resultantly, the need to focus advocacy on this objective. Dumiso Gatsha, while writing on the context of **Botswana**, sums up what may be described as a common experience across the countries surveyed. Gatsha describes how collective advocacy helps to overcome the structural boundaries between civil society actors which enables a shift in focus from “symptomatic to systemic issues”. Gatsha adds that this in turn provides one of the greatest opportunities for ensuring the implementation of the rights to equality and non-discrimination.⁷⁵

Across the six countries, civil society is coming together to advocate for the adoption of comprehensive laws, recognising their value as the only legislative basis to challenge the full range of discriminatory patterns. In **Armenia**, Lusine Karamyan and Nvard Piliposyan describe how persistent difficulties in ensuring “effective legal remedy for people who face systemic discrimination” has been a major motivating factor for the focus on the adoption of comprehensive equality law among civil society organisations and state bodies.⁷⁶ They add that the enactment of a comprehensive anti-discrimination law should be on the agenda of all those working for the protection of human rights and marginalised groups.⁷⁷

Similarly in **the Philippines**, Wilnor Papa describes the crystallisation of opinion among civil society actors which led to the adoption of an equal rights approach to their collective advocacy. Papa describes as a causal factor the existing “patchwork of non-discrimination provisions” in the Philippines which “together, fail to provide comprehensive protection both between and within groups”.⁷⁸ Papa describes the increased collaboration among civil society actors, who in 2015 came together for the first multi-sector conference and workshop on discrimination.⁷⁹ The conference

was organised by OutRight International, Amnesty International Philippines and the Commission on the Human Rights of the Philippines and was attended by 150 participants from civil society organisations working with a range of groups at risk of discrimination, including older persons, persons with disabilities, LGBTQI+ people, indigenous people, religious minorities, youth, and women – described by Papa as the various “sectors” of the CSO movement.⁸⁰

The formation of the Stop the Discrimination Coalition (‘the Coalition’) was grounded on an agreement among the workshop participants that: (i) among most – if not all – participants, there are common experiences of discrimination, and obstacles to ensuring equality; (ii) there is a need for state policy to ensure the rights to equality and non-discrimination, and (iii) there is a need to consolidate efforts across sectors to advocate for comprehensive anti-discrimination policies, and ensure no one is left behind.⁸¹ The Coalition brings together a number of civil society “sectors” under a comprehensive framework which has the adoption of comprehensive anti-discrimination law as its central objective. Since 2015, the Coalition has expanded its core group from 10 to 14 organisations, encompassing additional organisations representing additional groups at risk of discrimination, including urban and rural poor communities, religious groups, as well as other human rights and political organisations.⁸²



Dumiso Gatsha, Success Capital Organisation, Botswana

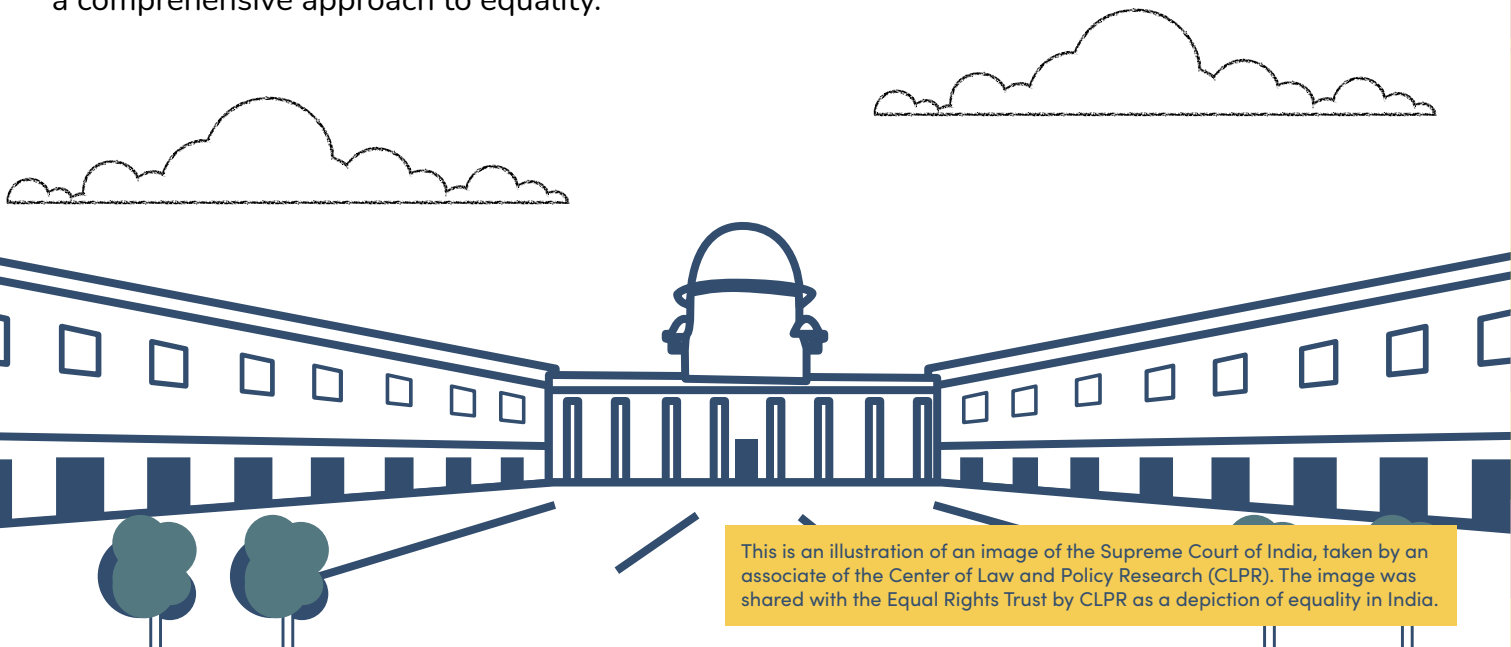
The Value of a Comprehensive Strategy

The experience of advocates in the countries spotlighted all demonstrate that the adoption of a joint strategy is the most effective pathway to the realisation of comprehensive equality legislation. In **Armenia**, for example, Karamyan and Piliposyan highlight that the “starting point” for the formation of NDEC (‘the Coalition’) was the increasing consensus that a comprehensive approach requires collaborative and intersectional working across civil society.⁸³ In 2016, more than 10 CSOs came together to form the Coalition in order to consolidate their efforts to combat discrimination and advocate for comprehensive equality legislation. Karamyan and Piliposyan describe how – prior to the formation of the Coalition – “it was not always about the denial of cooperation, sometimes such CSOs just did not realise the necessity of working together”, adding that CSOs previously lacked understanding of the different forms of discrimination, and the relevance of intersectional discrimination to their work.⁸⁴

The case of **India** is illustrative of the value of an intersectional and collaborative approach as an alternative and complimentary strategy to efforts focused on addressing discrimination against particular groups in isolation. Tarun Khaitan describes how the adoption of a coalition-based effort in the Indian context serves as a reminder that we do not lead single issue lives, and that eliminating discrimination necessitates a comprehensive approach to equality.⁸⁵

In contrast, Khaitan describes how demands for social equality in India have typically been articulated as demands for reservations, framing equality as a zero-sum agenda, and leaving different identity groups vying for a bigger piece of the metaphorical pie.⁸⁶ The ossification of identities, Khaitan notes, has been an unhelpful consequence of the constitutional recognition of reservations in India, making it difficult for identity groups to find common ground and form coalitions.⁸⁷ Khaitan and Jayna Kothari agree that CSOs tend to operate in siloes, noting that such an approach prevents the synergies that come from working in coalitions.⁸⁸

In comparison, in recent years in India, a limited body of civil society actors – including Khaitan, CLPR and others – are coming together to advocate for the adoption of a comprehensive law. In 2019, CLPR built upon the previous work of other CSOs and academics to elaborate a comprehensive equality draft law. The organisation has continued to refine the content of the draft law through stakeholder consultations.⁸⁹ In January 2021, CLPR published the Equality (Prohibition of Discrimination) Bill 2021, reflecting the evolution in understanding of the field of equality law and plugging the gaps in comprehensiveness identified in a 2017 bill tabled by the Member of Parliament, Dr. Shashi Tharoor.⁹⁰ CLPR is currently preparing to present the Equality Bill to political actors.



This is an illustration of an image of the Supreme Court of India, taken by an associate of the Center of Law and Policy Research (CLPR). The image was shared with the Equal Rights Trust by CLPR as a depiction of equality in India.

Increasing Resources and Expertise

Across the countries surveyed, the adoption of a collaborative approach has equipped civil society actors with the knowledge, tools and strategy they need to effectively advocate for the adoption of comprehensive anti-discrimination legislation. In **Cabo Verde**, Dionara Anjos describes how the formation of the Coalition for Equality ('the Coalition') in November 2020 – as well as the collaboration which preceded its formation – has had and will continue to have a number of primary and secondary benefits.⁹¹ Anjos outlines how members of the newly-founded Coalition perceive that it will enable them to mobilise their resources toward a common purpose, avoiding the duplication of small initiatives which are more likely to be ineffective.⁹² Those interviewed by Anjos consider that the adoption of a coalition-based approach will support the exchange of experiences and knowledge and strengthen the capacities of all involved.⁹³

Elsewhere, in **Botswana** and **India**, where civil society actors are in the process of coming together, there is increasing recognition of the value of a shared strategy in their advocacy for comprehensive equality law. In **Botswana**, Gatsha identifies that coalition-working, backed by resources, is

the “most impactful approach” to guarantee effective advocacy and engagement with state actors. Gatsha reflects that such an approach works to overcome the “structural limits of civic space” by facilitating the pooling of resources and expertise among civil society actors, adding that, in the past, coalition-working has “increased voice”, while also strengthening “visibility complimentary to different movements”.⁹⁴

In **India**, there is agreement that the benefits of coalition-building would be immense. Increased collaboration would result in a stronger push for the adoption of a comprehensive law, lead to better engagement among stakeholders across identity groups, emphasise the importance of legal protection in broader social justice efforts, and create valuable knowledge and resource synergies among CSOs.⁹⁵ Shreya Atrey emphasises that it is critical CSOs and activists who were instrumental in the passing of key anti-discrimination laws, such as the Rights of Persons with Disabilities Act (2016), and the Transgender Persons (Protection of Rights) Act (2019), come together and bring their collective experience to bear on efforts to adopt a comprehensive equality law.⁹⁶



This is an illustration of a photo from a demonstration by Success Capital Organisation in celebration of LGBTQI+ rights on Botswana's Independence Day on the 30th of September 2020, taken by Success Capital organisation. The image was shared with the Equal Rights Trust by Success Capital organisation as a depiction of equality in Botswana.

Together for Impact

Evidence from across the countries surveyed also demonstrates the clear value of a united civil society approach in overcoming political and cultural barriers. The experience of advocates in **the Philippines** demonstrates how the adoption of a joint strategy has increased the legislative appeal of equality law reform. Papa describes how the Filipino Coalition has focused through its strategy on the development of a network of legislative champions, increasing its regional presence from 8 regional groups in 2016 to 13 regional groups in 2019, with the aim of lobbying members of the House of Representatives in their districts.⁹⁷ The Coalition became part of the Technical Working Group of the Senate Committee on Social Justice, and is engaging with the House of Representatives and the Senate on the passage of the Comprehensive Anti-Discrimination Bill.⁹⁸ The collaborative approach taken, Papa notes, has shown clear benefits both for individual members of the Coalition – who reap the rewards of the Coalition’s magnified impact – and for legislative champions who are attracted by the unified approach adopted.⁹⁹

The success of advocacy undertaken in **the Philippines** and elsewhere has also shown that collaborative and intersectional campaigns for a comprehensive law can generate political support which advocacy for ground-specific reform cannot. In **Armenia**, for example, Karamyan and Piliposyan note that advocacy for LGBTQI+ specific reform has the risk of being rejected by state actors, whereas “the Coalition has more chances to raise the issue and make the responsible body consider its recommendations”.¹⁰⁰ Overall, Karamyan and Piliposyan agree that coalition-working amplifies impact: CSOs working alone often lack the resources to promote large-scale change, but a joint effort “can be strong enough to influence the policy, legislation, practices, etc.”¹⁰¹

In the context of **Kyrgyzstan**, Nadira Masiumova shares the view that by uniting voices, civil society has become “more audible”.¹⁰² The work of Kyrgyzstan’s Coalition for Equality (‘the Coalition’) provides a case in point. The Coalition was formed between 2013 and 2014 by a group of organisations working with different groups at risk of discrimination.¹⁰³ At the time of writing, the Coalition covers 4 regions of the country and includes 30 organisations and individual activists.¹⁰⁴ Since its formation, the Coalition has increased the engagement of state actors on the prospect of equality law reform by forming strategic partnerships and effectively leveraging international mechanisms.

To take just one example, the Coalition was actively involved in joint advocacy in connection with the Voluntary National Review (VNR) of Kyrgyzstan – a multilateral process to monitor the implementation of the Sustainable Development Goals (SDGs). The Coalition submitted evidence to the two state bodies responsible for the relevant SDGs – the Ministry of Labour and Social Development and the Ministry of Justice.¹⁰⁵ It also submitted an alternative, ‘spotlight’ report to cover issues not addressed in the state report. In the resulting government report, discrimination is mentioned in several places, and the government acknowledges that “the enforcement of anti-discrimination legislation is not satisfactory” which Masiumova notes as an “important achievement” and a significant leap forwards in their engagement with the state on the need for anti-discrimination law reform.¹⁰⁶

A Pathway to Realising the Rights to Equality and Non-Discrimination

Insights from across the countries featured show that one of the immediate benefits of the collaborative approach adopted by civil society has been to improve the implementation of the rights to equality and non-discrimination, including under existing legislation. In the context of **India**, for example, Jayna Kothari describes how the consultation meetings held by CLPR on the Equality (Prohibition of Discrimination) Bill 2021 enabled different identity groups to better understand intersectional discrimination and have resulted in better enforcement of the existing equality and anti-discrimination protections.¹⁰⁷

Indeed, testimonies from across the countries highlighted show that coalition-building is itself a powerful tool to ensure the wider realisation of the rights to equality and non-discrimination. Examples from **Cabo Verde** and **the Philippines**, for example, have shown the role of equality coalitions in sensitising individual members and member organisations and capacitating them to ensure the effective realisation of rights without discrimination. The case of **Armenia** is illustrative of the extent of the duties performed by equality coalitions. Karamyan and Piliposyan describe how the Coalition has provided a “unique hub” for individuals and member organisations to share expertise and exchange resources.¹⁰⁸ Their testimony outlines how coalition members have drawn upon their collective resources to fulfil a vital advisory and watchdog function. The Coalition has, for example: implemented trainings; provided expert input on discrimination cases being pursued by member organisations; influenced the content of relevant laws, policies and practices; and monitored their implementation.¹⁰⁹

Examples from **Armenia** and **Kyrgyzstan** also demonstrate how equality coalitions have used their platform to increase the protection and opportunities afforded to discriminated groups. In **Armenia**, the Coalition seeks to ensure the representation of a full range of groups at risk of discrimination by forming partnerships with those not currently represented in its membership. Karamyan and Piliposyan cite the Coalition’s engagement with community-based organisations representing Yezidis and other national minorities as an example, adding that it is at times just as effective to “advocate as partners” rather than to build a new coalition with all stakeholders in the field.¹¹⁰

Likewise, in **Kyrgyzstan**, Masiumova highlights how the Coalition has shone a spotlight on patterns of discrimination affecting particular groups. Masiumova notes, for example, that in the list of issues submitted by the Coalition to the UN Human Rights Committee in August 2020, the Coalition raised the issue of discrimination in the burial rights of Christian proselytes, and discriminatory attacks on feminist and LGBTQI+ initiatives.¹¹¹

Powerfully, Masiumova adds that in the absence of the Coalition, the voices of these communities would not be visible.¹¹²

Key takeaways

Like part 1, the common experiences from across the countries surveyed in part 2 generates a number of important reflections relevant to equality defenders who are coming together to form coalitions to advocate for the development and adoption of comprehensive equality laws.

We emphasise the following key takeaways:

- **Collaboration helps to overcome siloes and ensure a comprehensive approach.** The experience from across the countries featured illustrates that, by building collaborative and intersectional campaigns, equality defenders ensure a shift from symptomatic issues to systemic ones.
- **Collaboration increases the resources and expertise available to equality movements.** By working together, equality defenders amplify their reach and maximise the impact of their advocacy for the development and adoption of comprehensive anti-discrimination laws.
- **Diverse coalitions serving a unified purpose maximise impact.** Coalitions which bring together actors working on behalf of different groups exposed to discrimination to advocate for comprehensive reform can effect change where advocacy for specific groups cannot. The experience of advocates shows that different decision-makers will listen to different civil society actors, and a coalition approach can provide a “shield” for those advocating for the rights of the most stigmatised and persecuted groups.
- **Coalition-building serves the wider implementation of the rights to equality and non-discrimination.** Across all the countries spotlighted, in addition to undertaking collaborative advocacy for comprehensive equality laws, coalitions are already providing vital support to groups exposed to discrimination and improving the enforcement of existing equality and non-discrimination provisions.

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Part 3:

Using the Law to Advance Equality



Part 3: Using the Law to Advance Equality

This part contains five individually authored case studies exploring the use of comprehensive anti-discrimination legislation by different actors and in varying contexts to advance equality. These case studies highlight: the work of the Equality Courts in South Africa to decide cases litigated under the Promotion of Equality and Prevention of Unfair Discrimination Act 2000, focusing specifically on cases that have helped advance the rights of women and LGBTQI+ people; the role of statutory human rights codes in expanding the scope of equality law in Canada and in recognising emerging grounds of discrimination; the significance

of comprehensive equality legislation in protecting the rights of LGBTQI+ persons in Buenos Aires; the contribution of Moldova's equality body, the Council for the Prevention and Elimination of Discrimination and Ensuring Equality, to combatting discrimination on a wide range of grounds and areas of life; and the use of equality duties by public authorities and the Courts to advance equality of opportunity in the area of education in the UK.

Realising the Right to Non-Discrimination: South Africa's Equality Courts

Author: Kritika Vohra, Bob Hepple Equality Law Fellow, Equal Rights Trust

The Constitution of South Africa ('the Constitution'), adopted in 1996 after extensive public participation and a judicial certification, marked the country's transition from an apartheid regime to a constitutional democracy. Its transformative ambitions, including through its commitment to substantive equality, have been among the founding document's defining features. The Constitution expressly protects the rights to equality and non-discrimination and requires the national legislature to enact a law to "prevent or prohibit unfair discrimination".¹¹³ It is in this context that the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 was passed by the legislature. Its Preamble emphasises the country's commitment to the principles of "equality, fairness, equity, social progress, justice, human dignity and freedom" and affirms the importance of the legislation in restructuring South Africa into a more equitable society.¹¹⁴ It also refers to the country's equality obligations under international law, particularly those contained in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD).¹¹⁵

The Promotion of Equality and Prevention of Unfair Discrimination Act 2000 ('the Act') contains a wide range of protections, including provisions for the prohibition of unfair discrimination, and for the promotion of equality.¹¹⁶ It prohibits unfair discrimination, whether direct or indirect, on the basis of one or more enumerated grounds, as well as on the basis of any other ground, where discrimination based on such other ground causes or perpetuates systemic disadvantage, undermines human dignity, or affects the enjoyment of rights in a manner comparable to discrimination on the basis of an enumerated ground.¹¹⁷ The Act binds

the state as well as private actors, and the illustrative list of unfair discriminatory practices set out in the Schedule to the Act includes conduct from a wide range of sectors (labour, education, healthcare, insurance, and housing, to name a few), thus emphasising that the Act's protections span across numerous areas of life.¹¹⁸ The Act also covers a wide range of conduct, including harassment, denial of reasonable accommodation and hate speech.¹¹⁹ Notably, harassment is defined in the Act as relating not only to the traditional grounds of sex, gender or sexual orientation, but to any of the prohibited grounds.¹²⁰ Similarly, the denial of reasonable accommodation is identified as discriminatory not only in the context of disability, but also race and gender.¹²¹

In addition to offering wide protections to the right to equality and non-discrimination, the Act recognises Equality Courts for the enforcement of these protections, and empowers these Courts to craft civil remedies as appropriate in the circumstances.¹²² It envisages expeditious and informal proceedings in Equality Courts with a view to enhance access to justice, and provides for the appointment of clerks to assist the Courts and complainants.¹²³ The rules of standing are flexible and any person – whether acting for themselves, on behalf of someone else, or in public interest – can institute proceedings in an Equality Court.¹²⁴ Once a complainant makes out a *prima facie* case of discrimination, the Act shifts the burden of proof to the respondent.¹²⁵ This procedural mechanism is crucial in ensuring that victims of discrimination are not unduly inhibited in obtaining redress.¹²⁶

The 2008 case of *Z. Mpanza v. Sibusiso Cele*, which struck down a local ban on women wearing trousers, was among the early high-profile cases to emerge after the passing of the Act.¹²⁷ Informal male leaders of T-Section in Umzali, a township outside of Durban, had issued an edict prohibiting women from wearing trousers on the basis that trousers were not traditional attire for women, and that wearing them contributed to women's moral degradation and increased the incidence of rape.¹²⁸ 25-year old Zandile Mpanza, a resident of Umzali, was among the many women who faced violence and harassment for not adhering to the code. Represented by the Commission for Gender Equality (the CGE), Mpanza filed a complaint under the Act, and the Umlazi Equality Court found the ban to be unconstitutional and violative of women's right against unfair discrimination.¹²⁹ In addition to traditional forms of relief, the Court ordered Mpanza's assaulters to tender an unconditional apology for implementing the ban, and ordered the Umzali police to hold a community meeting to notify residents of the Court Order, and to update the CGE about pending cases regarding the ban.¹³⁰

In a 2010 case, another Equality Court found Member of Parliament Julius Malema liable

for hate speech and harassment on the basis of two prohibited grounds: gender and sex.¹³¹ Sonke Gender Justice Network alleged that comments made by Malema at a political rally were gender insensitive and trivialized rape. Malema contended that his statements were protected by Section 12 of the Act for being fair comment, as his was a comment about the complainant in a recent rape case, rather than one about women in general.¹³² After examining evidence, the Court found Malema's statements to be generalisations about women, sex and consent (rather than fair comment on a case) and held that they could reasonably be construed as hurtful, harmful and demeaning to women. In addition to traditional reliefs, the Court ordered Malema to pay a certain amount of money to the organization 'People Opposed to Women Abuse', and to issue a public apology in the form of a press release.

In recent years, decisions of Equality Courts have also played a significant role in mainstreaming and protecting the rights of LGBTQI+ persons in the country. For instance, when a church fired its music teacher on the basis of his sexual orientation, an Equality Court struck the church's actions down as unfair discrimination under the Act.¹³³ The church relied on its freedom of religion and argued that, since the complainant did not follow an exemplar Christian lifestyle, there was no unfair discrimination if the church fired him from a position of spiritual leadership.¹³⁴ However, the Court found the teacher to be a contract worker who taught music, rather than being a spiritual leader. In the Court's view, the church had failed to discharge its burden of proof to establish that the discrimination was fair.¹³⁵

In the 2019 case of *September v. Subramoney*, an Equality Court was called upon to apply the provisions of the Act in the context of a trans woman in prison.¹³⁶ The complainant, a trans woman, argued that government officials and prison authorities had refused to address her as a woman, had prevented her from wearing female clothing and makeup, and had forced her to cut her hair. These actions, she argued, prevented her from expressing her gender identity, causing

her immense mental and physical suffering. The respondents thought their actions to be in the interest of the complainant's safety and argued that the discrimination was thus fair. The Court held that although gender identity was not listed as a protected ground under the Act, September's right to express her gender identity was protected under the rights to equality and dignity, and the respondents' actions amounted to unfair discrimination. It found that the respondents' argument around September's safety was unsubstantiated, and that any safety concerns could be addressed through less restrictive means, thus making the discrimination unfair.¹³⁷

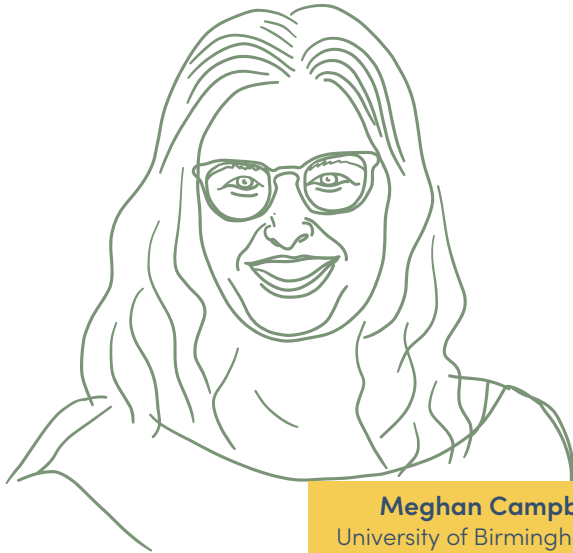
These cases are certainly notable with regards the right to equality and non-discrimination. It must be acknowledged however that although the Act was passed over two decades ago, it was only in 2003 that Courts began to be designated as Equality Courts.¹³⁸ It was not until August 2009 that all Magistrate Courts in the country were recognised as Equality Courts, thus significantly increasing access to justice for victims of discrimination.¹³⁹ There are now as many as 382 Equality Courts, although individuals and organisations representing groups exposed to discrimination have expressed concerns that the courts remain severely underutilised.¹⁴⁰ Over the years, many efforts have been made to understand the reasons for this underutilisation. Studies published in 2009 and 2010 noted that Equality Courts were fairly new at the time, and the lack of awareness of the Courts' existence and procedures, excessive caseload from existing civil and criminal dockets in Courts, insufficient training of judges and clerks, and inadequate legal aid contributed to this low uptake.¹⁴¹ A 2014 study into the barriers for persons with disabilities identified physical, geographical and financial accessibility to Equality Courts, and insensitive attitudes of frontline workers (including Court clerks) as significant challenges.¹⁴² Many have also flagged the lack of accurate information about Equality Courts as a significant hurdle.¹⁴³ The South African Human Rights Commission has also echoed concerns regarding inaccessibility,

inadequate training and insufficient resourcing of Equality Courts.¹⁴⁴ In 2016, the country's delegation before the Committee on the Elimination of Racial Discrimination noted a pressing need to address the low uptake through better public education and awareness-raising campaigns.¹⁴⁵

The Act, with its wide range of protections for the rights to equality and non-discrimination, has a key role in advancing equality South Africa. Decisions of Equality Courts on a range of subjects are telling of the legislation's potential. Public awareness of and adequate resourcing of Equality Courts, including training judges, is necessary to ensure no one is left behind.

Laboratories of Innovation: The Expansive Scope of Statutory Anti-Discrimination Law in Canada

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The constitutional structure and federalist system in Canada have resulted in a dual-tracked approach to the protection of equality rights. Section 15 of the Canadian Charter of Rights and Freedoms ('the Charter') guarantees every individual equality before and under the law and the right to equal protection and benefit of the law without discrimination. However, s15 only binds the federal and provincial governments.¹⁴⁶ The statutory human rights codes supplement the constitutional guarantee of equality. In broad terms, the statutory human rights codes prohibit discrimination in private sectors of life such as employment and housing. Each province and territory has a human rights code and there is a federal human rights code, the Canadian Human Rights Act ('the Act'), which applies to federally regulated entities (such as banking or shipping).¹⁴⁷ While there is a small-body of scholarship exploring the links between the Charter and statutory human rights codes,¹⁴⁸ as a general observation the federal and provincial human rights codes have languished in the shadow of constitutional guarantees of equality. This contribution explores the role of statutory human rights codes in expanding the scope of anti-discrimination law in Canada.

In *Vriend v Alberta*,¹⁴⁹ the Supreme Court of Canada held that the scope of statutory anti-discrimination protection must be consistent with constitutional equality guarantees. Vriend filed a complaint to the Alberta Human Rights Commission on the ground that his employer discriminated against him due to his sexual orientation. The complaint was dismissed as sexual orientation was not a protected ground under the Alberta Human Rights Act.¹⁵⁰ Vriend successfully argued in the Supreme Court of Canada that the exclusion of sexual orientation from the Act was discriminatory under s15 of the Charter and unconstitutional. In *Vriend*, the Court provides thoughtful discussion on the vital importance of ensuring statutory human rights laws protect against invidious forms of discrimination.

The government had two rationales to justify the exclusion of sexual orientation from statutory human rights codes. First, it argued that the exclusion was permissible as both heterosexual and homosexual people were unable to claim discrimination on the basis of sexual orientation under the Act. The Supreme Court of Canada rejected this argument as based on a "thin and impoverished notion of equality."¹⁵¹ The formal equality between straight and LGBTQI+ people, as a result of excluding sexual orientation from the human rights code, failed to account for the social reality and the history of disadvantage and exclusion of LGBTQI+ people. The absence of sexual orientation protection had no real impact on heterosexual people as their sexual orientation was not a basis for differential treatment, but the same was not true of LGBTQI+ people. Although LGBTQI+ people could, depending on other identity characteristics, frame claims for discrimination in relation to other protected grounds, the Court held excluding sexual

orientation would deny the protection of a ground that would be most significant for them: discrimination on the basis of sexual orientation.¹⁵² The statutory human rights codes should not be premised on ensuring identical or consistent treatment but must recognise that disadvantage can require differential treatment. They must embrace and echo the substantive notion of equality embedded in the Charter.

The government's second argument was that any distinction or disadvantage against LGBTQI+ persons was not a result of the exclusion of the Alberta Human Rights Act but the result of societal discrimination. Rather than accept this argument, the Court held that the larger patterns of disadvantage against LGBTQI+ people mandated their inclusion in the protections of the human rights code. The urgent need for protection from discrimination coupled with their exclusion from statutory anti-discrimination law meant LGBTQI+ persons were denied equal benefit of the law per s15 of the Charter. Justice Cory explained "it is not necessary to find that the legislation creates the discrimination existing in society in order to determine that it creates a potentially discriminatory distinction."¹⁵³

The Supreme Court also critically considered the impact of exclusion on vulnerable groups. At the practical level, LGBTQI+ persons were denied access to justice when they experienced discrimination on the basis of sexual orientation. They could not make a formal complaint to the Alberta Human Rights Commission or receive a legal remedy. Sexual orientation discrimination was treated with impunity. The Court then considered the expressive harms precipitated by the exclusion from the protection and remedies of the Act. Justice Cory noted that the central aim of the Alberta Human Rights Act was to recognise the inherent dignity and equality of all persons and to protect all individuals against discrimination in the private sector. The exclusion of LGBTQI+ people from a comprehensive anti-discrimination law conveyed a 'strong and sinister' message that they were not worthy of protection.¹⁵⁴ The Court went so far as to hold that by failing to include sexual orientation as

a ground of discrimination, the law was implying not only that sexual orientation discrimination was acceptable but may also be seen as "condoning or even encouraging discrimination against lesbian and gay men."¹⁵⁵ The lack of legal recourse has dire and demeaning consequences. LGBTQI+ people must live in fear of experiencing unremedied discrimination and may be forced to conceal their true identity. All of this imposes a heavy and disabling burden.

By only offering protection against discrimination to certain vulnerable groups and excluding others, the Alberta Human Rights Act was in violation of s15. The Court remedied this constitutional violation by reading-in the "sexual orientation" as a ground of discrimination under the statutory code.



All of the statutory anti-discrimination codes now include sexual orientation. In the last few decades, the statutory human rights codes have become laboratories of social innovation¹⁵⁶ and have been pioneering a wide range of grounds of discrimination that moves equality law beyond the traditional canon of grounds.

The statutory human rights codes and s15 of the Charter all protect against the commonly recognised grounds of discrimination.¹⁵⁷

The grounds of discrimination under the Charter are open-ended. The Supreme Court of Canada has added a small list of

analogous grounds under s15 including citizenship, sexual orientation, marital status and on-reserve Aboriginal residency.¹⁵⁸

The Court has not recognised a new analogous ground in twenty-two years and in refusing to expand the list of analogous grounds it has been critiqued for ossifying the constitutional right to equality.¹⁵⁹ The statutory human rights codes, however, have been responsive to the twists and turns of inequality. The codes recognise a plethora of emerging and newly recognised grounds of discrimination. The following table provides a snapshot of non-traditional grounds included in the statutory human rights codes:

Table 1: Non-Traditional Grounds in Statutory Human Rights Codes¹⁶⁰

Ground	Inclusion in Provincial, Territorial or Federal Human Rights Code
Gender Identity or Expression	Alberta British Columbia Manitoba New Brunswick Newfoundland Nova Scotia Ontario Prince Edward Island Quebec Saskatchewan Northwest Territories Nunavut Yukon Canada
Criminal Conviction	British Columbia ¹⁶¹ Newfoundland Ontario ¹⁶² Prince Edward Island Northwest Territories ¹⁶³ Nunavut ¹⁶⁴ Yukon Canada ¹⁶⁵
Source of Income or Receipt of Public Assistance	Alberta British Columbia ¹⁶⁶ Manitoba Newfoundland Nova Scotia Ontario ¹⁶⁷ Prince Edward Island Saskatchewan Nunavut Yukon

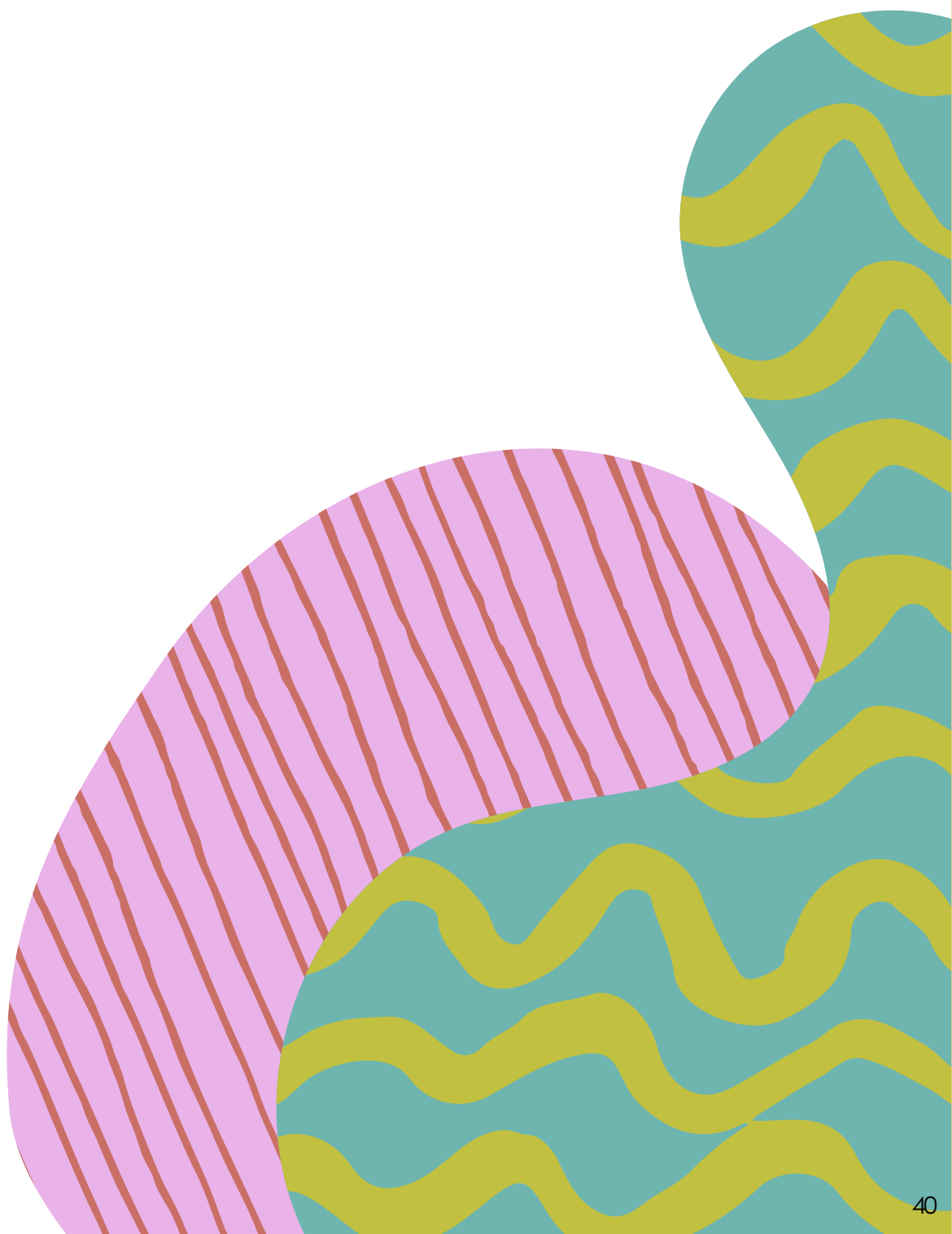
Social Condition or Disadvantage	Manitoba New Brunswick Quebec North West Territories
Disfigurement	Newfoundland
Genetic Characteristics	Canada
Irrational Fear of Contracting an Illness or Disease	Nova Scotia
Association with Protected Groups or Individuals	Nova Scotia Prince Edward Island Nunavut Yukon
Language	Quebec Yukon

There are some notable trends in the non-traditional grounds included in the statutory human rights codes. All of the provinces, territories and federal government prohibit discrimination on the basis of gender identity and expression. Ten of the human rights codes include source of income/receipt of public assistance and four provincial human rights codes include social disadvantage or condition. This is intriguing as Courts have repeatedly rejected including socio-economic status or poverty as a ground under the Charter.¹⁶⁸ The Manitoba and Northwest Territories provide an illuminating definition of social disadvantage. The Manitoba code defines the ground as “diminished social standing or social regard due to homeless or inadequate housing; low levels of education, chronic low income or chronic unemployment or underemployment”¹⁶⁹ and the Northwest Territories defines it as “social or economic disadvantage resulting from poverty, source of income, illiteracy, level of education or any other similar circumstance.”¹⁷⁰ There are also uncommon and very cutting-edge innovations to the canon of grounds. There is a growing number of human rights codes that include protections for individuals who have some form of criminal conviction. Four of the provinces protect against associational discrimination. Nova Scotia protects against disadvantage on the basis of irrational fear of contracting an illness or disease and Newfoundland protects against disfigurement, which the Newfoundland

Human Rights Commission explains includes burning, scarring or disfiguring conditions.¹⁷¹ The federal human rights code protects against any discrimination flowing from genetic testing. Section 3 of the Canadian Human Rights Act explains that this includes the refusal to undergo or disclose the results of a genetic test.

Two final observations on the inclusion of non-traditional grounds. First, in comparison to the Charter,¹⁷² the statutory human rights codes are significantly easier to amend. This may explain why the statutory human rights codes can be more responsive to new understandings of equality and discrimination. And second, unlike an analogous ground under the Charter,¹⁷³ the statutory human rights code can limit the application of the ground. For instance, the British Columbia Human Rights Code only prohibits criminal conviction discrimination in the context of employment and the Ontario Human Rights Code limits receipt of public assistance discrimination to tenancy. The ability to circumscribe the bounds of certain newly protected forms of discrimination means the government can more tightly control the scope of equality duties on private actors and ward off any unforeseen consequences. This could encourage innovation in anti-discrimination law and act as a springboard for further evolutions and expansions of the scope of statutory human rights codes.

One of the impetus for confederation and a strong federalist system was to encourage creativity and social laboratories. The provinces can adopt laws that are “too innovative or radical to be acceptable to the nation as a whole.”¹⁷⁴ The interaction between the Charter and the provincial, federal and territorial human rights codes has resulted in remarkable innovation identifying characteristics or experiences that contribute to disadvantage. In doing so, they have expanded the scope of anti-discrimination law to ensure that all people are treated as dignified and equal.



Guaranteeing Protections for LGBTQI+ Persons: the Buenos Aires Anti-Discrimination Law

Author: Nicolás Forero-Villarreal, Bob Hepple Equality Law Fellow, Equal Rights Trust

In 1987, Argentina was experiencing a period of transition, consolidating democracy after long decades of military dictatorships. It was in this context that political forces began a process to promote an anti-discrimination law. Several LGBTQI+ associations of the time tried to participate in the process but failed to be included in the discussions.¹⁷⁵ In 1987, Fernando de la Rúa, then senator of the UCR – a moderate centrist party – presented a draft anti-discrimination law to the Senate.¹⁷⁶ After completing the legislative process in 1988, the draft was approved and sanctioned, becoming Law No. 23.592 and one of the first anti-discrimination laws in Latin America ('the 1988 national law'). De la Rúa would eventually become President of Argentina a few years later. The 1988 national law is composed of four Articles, recognising discrimination on the grounds of race, religion, nationality, ideology, political or union opinion, sex, economic position, social condition or physical characteristics.¹⁷⁷ The 1988 national law increases the sanctions for crimes committed with discriminatory motives and it creates an offence of belonging to an organisation promoting hate or engaging in hate speech. It has become the backbone of anti-discrimination legislation in the country and was followed by Law No. 24.515 of 1995 that created Argentina's Institute against Discrimination, Racism and Xenophobia (INADI).¹⁷⁸

For over 30 years the 1988 national law has been the national legal framework against discrimination and the main legislative tool used by the INADI to address issues of discrimination.¹⁷⁹ Despite being only composed of four Articles and having a narrow list of protected grounds, failing to include grounds such as sexual orientation and disability, activists have been successful in stretching the interpretation of the law through strategic litigation in several judicial instances.¹⁸⁰ At times, the 1988 national

law was an obstacle for many LGBTQI+ organisations, but through continuous efforts, national jurisprudence has evolved and consolidated an extensive and inclusive application of the 1988 national law, in line with international and regional human right standards.¹⁸¹ Nevertheless, CSOs have long manifested the need to renew and modify the national anti-discrimination law in Argentina, to properly respond to the needs of all groups exposed to discrimination.

Argentina's federal system of government allows every province and the city of Buenos Aires to have their own legislative bodies. Hence, each province has its own codes and regulations. Many provinces, including Buenos Aires, continued to maintain provisions in their criminal code leftover from the military dictatorships.¹⁸² In fact, until 2012, there were provisions



in Buenos Aires' criminal code that punished gender expression, targeting trans women specifically. It was this harsh reality that moved several CSOs representing and advocating for the rights of the LGBTQI+ community in Buenos Aires and at the national level to unite efforts to promote equality.

One of the organisations that took the lead in this process was the coalition of LGBTQI+ organisations (FALGBT): a coalition that brings together many grassroots movements from every province in Argentina. Through the leadership of María Rachid, the FALGBT led, in 2010, the development of a National Board of Equality that aimed to bring together and collectively advocate on behalf of CSOs working towards equality. One of the main objectives of this network was to advance and promote a comprehensive national anti-discrimination law. For years, attempts were made, and draft laws were presented, however these efforts were unsuccessful.

Rachid became in 2011 a member of the legislative body of Buenos Aires. After failing to succeed at the national level it was decided to promote instead a comprehensive anti-discriminatory law in Buenos Aires. Under the umbrella of the National Board of Equality as well as the support of other organisations¹⁸³ the Buenos Aires anti-discrimination law was drafted.¹⁸⁴ Technical committees (made up of representatives of CSOs and public and private institutions) were established to work on the draft law. Rachid introduced the law before the Buenos Aires Legislative body. Historically, the legislative branch of the city of Buenos Aires was mostly led by conservative parties. This represented a great challenge to CSOs working to promote the anti-discrimination law. Nevertheless, the coalition of organisations collectively lobbied and convinced legislators to support the draft anti-discrimination law, which was in the end approved unanimously, becoming Law No. 5.261 in 2015 (the Buenos Aires Anti-Discrimination Law).

One of the key differences between the 1988 national law and the Buenos Aires Anti-Discrimination Law is the expansion of the list of protected grounds. The 1988 national law

only recognises nine grounds. The drafters of the Buenos Aires Anti-Discrimination Law wanted to include as many groups exposed to discrimination as possible, while at the same time leaving the list of protected grounds open to the addition of other characteristics. The Buenos Aires Anti-Discrimination Law includes, under Article 3, the following open list of protected grounds: ethnicity, nationality, colour, birth, national origin, language or linguistic variety, religious or philosophical convictions, ideology, political or trade union opinion, sex, gender, gender identity and/or its expression, sexual orientation, age, marital status, family status, work or occupation, physical appearance, disability, health condition, genetic characteristics, socio-economic status, social status, social origin, social or cultural habits, place of residence, and/ or any other personal, family, social status, temporary or permanent. Article 3 is the result of a collaborative effort between CSOs representing different groups exposed to discrimination.

Moreover, the Buenos Aires Anti-Discrimination Law includes positive action provisions, noting that measures directed at promoting equality of groups that have been historically marginalised are not discriminatory, and includes a provision for the shifting of the burden of proof.¹⁸⁵ This provision has been welcomed by equality defenders in Argentina as procedural barriers have presented great challenges to the protection of groups at risk of discrimination in the country.

The Buenos Aires Anti-Discrimination Law positions this municipality far ahead of other provinces. While at least nine other provinces have non-discrimination legislation, none is as comprehensive and as the law of Buenos Aires. Where provinces have not enacted their own anti-discrimination legislation, equality defenders must rely on the four Articles of the 1988 national law. The FALGBT is currently promoting once more an anti-discriminatory law at the national level. In light of the political reforms in Argentina, the FALGBT hopes that a comprehensive national anti-discrimination law will finally be approved.

Overseeing the Implementation of Equality Law: Perspective from Moldova

Author: Ellie McDonald, Advocacy Officer, Equal Rights Trust

States should establish and maintain a body or system of coordinated bodies for the protection and promotion of the right to equality.¹⁸⁶ In recent decades, a growing number of states have established such independent bodies – referred to as equality bodies – recognising their value in both overseeing the implementation of the equality law framework and supporting them to comply with their non-discrimination obligations.

Equality bodies serve an essential role in monitoring compliance with the rights to equality and non-discrimination, assisting individuals exposed to discrimination, and providing expertise. Such bodies vary in their mandate and functions. Their powers can include, variously: research, monitoring, training, and other activities aimed at promotion and protection; support to discriminated persons, which may include representation and litigation; and in some contexts, a decision-making or enforcement function. Where equality bodies are granted adequate resourcing and sufficient powers, they are instrumental to ensuring that comprehensive equality legislation can be used to effect change in different areas of life. We highlight here the value of such bodies through the example of Moldova's Council for the Prevention and Elimination of Discrimination and Ensuring Equality ('the Council').

In recent decades, Moldova has undertaken significant legislative and policy reform to ensure protection of the rights to equality and non-discrimination, driven in part by a desire to align with EU standards. The most significant of these reforms was the adoption in 2012 of the Law on Ensuring Equality (Law No. 121 of 25 May 2012) ('the Law on Ensuring Equality') which is Moldova's principal non-discrimination statute.¹⁸⁷ The Law provides protection from discrimination for all persons in Moldova's jurisdiction "on

a wide variety of grounds, in a large number of areas regulated by law and prohibits a range of conduct understood to fall within with the international right to be free from discrimination."¹⁸⁸ Article 11 of the Law establishes the Equality Council as an independent and impartial body empowered to protect against discrimination and ensure equality.¹⁸⁹

Since its inception in 2013, the Council has adjudicated on cases relating to wide range of grounds, including sex, disability, language and HIV status, and in areas of life including employment, healthcare, pensions, parental leave, and movement and burial restrictions in the context of the COVID-19 pandemic.¹⁹⁰

The Council has used its enforcement powers to end systematically discriminatory practices by mandating the repeal or amendment of discriminatory laws, policies and practices. For example, in its case no. 030/2013, decision of 13/02/2014, the Council received complaints relating to requirements which prevented elderly pensioners from receiving the paid job of "personal assistant" for caring for their severely disabled children.¹⁹¹ The Council ruled that the case constituted discrimination by association of the complainants with their children and on the grounds of gender and age resulting from the restriction of access to the position of "personal assistant" by elderly pensioners. Finding that these characteristics were not a proper indication of the capacity of the complainants to act as carers, the Council mandated several amendments to the legislation.¹⁹²

Through its casework, the Council has provided a variety of legal remedies, including those aimed at restitution for the victim and the prevention of similar acts. For example, in its case no. 021/2013, decision of 27/12/2013, the Council found that the Ministry of Health's Order No. 100 on

prophylaxis transmission of HIV infection was discriminatory against HIV-positive pregnant women.¹⁹³ The Council ruled that the Ministry of Health repeal Order No. 100 and that the hospital at the centre of the complaint train its medical staff on ensuring equality and the prevention of discrimination in the provision of services.¹⁹⁴

The Council has adjudicated on a range of cases to ensure the right to non-discrimination for linguistic minorities. In a series of decisions, the Council ruled that some practices of public institutions were discriminatory on the basis of language and ordered that the relevant public bodies publish parallel versions of their webpages in Romanian and Russian to ensure access to publicly important information.¹⁹⁵ Two of the authorities – the Chisinau City Hall and the Parliament – implemented the Council's decision, while the Ministry of Justice successfully challenged it in Court.¹⁹⁶

In addition to receiving complaints from victims of discrimination, the Council is able to adjudicate cases and examine potential discriminatory conduct in the absence of complaints. The Council has increasingly availed itself of this power by initiating cases.¹⁹⁷ For example, identifying widespread, direct discrimination on the basis of multiple characteristics (such as age, sex and residence) in employment vacancies, the Council initiated a number of cases against websites advertising such vacancies.¹⁹⁸ These decisions had a systemic impact: shifting direct discrimination in job adverts from a widespread to an exceptional practice.¹⁹⁹ The Council built on this positive work by issuing guidance on ensuring non-discrimination in employment vacancies – work which is exemplary of the Council's promotion and protection function (further explored in the following examples).²⁰⁰ The Council's work in the area of employment has afforded increased and sustained protection for multiple discriminated groups.

The Council has a variety of tools at its disposal which it has employed strategically to achieve positive change. As shown by the previous examples, under its enforcement function, the Council can impose binding

judgements on authorities. The Council can also develop advisory opinions which facilitate the rapid review of core information rather than necessitating the collection of extensive evidence.²⁰¹ Such cases are advisory and non-obligatory and have been used by the Council to powerful effect in particular contexts. The Council can also elaborate and promote guidelines and collaborate with diverse actors – public and private authorities, civil society organisations (CSOs) and international organisations – to support the implementation of the anti-discrimination law framework and promote a culture of equality.

The Council's advisory opinion function has proven to be a powerful tool in ensuring rapid redress for discriminated groups. In the context of the COVID-19 pandemic, the Council has used advisory opinions to ensure compliance of emergency measures taken by the state with its non-discrimination obligations. For example, on the 31st March 2020, the Commission for Emergency Situations adopted measures which amended the procedure for the acquisition of compulsory health insurance during the period of emergency measures.²⁰² In its opinion of the 3rd April 2020, the Council established that the restrictions had the effect of restricting the freedom of movement of citizens based on their mode of entry to the country, advising that while the condition to obtain health insurance was a legitimate one, it had not been applied in



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a reasonable or objective manner to those travelling by air.²⁰³ On the very same day, the Commission amended the restrictions in line with the Council's advisory opinion.²⁰⁴ A member of the Council observed that after the Commission's decision, no further movement restrictions were imposed on Moldovan citizens returning by air, adding that the decision likely had a positive impact on tens of thousands of Moldovans who were required to return to the country by air during the pandemic.²⁰⁵

In another example of the positive impact of the Council's advisory opinions, the Council's advisory opinion of 20/03/2018 resulted in the amendment of legislation to ensure the provision of parental leave for military personnel under contract.²⁰⁶ This followed the Council's recommendation that the right to parental leave be granted to contract military personnel to ensure that they may participate in the care and upbringing of children and lessen the burden on mothers by redistributing responsibilities between parents.²⁰⁷

In addition, the Council has fulfilled its mandate to promote equality and prevent discrimination by publishing research, issuing guidance, and collaborating with other actors. As previously noted, the Council has developed guidance on the protection of the right to non-discrimination in employment.²⁰⁸

The Council has also elaborated the Social Distance Index to measure the gap between the general population and discriminated groups, which has been widely used by a variety of actors in programming and policy development. For example, the United Nations in Moldova has used the Index as part of the baseline and indicators included in its Partnership Framework for Sustainable Development 2018-2022, a medium-term strategic planning document.²⁰⁹ Moldova's National HIV Programme 2012-2025 – elaborated by medical professionals and CSOs – also relies on the Index.²¹⁰

The examples highlighted here are illustrative of some of the principal ways in which the Council has used its powers to strategic effect to enable the state to fulfil its non-discrimination obligations and ensure Moldova's Law on Ensuring Equality is used in practice to effect positive change for discriminated groups. The demonstrable human impact of the Council's work across a range of grounds and areas of life shows the need for states to establish independent and specialised equality bodies in their adoption of comprehensive equality legislation, as a means of discharging their obligations to respect, protect and fulfil the rights to equality and non-discrimination.



This is an illustration of a photo from a demonstration on international women's day which took place on the 8th of March 2020 in Chisinau, Moldova. The image was shared with the Equal Rights Trust by Evghenii Alexandrovici Goloşceapov, member of the Council for Preventing and Eliminating Discrimination and Ensuring Equality, as a depiction of equality in Moldova. [Original Image]

Advancing Equality of Opportunity in Education: The Public Sector Equality Duty in the UK's Equality Act

Author: Ariane Adam, Deputy Director, Equal Rights Trust

The development of modern equality law in the UK has taken place over a long period through one or more of the following routes:²¹¹ (i) by Parliament enacting statutes, following campaigns or lobbying by civil society; (ii) in the case of the public sector equality duties, as a response to the criticisms of the police and other public services in the inquiry into the murder of Stephen Lawrence, a Black British teenager killed in a racially motivated attack while waiting for a bus in London;²¹² (iii) by integration of European Union primary law and directives. The ratification of the European Convention on Human Rights and UN human rights treaties, as well as the coming into force of the European Charter of Fundamental Human Rights have also influenced the development of equality law.

The Equality Act 2010 ('the Act') brought together, harmonised and expanded protections included under earlier, specific, non-discrimination legislation. Part 11 of the Act contains the public sector equality duty (PSED): under section 149 all public authorities, and those who exercise public functions,²¹³ must have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In R (Brown) v Secretary of State for Work and Pensions,²¹⁴ Lord Justice Aikens – sitting then at the High Court of Justice – identified a number of general principles governing in practice a public authority's duty to have "due regard". These are commonly described as the *Brown* principles, as follows: (i) those in the public authority who have to take decisions that do or might affect people with a relevant protected characteristic must be made aware of their duty to have "due regard" to the goals in the PSED; (ii)

the "due regard" duty must be fulfilled before and at the time that a particular policy that will or might affect people with a protected characteristic is being considered by the public authority in question; (iii) the duty must be exercised in substance, with rigour and with an open mind – it must be integrated within the discharge of the public functions of the authority, and it is not a question of "ticking boxes"; (iv) the duty is non-delegable and will always remain on the public authority charged with it; (v) the duty is a continuing one; (vi) it is good practice for those exercising public functions in public authorities to keep an adequate record showing that they have actually considered equality duties and pondered relevant questions.²¹⁵

The Explanatory Notes to the Equality Act include the following examples of how the PSED could operate in practice:²¹⁶

- The duty could lead a police authority to review its recruitment procedures to ensure they do not unintentionally deter applicants from ethnic minorities, with the aim of eliminating unlawful discrimination.
- The duty could lead a local authority to target training and mentoring schemes at disabled people to enable them to stand as local councillors, with the aim of advancing equality of opportunity for different groups of people who have the same disability, and in particular encouraging their participation in public life.
- The duty could lead a local authority to provide funding for a black women's refuge for victims of domestic violence, with the aim of advancing equality of opportunity for women, and in particular meeting the different needs of women from different racial groups.

- The duty could lead a large government department, in its capacity as an employer, to provide staff with education and guidance, with the aim of fostering good relations between its transsexual staff and its non-transsexual staff.
- The duty could lead a local authority to review its use of internet-only access to council services; or focus “Introduction to Information Technology” adult learning courses on older people, with the aim of advancing equality of opportunity, in particular meeting different needs, for older people.
- The duty could lead a school to review its anti-bullying strategy to ensure that it addresses the issue of homophobic bullying, with the aim of fostering good relations, and in particular tackling prejudice against gay and lesbian people.
- The duty could lead a local authority to introduce measures to facilitate understanding and conciliation between Sunni and Shi’a Muslims living in a particular area, with the aim of fostering good relations between people of different religious beliefs.

This case study spotlights the use of the PSED by public authorities and by the Courts to advance equality of opportunity in the area of education. Educational institutions in the UK are bound by the PSED, as the provision of education is an exercise of public function.

Improving Education Attainment ²¹⁷

In 1990, only 8% of students in Tower Hamlets, a London borough, left school with more than five A-C grades at the General Certificate of Secondary Education (GCSE), and educational expectations for young people from deprived communities were low. The borough also had significant variations in income with the individual average at £65k, whilst a quarter of households were living on around £15k a year and 56% of pupils were eligible for free school meals. This stark difference in income was also reflected in pupils’ school outcomes.

The borough gathered equality information about their residents to understand the barriers faced by students from different backgrounds, and to determine what steps they could take to improve student attainment. This data collection helped the borough identify that the majority of underperforming students came from homes where English was not the first language. Responding to these findings, the borough focused its efforts on improving teaching practice and support in the classroom for those students. Schools also provided breakfast and homework clubs to help young people. In addition, a programme encouraging people in the locality to become teachers strengthened local skills and provided young people with more role models from their area. Investment was further made to encourage and strengthen parental involvement. As a large percentage of borough residents identified as Muslim, mosques in the locality were involved to encourage better attendance at school. By 2012, 62% of children in Tower Hamlets left schools with over five A-Cs at GCSE.

Realising the Right to Religious Expression in School

In determining a discrimination claim, the High Court found that a school's decision not to allow a pupil to wear the Kara – a small plain steel bangle worn by Sikhs, as a visible sign of their identity and faith – at school constituted indirect discrimination on grounds of race and of religion, as well as a breach of the school's equality duty.²¹⁸

The claimant in the case was a 14-year-old Sikh school girl who had been asked by a teacher to remove the bangle because it contravened the school's uniform policy, which in terms of jewellery allowed only one pair of plain stud earrings and a wristwatch (it is noted that the Kara is 5mm wide and is therefore much narrower than a watch strap). She refused to remove the bangle and asked to be exempt from the policy. While her request for an exemption was considered, the claimant was permitted to attend school wearing the Kara on the strict condition that she was taught in isolation and kept segregated from the other pupils. The segregation was strictly enforced, and she was even accompanied to the toilet by a member of staff, who waited outside. Her request for an exemption was refused and when the claimant returned to school wearing the Kara she was given a series of fixed term exclusions.

The Court held that the school's decision not to grant the claimant a waiver to permit her to wear the Kara constituted indirect discrimination on grounds of race and of religion finding that there would be particular disadvantage or detriment if a pupil were forbidden from wearing an item when that young person genuinely believed that wearing it was a matter of exceptional importance to her racial identity or religious

belief, and that wearing of the item could be shown objectively to be of exceptional importance to her religion or race, even if it was not an actual requirement. None of the arguments put forward by the school, which included that there was a possibility that the claimant may be singled out as being different from her peers and that such actions may result in bullying and that wearing of the Kara would give rise to health and safety issues, justified its decision, the Court noting in particular that the Kara was only 5mm wide.²¹⁹

The Court further held that the school had clearly failed to comply with its obligations under the equality duty,²²⁰ finding that race equality issues had played no part in the school's decision-making in relation to the claimant's wish to wear a Kara. Specifically, the Court found that the school's argument that there was a possibility that the claimant would be singled out if she wore the Kara, and that this could result in bullying or similar repercussions, demonstrated an inability to implement a race equality policy and to foster good relations between pupils of different racial groups. The Court stated that the school "should have regarded itself under a clear obligation to avoid bullying by explaining to all pupils why it was so important to the claimant to wear the Kara and why they should be tolerant of her."²²¹

Securing Greater Accessibility for Disabled Students²²²

Equality monitoring information gathered by the Open University in 2011 showed that disabled students were three times more likely to raise a complaint in comparison to non-disabled students and less satisfied with their overall study experience. To remedy this, the university committed to increase the satisfaction of disabled students as part of its equality objectives to support compliance with the PSED. Prior to implementing any policy, the university conducted qualitative research to develop a better understanding of the source and the nature of student dissatisfaction. This revealed that a significant proportion of reasonable accommodation was made retrospectively once courses started. This 'retro-fitting' created uncertainty for students, sometimes leading to delay in obtaining services. The university decided to shift consideration of the needs of disabled students to before and during course development. The Securing Greater Accessibility project was established, setting up the following infrastructure in its first two years:

- Named associate deans were allocated overall responsibility for accessibility in each faculty
- Accessibility specialists were appointed in each faculty to champion accessibility in course development. This included training them in matters related to disability as well as providing them with support when required.
- A central accessibility referrals panel was created to bring experts together to make recommendations on complex cases involving access to the curriculum, accessibility of learning platforms and adjustments for individual students
- A website was launched to provide a central source of advice and guidance to all staff members on issues such as access to audio and visual material, notation in maths, science and music and use of third-party learning materials
- As a result, a student satisfaction survey carried out in 2013 showed that disabled students' overall satisfaction rates increased from 82 percent to more than 84 percent.



Reducing Exclusions Among Black Pupils ²²³

Exclusion from school has a negative effect on the attainment level of students, their mental health and their opportunities. In 2012, a school in London, Preston Manor School, identified that Somali and African Caribbean students were disproportionately given fixed term exclusions. To tackle this issue, the school launched the Black Boys Council (BBC), made up of students from various year groups, to provide them with more opportunities to succeed in school and to become a positive role model for others. For example, BBC members met

with successful Black men from major companies headquartered in London and participated in a business training day that takes place every year at Preston Manor School and which consists of researching, selecting, marketing and selling a product of their choice. BBC members were responsible for reporting back to their peers about these opportunities including by producing a newsletter and an audio-diary every year. The BBC contributed significantly to a decrease in the rate of fixed term exclusions.

Ensuring Sufficient Resources for Children with Special Educational Needs

In a claim brought against Bristol City Council for reducing the budget for special educational needs without consultation, the High Court determined that the Council had breached the PSED.²²⁴

The first claimant, KE, was the mother of the second claimant, IE, a nine-year-old child with significant learning difficulties, physical disabilities and a diagnosis of autism. KE was concerned about the impact of funding cuts on the ability of the Council to fund the kind of early intervention services which might have prevented IE needing to attend an expensive special school and which might have also prevented a deterioration in IE's mental health. The third claimant, CH, was also a child diagnosed with ambivalent attachment disorder and encopresis and was attending a pupil referral unit, an alternative education provision in the UK which is specifically organised to provide education for children who are not able to attend school and may not otherwise receive suitable education. The Council was planning to reduce the budget for such units.

The High Court highlighted that having "due regard" to equality needs requires "analysis of substance not form". It held that there is, by implication, "a duty of inquiry" upon any decision maker who "must take reasonable steps to inquire into the issues, so that the

impact, or likely impact, of the decision upon those of the listed equality needs who are potentially affected by the decision, can be understood." The Court noted, that depending on the context, the level of inquiry may require "no more than an understanding of the practical impact on the people with protected characteristics who are affected by the decision" or may require much more, including consultation.²²⁵

The claimants argued that the decision to reduce the budget carried a duty to consult under the PSED, and that the Council had failed to consult on proposed savings with those directly impacted by the budget, namely children with special educational needs, their carers or others before determining to reduce expenditure in this area. The Court, noting that the decision to reduce the budget amounted to a decision to cut the extent of services to a defined group who were, on the council's own analysis, struggling with the extent of the existing provisions, found that the decision engaged the duty to consult.²²⁶ The Court was also satisfied that the Council had adequate time and sufficiently well formed proposals to consult well prior to the date for setting the budget.²²⁷ It found the Council in breach of the PSED for failing to do so.²²⁸

Endnotes

1. For instance, the Committee on Economic, Social and Cultural Rights has noted that “Non-discrimination and equality are fundamental components of international human rights law and essential to the exercise and enjoyment of economic, social and cultural right.” See General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/20, 2009 (CESCR, General Comment No. 20), Para. 2.
2. OHCHR, Status of Ratification Interactive Dashboard, last visited April 2021, available at: <https://indicators.ohchr.org>.
3. See, for instance, HRC, Concluding Observations: Iceland, UN Doc. CCPR/C/ISL/CO/5, 31 August 2012, Para 6.
4. CESCR, General Comment No. 20, Para 37.
5. Committee on the Rights of Persons with Disabilities, General Comment No. 6: Equality and Non-Discrimination, UN Doc. CPRD/C/ GC/6, 2018, Para 22.
6. See, for instance, Committee on the Elimination of Discrimination against Women, Concluding Observations on Eritrea, UN Doc. CEDAW/C/ERI/CO/6, 2020, Para 13(c); Committee on the Elimination of Racial Discrimination, Concluding Observations on Israel, UN Doc. CERD/C/ISR/CO/17-19, 2020, Para 12.
7. Declaration of Principles on Equality, Equal Rights Trust, London, 2008. The Declaration was drafted and signed in 2008 by 128 human rights and equality experts the Equal Rights Trust convened from over 40 different nation. It has been endorsed or cited at a judicial or legislative level in a number of jurisdictions. The Declaration’s conceptual framework and principles have been reflected in interpretive statements on the right to non-discrimination by UN Treaty Bodies, including the CESCR in its General Comment 20, the Committee for the Elimination of Discrimination Against Women in its General Recommendation 28 (General Recommendation No. 28: The Core Obligations of States parties Under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, UN Doc. CEDAW/C/GC/28, 2010) and most recently the Committee on the Rights of Persons with disabilities in its General Comment 6 (General Comment No. 6: Equality and Non-Discrimination, UN Doc. CRPD/C/GC/6, 2018). The Parliamentary Assembly of the Council of Europe has adopted a Recommendation calling on Member States to implement the Declaration in their domestic law and policies (see Parliamentary Assembly of the Council of Europe, The Declaration of Principles on Equality and activities of the Council of Europe, Recommendation 1986 (2011), 25 November 2011).
8. Declaration of Principles on Equality, Principles 5 and 13.
9. Ibid., Principle 5.
10. Ibid., Principles 8, and 10.
11. Ibid., Principles 18-21.
12. Ibid., Principle 22.
13. Ibid., Principle 3.
14. See Equal Rights Trust, Presentation Delivered to the Special Rapporteur on the Right to Development Concerning Good Practices in Respect of the Practical Implementation of the Right to Development, 2018, available at: <http://www.equalrightstrust.org/ertdocumentbank/Equal%20Rights%20Trust%20-%20Presentation%20for%20Consultation%20by%20Special%20Rapporteur%20on%20Right%20to%20Development%20FINAL.pdf>.
15. See Human Rights Council, Report of the Special Rapporteur on the Right to Development, UN Doc. A/HRC/42/38, 2019, Paras 147-148.
16. Ibid., Para 148.
17. See, for example: Law on Gender Equality in Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, No. 16/03 and 102/09; Law on the Rights of National Minorities, Official Gazette of Bosnia and Herzegovina, No. 12/03; Law on the Rights of Veterans and their Families in the Federation of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, No. 33/04 and 56/05.

18. Equal Rights Trust, Interview with Adnan Kadribašić, Independent Equality and Non-Discrimination Expert, Bosnia and Herzegovina, 10 February 2021.
19. Ibid.
20. Fedorovych, I., "Anti-Discrimination Legislation in Ukraine – Box Ticking for the EU or Real Reforms to Ensure Equality for Ukraine's Citizens?", International Renaissance Foundation, December 2016, available at: https://rpr.org.ua/wp-content/uploads/2017/02/Renaissance_A4_1Discrimination.pdf.
21. Equal Rights Trust, In the Crosscurrents: Addressing Discrimination and Inequality in Ukraine, London, August 2015, available at: <https://www.equalrightstrust.org/sites/www.equalrightstrust.org/files/ertdocs/In%20the%20Crosscurrents%20Addressing%20Discrimination%20and%20Inequality%20in%20Ukraine.pdf>.
22. The Equal Rights Trust assesses that the Law, while imperfect, can be considered a comprehensive anti-discrimination law. See: Equal Rights Trust, In the Crosscurrents: Addressing Discrimination and Inequality in Ukraine, London, August 2015, available at: <https://www.equalrightstrust.org/sites/www.equalrightstrust.org/files/ertdocs/In%20the%20Crosscurrents%20Addressing%20Discrimination%20and%20Inequality%20in%20Ukraine.pdf>, Page XIV.
23. Visa Liberalization Action Plan (VLAP) sets out a series of benchmarks to be achieved in order to allow visa-free access to the EU. See, for example: European Commission, "Visa liberalisation with Moldova, Ukraine and Georgia", n.d., available at: https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/visa-liberalisation-moldova-ukraine-and-georgia_en.
24. Fedorovych, I., "Anti-Discrimination Legislation in Ukraine – Box Ticking for the EU or Real Reforms to Ensure Equality for Ukraine's Citizens?", International Renaissance Foundation, December 2016, available at: https://rpr.org.ua/wp-content/uploads/2017/02/Renaissance_A4_1Discrimination.pdf, Page 3.
25. See, for example: United Nations General Assembly, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Mission to Bolivia, 18 February 2009, A/HRC/11/11, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/109/15/PDF/G0910915.pdf?OpenElement>, Page 6-7.
26. United Nations General Assembly, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, Mission to Bolivia, 18 February 2009, A/HRC/11/11, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/109/15/PDF/G0910915.pdf?OpenElement>, Page 16.
27. Comunidad de Derechos Humanos, Balance de la Implementación de la Ley Contra el Racismo y Toda Forma de Discriminación Ley No. 045, 2020, Page 17.
28. Fedorovych, I., "Anti-Discrimination Legislation in Ukraine – Box Ticking for the EU or Real Reforms to Ensure Equality for Ukraine's Citizens?", International Renaissance Foundation, December 2016, available at: https://rpr.org.ua/wp-content/uploads/2017/02/Renaissance_A4_1Discrimination.pdf, Page 2.
29. See, for example: Fedorovych, I., "Anti-Discrimination Legislation in Ukraine – Box Ticking for the EU or Real Reforms to Ensure Equality for Ukraine's Citizens?", International Renaissance Foundation, December 2016, available at: https://rpr.org.ua/wp-content/uploads/2017/02/Renaissance_A4_1Discrimination.pdf; Equal Rights Trust, Interview with Iryna Fedorovych, Deputy Head of the Social Action Center (NGO), 15 February 2021.
30. Equal Rights Trust, Interview with Iryna Fedorovych, Director of the Social Action Centre (NGO), 15 February 2021.
31. Ibid.
32. Ketevan Shubashvili, Head of Equality Department, Office of the Public Defender of Georgia, 27 February 2021 (Provided to the Equal Rights Trust).
33. Ibid.
34. See, for example: Equal Rights Trust, Equality in Practice: Implementing Serbia's Equality Laws, London, January 2019, available at: https://www.equalrightstrust.org/ertdocumentbank/Serbia%20report_EN.pdf, Page 34 – 39.
35. Equal Rights Trust, Interview with Kosana Beker, Former Assistant to the Commissioner for the Protection of Equality in Serbia (2010–2016), 23 February 2021.
36. Ibid.

37. Ibid.
38. Ibid.
39. Equal Rights Trust, *Equality in Practice: Implementing Serbia's Equality Laws*, London, January 2019, available at: https://www.equalrightstrust.org/ertdocumentbank/Serbia%20report_EN.pdf, Page 1.
40. Equal Rights Trust, Interview with Kosana Beker, Former Assistant to the Commissioner for the Protection of Equality in Serbia (2010–2016), 23 February 2021.
41. Equal Rights Trust, Interview with Mónica Bayá, Secretaria Técnica, Comunidad de Derechos Humanos, 15 February 2021.
42. Ibid.
43. Ibid.
44. Ibid.
45. The Starting Line Group was a coalition of more than 400 non-governmental actors from across the European Union, advocating for the adoption of EU directives in the field of non-discrimination.
46. Equal Rights Trust, Interview with Adnan Kadribašić, Independent Equality and Non-Discrimination Expert, Bosnia and Herzegovina, 10 February 2021.
47. Ibid.
48. Ibid.
49. Ibid.
50. Ibid.
51. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
52. Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.
53. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).
54. Equal Rights Trust, Interview with Mónica Bayá, Secretaria Técnica, Comunidad de Derechos Humanos, 15 February 2021.
55. Ketevan Shubashvili, Head of Equality Department, Office of the Public Defender of Georgia, 27 February 2021 (Provided to the Equal Rights Trust).
56. Ibid.
57. Ibid.
58. Equal Rights Trust, *In the Crosscurrents: Addressing Discrimination and Inequality in Ukraine*, London, August 2015, available at: <https://www.equalrightstrust.org/sites/www.equalrightstrust.org/files/ertdocs/In%20the%20Crosscurrents%20Addressing%20Discrimination%20and%20Inequality%20in%20Ukraine.pdf>, Page 307 – 309.
59. Equal Rights Trust, Interview with Kosana Beker, Former Assistant to the Commissioner for the Protection of Equality in Serbia (2010–2016), 23 February 2021.
60. Ibid.
61. Equal Rights Trust, Interview with Adnan Kadribašić, Independent Equality and Non-Discrimination Expert, Bosnia and Herzegovina, 10 February 2021.
62. Kadribašić, A., "Developing Equality Legislation in Divided Societies: the Case of Bosnia and Herzegovina," *The Equal Rights Review*, Vol. Ten, Equal Rights Trust (2013).
63. "Two schools under one roof" refers to the practice of two distinct schools serving children of different ethnic

- groups operating within the same building. Established as a temporary measure to encourage the return of refugees and displaced persons in period following the 1990s conflict, the practice became permanent. See: OSCE Mission to Bosnia and Herzegovina, ““Two Schools Under One Roof”: The Most Visible Example of Discrimination in Education in Bosnia and Herzegovina”, November 2018, available at: <https://www.osce.org/files/f/documents/3/8/404990.pdf>, Page 4.
64. Kadribašić, A., “Developing Equality Legislation in Divided Societies: the Case of Bosnia and Herzegovina,” *The Equal Rights Review*, Vol. Ten, Equal Rights Trust (2013). The Court found that the school’s policies to separate children by having them attend different classes as well as manipulating school breaks so as to make it impossible for ethnically different children to ever meet constituted ethnic segregation and ordered the schools to change this practice. It is noted that the guidelines introduced have not had the full desired impact as the Ministry has no competencies over the decentralised school system.
 65. Equal Rights Trust, Interview with Adnan Kadribašić, Independent Equality and Non-Discrimination Expert, Bosnia and Herzegovina, 10 February 2021.
 66. The evaluation of the 2020 Action Plan shows that the chapter related to discrimination was the least implemented of the Plan, with almost 0% of the tasks being completed in four years. See: <http://hro.org.ua/index.php?id=1590308681>.
 67. See, for example, discussion of the “special protection” provisions of the Serbian Constitution in Equal Rights Trust, *Equality in Practice: Implementing Serbia’s Equality Laws*, London, January 2019, pp. 37-38, available at: https://www.equalrightstrust.org/ertdocumentbank/Serbia%20report_EN.pdf.
 68. Equal Rights Trust, Interview with Mónica Bayá, Secretaria Técnica, Comunidad de Derechos Humanos, 15 February 2021.
 69. Equal Rights Trust, *Equality in Practice: Implementing Serbia’s Equality Laws*, London, January 2019, available at: https://www.equalrightstrust.org/ertdocumentbank/Serbia%20report_EN.pdf, Page 81.
 70. Ketevan Shubashvili, Head of Equality Department, Office of the Public Defender of Georgia, 27 February 2021 (Provided to the Equal Rights Trust).
 71. A list of these organisations is available at: <http://praxis.org.rs/images/Potpisnici%20saoptenja.pdf>.
 72. European Commission, *IPA Multi-Country Programmes Activity Report July - December 2019*, 2019, p. 67, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/activity_report_july-december_2019.pdf.
 73. See: Public Defender (Ombudsman) of Georgia, *Public Defender’s Mandate Strengthened relating to Cases of Discrimination*, 8 May 2019, available at: <https://www.ombudsman.ge/eng/akhali-ambebi/diskriminatsiis-sakmeebze-sakhalkho-damtsvelis-mandati-gadzlierda>.
 74. Equal Rights Trust, Interview with Kosana Beker, Former Assistant to the Commissioner for the Protection of Equality in Serbia (2010–2016), 23 February 2021.
 75. Dumiso Gatsha, Founder, Success Capital, 24 February 2021 (Provided to the Equal Rights Trust).
 76. Lusine Karamyan and Nvard Piliposyan, President and Legal Specialist, Non-Discrimination and Equality Coalition (NDEC), 24 February 2021 (Provided to the Equal Rights Trust).
 77. Ibid.
 78. Wilnor Papa, Human Rights Officer, Amnesty International Philippines, 12 March 2021 (Provided to the Equal Rights Trust).
 79. Ibid.
 80. Ibid.
 81. Ibid.
 82. Ibid.
 83. Lusine Karamyan and Nvard Piliposyan, President and Legal Specialist, Non-Discrimination and Equality Coalition (NDEC), 24 February 2021 (Provided to the Equal Rights Trust).
 84. Ibid.
 85. Equal Rights Trust, Interview with Tarunabh Khaitan, Professor of Public Law and Legal Theory and a Vice

Dean at the Faculty of Law, University of Oxford, 19 February 2021.

86. Ibid.
87. Ibid.
88. Equal Rights Trust, Interview with Jayna Kothari, Executive Director, Centre for Law and Policy Research, 18 February 2021; Equal Rights Trust, Interview with Tarunabh Khaitan, Professor of Public Law and Legal Theory and a Vice Dean at the Faculty of Law, University of Oxford, 19 February 2021.
89. Equal Rights Trust, Interview with Jayna Kothari, Executive Director, Centre for Law and Policy Research, 18 February 2021.
90. Equal Rights Trust, Interview with Jayna Kothari, Executive Director, Centre for Law and Policy Research, 18 February 2021. See Equality Bill 2021: Takes a New Step in Addressing Discrimination, Recognising Intersectionality & Promoting Equality, available at: <https://clpr.org.in/publications/equality-bill-2020/>.
91. Dionara Anjos, Independent Consultant, Equality and Non-Discrimination, 16 February 2021.
92. Ibid.
93. Dumiso Gatsha, Founder, Success Capital, 24 February 2021 (Provided to the Equal Rights Trust).
94. Ibid.
95. Equal Rights Trust, Interview with Jayna Kothari, Centre for Law and Policy Research, 18 February 2021; Equal Rights Trust, Interview with Tarunabh Khaitan, 19 February 2021.
96. Equal Rights Trust, Interview with Shreya Atrey, Associate Professor in International Human Rights Law, University of Oxford, 16 March 2021.
97. Wilnor Papa, Human Rights Officer, Amnesty International Philippines, 12 March 2021 (Provided to the Equal Rights Trust).
98. Ibid.
99. Ibid.
100. Lusine Karamyan and Nvard Piliposyan, President and Legal Specialist, Non-Discrimination and Equality Coalition (NDEC), 24 February 2021 (Provided to the Equal Rights Trust).
101. Ibid.
102. Nadira Masiumova, Head of Advocacy and Human Rights Department, Kyrgyz Indigo, 20 February 2021.
103. Ibid.
104. Ibid.
105. Ibid.
106. See: the Government of the Kyrgyz Republic, Voluntary National Review on the Implementation of the Sustainable Development Goals in the Kyrgyz Republic, Bishkek, 2020, available at: https://sustainabledevelopment.un.org/content/documents/26459VNR_2020_Kyrgyzstan_Report_English.pdf, Page 86; Nadira Masiumova, Head of Advocacy and Human Rights Department, Kyrgyz Indigo, 20 February 2021.
107. Equal Rights Trust, Interview with Jayna Kothari, Centre for Law and Policy Research, 18 February 2021.
108. Lusine Karamyan and Nvard Piliposyan, President and Legal Specialist, Non-Discrimination and Equality Coalition (NDEC), 24 February 2021 (Provided to the Equal Rights Trust).
109. Ibid.
110. Ibid.
111. Nadira Masiumova, Head of Advocacy and Human Rights Department, Kyrgyz Indigo, 20 February 2021.
112. Ibid.
113. Chapter 2, Section 9(4).
114. Preamble, The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000.

115. In addition to these treaties, South Africa has also signed and ratified other key human rights treaties such as CCPR, CESC, CRPD and the African Charter on Human and Peoples' Rights, which protect equality and prohibit discrimination.
116. Although draft regulations regarding 'Promotion of Equality' (chapter 5) have been published for comment, they have not been given legal effect yet. See Kok, A., Xaso, L., Steenekamp, A., and Oelofse, M., "The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000: Proposals for Legislative Reform to Promote Equality through Schools and the Education System," *Erasmus Law Review*, 3, 2020, Page 49-64.
117. Sects. 1(viii) and 1(xxii).
118. Sect. 29. Schedule.
119. See Ch. 2 of the Act.
120. Sects. 1(viii) and 1(xiii).
121. See sects. 7, 8 and 9.
122. Sects. 16 and 21.
123. Sects. 4 and 17. Kaersvang, D., "Equality Courts in South Africa: Legal Access for the Poor," *The Journal of the International Institute*, Volume 15, Issue 2: The Africa Issue, Spring 2008.
124. Sect. 20. Proceedings can also be instituted by an association acting in the interests of its members, or by the South African Human Rights Commission or the Commission for Gender Equality.
125. Sect. 13.
126. Declaration of Principles of Equality, Principle 21.
127. Keehn, E. N., "The Equality Courts as a Tool for Gender Transformation," available at: https://escholarship.org/content/qt1ms61553/qt1ms61553_noSplash_a09f8d08d80f6b092e02247da12ca35e.pdf.
128. Ibid.
129. Pants ban prohibited in Umlazi, News24, 9 April 2008, available at: <https://www.news24.com/news24/pants-ban-prohibited-in-umlazi-20080409>; Pants ban victims speaks, 16 May 2011, Independent Online, available at: <https://www.iol.co.za/news/south-africa/kwazulu-natal/pants-ban-victims-speaks-1069352>.
130. Ibid.
131. *Sonke Gender Justice Network v. Julius Malema*, 2010 (7) BCLR 729 (EqC).
132. Ibid. The words in question were: "...When a woman didn't enjoy it, she leaves early in the morning. Those who had a nice time will wait until the sun comes out, requests breakfast and taxi money. In the morning that lady requested breakfast and taxi money. You don't ask for taxi money from somebody who raped you....".
133. *Strydom v. Nederduitse Gereformeerde Gemeente Moreleta Park*, (2009) 30 ILJ 868 (EqC).
134. Ibid., Paras 16, 17.
135. Ibid., Para 26.
136. *September v. Subramoney and Others*, [2019] 4 All SA 927 (WCC).
137. Ibid., Paras 138 - 141.
138. Sects. 16 and 31.
139. DoJ, Annual Report 2009-2010, available at: <https://www.justice.gov.za/reportfiles/anr2009-10.pdf>, p. 21.
140. DoJ, List of Designated Equality Courts, available at: https://www.justice.gov.za/EQCact/eqc_courts.html; Keehn, E.N, Bohler-Muller, N, "The Promise of Equality Courts," *South African Journal on Human Rights* Volume 22, 2006 - Issue 3; Naylor, N., "Constructing and Deconstructing the Rainbow Nation: The South African Equality Experience 1996-2009," *South-South Symposium on Constitutional Design for Diversity and Conflict* Jakarta, Indonesia – October 2009, Session 6: Delivering Equality and Non-Discrimination, available at: https://constitutionnet.org/sites/default/files/Nikki_%20Nov%202009.pdf; Krüger, R, "Small Steps to Equal Dignity: The Work of the South African Equality Courts," *Equal Rights Review*, Vol. Seven, Equal Rights Trust, 2011.
141. Bilchitz, D., and Du Toit, L., "Chapter 3: Fundamental rights in South Africa's Constitution" in *South*

African Institute for Advanced Constitutional, Public, Human Rights and International Law, Addressing the Performance of South Africa's Constitution, pp. 24-25; Emily N Keehn, p. 8: 'The structure of Equality Courts is such that officials take on equality cases in addition to their existing civil and criminal dockets. This can lead to low prioritisation of, and low interest in, Equality Court cases....'

142. Holness, W. and Rule, S., Barriers to Advocacy and Litigation in the Equality Courts for Persons with Disabilities, Potchefstroom Electronic Law Journal (PELJ), 17(5), 1907, Page 1912-1913.
143. Id.: 'The Institute for Democracy in South Africa was able to locate only 43 of the 220 designated Equality Courts when it did a study on the functioning of Equality Courts in October 2004.'
144. South African Human Rights Commission, Equality Report, 2012, available at: <http://www.sahrc.org.za/home/21/files/Equality%20Report%2020%20Oct%202012%20Final.pdf> , Page 18-19. These observations were made in the context of a study that examined five Equality Courts per province so as to develop a basis to evaluate the functioning of Equality Courts. For an overview of the study and its findings, see David Bilchitz and Linette Du Toit, Page 8-9.
145. Committee on the Elimination of Racial Discrimination, Ninetieth session, Summary record of the 2461st meeting (CERD/C/SR.2461).
146. Section 32 of The Constitution Act 1982.
147. Section 91 of The Constitution Act 1867.
148. Bruce Ryder, 'The Strange Double Life of Canadian Equality Rights' (2013) The Supreme Court Law Review 216; Claire Mimme, 'At the Crossroads in Discrimination Law: How Human Rights Codes Overtook the Charter in Canadian Government Service Cases' (2012) 9 Journal of Law and Equality 103; Denise Reaume, 'Defending the Human Rights Codes from the Charter' (2012) 9 Journal of Law and Equality 67; A Wayne MacKay, 'The Marriage of Human Rights Codes and Section 15 of the Charter' (2013) 64 University of New Brunswick Law Journal 54.
149. [1998] 1 SCR 493.
150. At the time of the decision, the Act was called the Individual's Rights Protection Act RSA 1980 c I-2.
151. Vriend (n 4) [76] citing Eldridge v British Columbia (Attorney General) [1997] 3 SCR 624 [73].
152. Ibid [77].
153. Ibid [84].
154. Ibid [100].
155. Ibid.
156. New State Ice Co v Liebmann (1932) 285 US 262, 311 (US Supreme Court).
157. Race, national or ethnic origin, religion, age, physical or mental disability, sex and gender, sexual orientation and marital or family status.
158. Andrews v Law Society of British Columbia [1989] 1 SCR 143; Egan v Canada [1995] 2 SCR 513; Nova Scotia (Attorney General) v Walsh [2002] 4 SCR 325; Corbiere v Canada (Minister of Indian and Northern Affairs) [1999] 2 SCR 203.
159. Rosalind Dixon, 'The Supreme Court of Canada Constitutional (Equality) Baselines' (2013) 50(3) Osgoode Hall Law Journal 637.
160. Canadian Centre for Diversity and Inclusion, 'Overview of Human Rights Codes by Province and Territory in Canada' (2018) <<https://ccdi.ca/media/1414/20171102-publications-overview-of-hr-codes-by-province-final-en.pdf>> accessed 23 February 2013.
161. Only in the context of employment; s13 of (British Columbia) Human Rights Code RSBC 1996 Chapter 210.
162. Only in context of employment; s5 of (Ontario) Human Rights Code RSO 1990 c H19.
163. Only for pardoned criminal convictions or record suspension; preamble (Northwest Territories) Human Rights Act SNWT 2002 c 18.
164. Only for a conviction for which a pardon has been granted; s7(1) of the (Nunavut) Human Rights Act SNU

165. Only for a conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered; s3(1) of Canadian Human Rights Act RSC 1985 c H-6.
166. Only in context of tenancy, s10(1) (British Columbia) Human Rights Code.
167. Only in the context of accommodation, s2 of the (Ontario) Human Rights Code.
168. Jessica Eisen, 'On Shaky Grounds: Poverty and Analogous Grounds Under the Charter' (2013) 2 Canadian Journal of Poverty Law 1.
169. Section 1 of the (Manitoba) Human Rights Code CCSM c H175.
170. Section 1 of (Northwest Territories) Human Rights Act.
171. Newfoundland and Labrador Human Rights Commission, 'Frequently Asked Questions' <<https://thinkhumanrights.ca/education-and-resources/frequently-asked-questions/>> accessed 23 February 2021.
172. Richard Albert, 'The Difficulty of Constitutional Amendment in Canada' (2015) 53(1) Alberta Law Review 85.
173. *Corbiere v Canada* (Minister of Indian and Northern Affairs) [1999] 2 SCR 203 Para 8.
174. Peter Hogg, *Constitutional Law of Canada* (Retuers 2017) 5-14.
175. Asociación por los Derechos Civiles (ADC), *Ley 23.595 de Actos Discriminatorios de 1988*, 2017, available at: <https://identidadydiversidad.adc.org.ar/normativa/ley-23-592-actos-discriminatorios-1988/>.
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179. García, M. I., *La construcción de "lo afro" por parte del Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI). Un estudio centrado en la Ciudad de Buenos Aires*, 2017.
180. Andia, M. G., *Disadvantaged Groups, the Use of Courts, and Their Impact – A Study of Legal Mobilization in Argentina Through the LGBT Movement*. Available at SSRN 1664178, 2010.
181. Asociación por los Derechos Civiles (ADC), *El camino hacia los derechos: la evolución de la jurisprudencia en materia LGBT*, available at: <https://identidadydiversidad.adc.org.ar/wp-content/uploads/2017/05/Derechos-LGBT-Informe-Jurisprudencia.pdf>.
182. Natalia, L. M., & de la FDCS, D. L. U. *Una criminalización con historia y una historia de criminalización. La diversidad sexual en los Códigos de Faltas Provinciales de Argentina. Ciudadanía, democracia y sexualidad*, 175.
183. Federación Argentina de Lesbianas, Gays, Bisexuales y Trans (FALGBT), *La Fulana*, la Mesa Nacional por la Igualdad, la Asociación de Travestis, Transexuales, Transgénero de Argentina (ATTTA), el Frente de Migrantes Organizados, la Sociedad de Socorros Mutuos Unión Caboverdeana, la Agrupación de Agricultores Cannábicos Argentinos (AACA), la Coalición Argentina por un Estado Laico (CAEL), el Frente Nacional por la Igualdad del Movimiento Evita".
184. Mesa por la Igualdad, *Aprobación de la Ley contra la Discriminación en CABA*, 9 April 2015, available at: <http://mesaporlaigualdad.blogspot.com/p/quienes-somos.html>.
185. *Ibid*, Art. 13.
186. Declaration of Principles on Equality, Principle 23.
187. In addition to comprehensive anti-discrimination legislation, there is a certain degree of protection in Moldova's Constitution, two further pieces of legislation which specifically seek to tackle inequality on the basis of gender and disability respective, and a variety of standalone non-discrimination provisions within pieces of legislation regulating various fields of activity. For an analysis of these provisions, see: *From Words to Deeds*:

Addressing Discrimination and Inequality in Moldova, Equal Rights Trust, London, 2016 (From Words to Deeds), Page 242-292.

188. Ibid, Page 250.
189. Ibid, Page 256.
190. Interview with Evghenii Alexandrovici Goloșceapov, LL.M., Member of the Equality Council, provided to the Equal Rights Trust, March 2021.
191. That time in Moldova the State retirement age was 57 years for women and 62 years for men. See, Council on Preventing and Combating Discrimination and Ensuring Equality of the Republic of Moldova, Case no. 030/2013, decision of 13/02/2014, available at: http://egalitate.md/wp-content/uploads/2016/04/decizie_fin_conf_cauza_nr_030_catre_das_si_mmpsf_2330661.pdf.
192. Ibid.
193. Council on Preventing and Combating Discrimination and Ensuring Equality of the Republic of Moldova, Case no. 021/2013, decision of 27/12/2013, available at: http://egalitate.md/wp-content/uploads/2016/04/decizie_2conf_din_27_12_2013_in_cauza_021_2013_t_r_3861503.pdf.
194. Ibid.
195. See, for example: Council on Preventing and Combating Discrimination and Ensuring Equality of the Republic of Moldova, Case no. 036/2018, decision of 02/08/2018, available at: http://egalitate.md/wp-content/uploads/2016/04/Decizie_constatare_36_2018.pdf; Case no. 037/2018, decision of 23/08/2018, available at: http://egalitate.md/wp-content/uploads/2016/04/Decizie_constatare_37_2018.pdf.
196. The Equality Council has latterly identified a concerning increase in non-compliance with its decisions, underscoring the need for the Moldovan State to reinforce the powers of the Council. See, Interview with Evghenii Alexandrovici Goloșceapov, LL.M., Member of the Equality Council, provided to the Equal Rights Trust, March 2021.
197. See, From Words to Deeds, Page 255-6; Interview with Evghenii Alexandrovici Goloșceapov, LL.M., Member of the Equality Council, provided to the Equal Rights Trust, March 2021.
198. See, for example, Council on Preventing and Combating Discrimination and Ensuring Equality of the Republic of Moldova, Case no. 041/2013, decision of 24/02/2014, available at: http://egalitate.md/wp-content/uploads/2016/04/decizia_cauza_041_autosesizarea_anunturi_discriminatorii_4412343.pdf; Council on Preventing and Combating Discrimination and Ensuring Equality of the Republic of Moldova, Case no. 041/2017, decision of 13/06/2017, available at: http://egalitate.md/wp-content/uploads/2016/04/Draft_Decizie_41_2017_constatare_votat_expediatDEPERS.pdf; Council on Preventing and Combating Discrimination and Ensuring Equality of the Republic of Moldova, Case no. 079/2017, decision of 23/08/2017, available at: http://egalitate.md/wp-content/uploads/2016/04/Draft_Decizie_79_2017_constatare_votat_sem.pdf.
199. Interview with Evghenii Alexandrovici Goloșceapov, LL.M., Member of the Equality Council, provided to the Equal Rights Trust, March 2021.
200. Ibid.
201. Ibid.
202. Citizens entering the country by air were required to provide proof of payment for health insurance as a condition for their right to return (a restriction which did not apply to those travelling by land). See, Commission for Emergency Situations of the Republic of Moldova, Decision No. 10 of 31st March 2020, available at: https://gov.md/sites/default/files/rasporyazhenie_no_10_ot_31_marta_2020_g_komissii_po_chrezvychaynym_situaciyam_respubliki_moldova_2.pdf.
203. The Council advised that all citizens returning to Moldova should be able to return on the basis of a declaration of responsibility regarding the obligation to pay the insurance. See, Council on Preventing and Combating Discrimination and Ensuring Equality of the Republic of Moldova, Advisory Opinion of 3rd April 2020, available at: http://egalitate.md/wp-content/uploads/2016/04/03_04_2020_Aviz_asig_med-final_1.pdf.
204. Commission for Emergency Situations of the Republic of Moldova, Decision No. 13 of 3rd April 2020, available at: https://gov.md/sites/default/files/rasporyazhenie_no_13_ot_03_aprelya_2020_g_komissii_po_chrezvychaynym_situaciyam_respubliki_moldova.pdf.
205. Interview with Evghenii Alexandrovici Goloșceapov, LL.M., Member of the Equality Council, provided to the

206. See, amendment of 27/07/2018 to the Law on the Status of the Military Persons No. 163/2005, available at: https://www.legis.md/cautare/getResults?doc_id=110385&lang=ro#; amendment of 27/12/2019 to the Decision of the government No. 941/2006 For the approval of the Regulation on the performance of military service in the Armed Forces, available at: https://www.legis.md/cautare/getResults?doc_id=119717&lang=ro.
207. Council on Preventing and Combating Discrimination and Ensuring Equality of the Republic of Moldova, Advisory Opinion of 30th March 2018, available at: <http://egalitate.md/wp-content/uploads/2016/04/Aviz-consultativ-30-martie.pdf>.
208. See, Council on Preventing and Combating Discrimination and Ensuring Equality of the Republic of Moldova, Ghid Practic pentru angajatorii din sectorul privat la întocmirea anunțurilor de recrutare, Chișinău, 2017, available at: http://egalitate.md/wp-content/uploads/2016/04/Ghid-practic_pentru-web.pdf; Council on Preventing and Combating Discrimination and Ensuring Equality of the Republic of Moldova, Ghid practic pentru angajatori în vederea prevenirii manifestărilor discriminatorii în cadrul interviurilor de angajare, Chișinău, 2017, available at: http://egalitate.md/wp-content/uploads/2016/04/Pliant_WEB.pdf.
209. Interview with Evghenii Alexandrovici Goloșceapov, LL.M., Member of the Equality Council, provided to the Equal Rights Trust, March 2021.
210. Ibid.
211. For further discussion of the history and sources of equality law in the UK see Allen QC, R. "Introduction and Background" in Blackstone's Guide to the Equality Act 2010, Fourth Edition, edited by Robinson, A., Ruebain, D. and Uppal, S. Oxford University Press, 2021.
212. The Stephen Lawrence Inquiry, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf.
213. All public authorities in England, Wales and Scotland are subject to the PSED in the Equality Act 2010. Public authorities in Northern Ireland are subject to a similar equality duty under section 75 of the Northern Ireland Act 1998.
214. [2008] EWHC 3158. Brown concerned the PSED contained in earlier legislation, s.49A of the Disability Discrimination Act 1995. The wording mirrors that integrated in s.149 of the Equality Act 2010.
215. Ibid. Paras 90-96. For further discussion, see also Prince, L., "The Public Sector Equality Duty and the Socio-Economic Duty" in Blackstone's Guide to the Equality Act 2010, supra note 210.
216. See para. 484 of the Equality Act 2010 Explanatory Notes, available at: <https://www.legislation.gov.uk/ukpga/2010/15/notes/contents>.
217. Case study shared from the website of the Equality and Human Rights Commission, Great Britain's national equality body. The full case study is available at <https://www.equalityhumanrights.com/en/advice-and-guidance/education-case-studies>.
218. R (on the application of Watkins-Singh) v (1) Governing body of Aberdare Girls' High School (2) Rhondda Cynon Taf Unitary Authority [2008] EWHC 1865 (Admin).
219. Ibid., Para. 92.
220. Ibid., Paras 121-123. It is noted that this case precedes the adoption of the Equality Act 2010 and this was decided under the Race Relations Act (RRA) 1976. The wording of s.71 RRA 1976 mirrors that integrated in s.149 of the Equality Act 2010.
221. Ibid., Paras. 115-116.
222. Case study shared from the website of the Equality and Human Rights Commission. The full case study is available at <https://www.equalityhumanrights.com/en/advice-and-guidance/education-case-studies>.
223. Ibid.
224. R (on the application of KE, IE, CH) v Bristol City Council, [2018] EWHC 2103 Admin.
225. Ibid., Para 52.
226. Ibid., Para 91.
227. Ibid., Para 94.
228. Ibid., Paras 104-106.

The Equal Rights Trust is an international non-governmental organisation, which exists to eliminate all forms of discrimination and ensure that everyone can participate in society on an equal basis. We work in partnership with equality defenders – civil society organisations, lawyers and legislators, advocates, academics, activists and others using the law to create an equal world. We provide them with the legal, practical, technical and strategic support necessary to secure the adoption, enforcement and implementation of comprehensive equality laws.

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