



EQUAL RIGHTS TRUST

Equal Rights Trust

“No One Left Behind: An Equal Rights Approach to Sustainable Development”

Presented as part of the regional consultation of the Special Rapporteur on the right to development concerning good practices in respect of the practical implementation of the right to development

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Introduction

The Equal Rights Trust is grateful for the opportunity to take part in this consultation on the practical implementation of the right to development. We are an independent international organisation whose mission is to eliminate discrimination and ensure that everyone can participate in society on an equal basis. We work in partnership with equality defenders around the world to secure the adoption and implementation of equality laws.

In this presentation I explain why we consider it to be essential that states adopt and effectively implement comprehensive equality laws, if they are to meet their obligations under the Sustainable Development Goals (SDGs) achieve the ultimate goal of ensuring that “no one is left behind”.

Equality and the Sustainable Development Goals

It has been widely recognised that the predecessor to the SDGs, the Millennium Development Goals (MDGs) largely failed to tackle the issue of inequality.¹ Indeed, the UN Task Team on the post-2015 development agenda acknowledged that “despite many of the successes of the MDGs, they have not managed to integrate all principles outlined in the Millennium Declaration, including equality.”²

The SDGs represent an important and welcome step forward: equality has been placed at the heart of the framework, as reflected in the commitment to “leave no one behind”.³ The clearest manifestation of this commitment is in Goal 10, which commits states to “reduce inequality within and between countries” through seven concrete targets. Goal 5 commits states to achieve

¹ See, for example; Kabeer, N., *Can the MDGs provide a pathway to social justice? The challenge of intersecting inequalities*, Institute of Development Studies and the MDG Achievement Fund, 2010, p. 11; Save the Children, *Born Equal: How reducing inequality could give our children a better future*, 2012, p. 5; Evans, J. and Kiasing, A., *Discrimination, Inequality and Poverty – A Human Rights Perspective*, Human Rights Watch, 2012, p. 2. For a broader discussion on this point, see: Fitzgerald, J., “No One Left Behind: Equality Law and the Sustainable Development Goals”, *Equal Rights Review*, Vol 13, 2014, p. 80, available at: <http://www.equalrightstrust.org/ertdocumentbank/ERR%2013%20-%20Fitzgerald.pdf>.

² UN System Task Team on the Post-2015 Development Agenda, *Addressing inequalities: The heart of the post-2015 agenda and the future we want for all: Thematic Think Piece*, May 2012, p. 3;

³ United Nations, *Transforming our world: the 2030 Agenda for Sustainable Development*, UN Doc A/RES/70/1, October 2015, available at: <https://sustainabledevelopment.un.org/post2015/transformingourworld>.

gender equality and empower all women and girls. A commitment to equality is also reflected in target 16B, which highlights the need for “non-discriminatory laws and policies for sustainable development” as an essential element of the framework for effective development. More broadly, the importance of equality can be seen in the significant number of other Goals which are aimed at tackling inequalities in other areas of development, such as target 4.1 to ensure that “all girls and boys complete free, equitable and quality primary and secondary education”. These latter commitments are underpinned by the focus on disaggregation of data to measure progress towards the SDGs across different social groups and “ensure that no one is left behind”.⁴

However, while we welcome states’ commitment to addressing inequality in the SDG framework, we are concerned that there has not yet been sufficient focus on how to operationalise it. In particular, we are concerned at the lack of recognition of the role of equality law in achieving the SDGs, both as a target in itself, and as a means to accelerate progress towards a wide range of other goals and targets.

Our research, consultation and analysis suggests that comprehensive and effective equality laws – laws which almost every state in the world is already under an international human rights law obligation to adopt – can provide a powerful means to achieve development ends. To take just three examples, such laws:

- Provide a means for individuals and communities to challenge the discriminatory barriers which frustrate their access to the resources necessary for their development, such as schools and hospitals;
- Require governments to assess the equality impact of their investment, development and public service policies and programmes;
- Necessitate the collection of data on the position of different groups in society, and the adoption of positive action (affirmative action) measures to address substantive inequalities.

The Equal Rights Approach to Development

As I will demonstrate, if states are to meet their SDGs and fulfil the aspiration that “no one is left behind”, they must adopt what we term an “equal rights approach”. The equal rights approach to development entails:

- The **adoption enforcement and implementation of comprehensive equality legislation**. The Declaration of Principles on Equality – a document of international best practice adopted in 2008 by a group of 128 experts from more than 40 different countries – provides guidance for the development of comprehensive equality laws in line with international human rights standards. Comprehensive equality legislation, as understood in the Declaration, should *inter alia* provide protection from direct discrimination, indirect discrimination, harassment and failure to make reasonable

⁴ *Ibid.*, Para 48. See also: Hooper, L., “Leaving No One Behind: Data disaggregation”, *Expert Group Meeting on Data Disaggregation*, ESA/STAT/AC.320/3, 2016, available at: https://unstats.un.org/sdgs/files/meetings/egm-data-dissaggregation/PPT3-UNSD_Hooper.pdf; and: Anderson, E., “Equality as a Global Goal”, *Ethics and International Affairs*, 2016, available at: <https://www.ethicsandinternationalaffairs.org/2016/equality-global-goal/>.

accommodation, on the basis of all grounds recognised in international law and in all areas of life governed by law.⁵ It should require positive action measures (also referred to as affirmative action measures).⁶ It should also contain the necessary procedural guarantees – ranging from the establishment of legal aid systems to provisions for the transfer of the burden of proof – to ensure that the protections which it provides are effective in practice.⁷

- The **adoption and financing of a range of policy measures to achieve equality**, including positive action measures to overcome past disadvantage and accelerate progress towards equality for groups which are unable to participate on an equal basis with others;⁸
- The **collection and analysis of data disaggregated by grounds of discrimination** (and combinations thereof) in order to identify and remove discriminatory barriers to participate and / or the need for positive action measures.⁹

Our position is that taking this equal rights approach will enable states to meet their obligations under the SDGs in three respects: (1) in respect of SDG 10 (Reduce inequality within and between countries), (as well as Goal 5 (Achieve gender equality and empower all women and girls)), through providing an essential means to reduce inequality within states; (2) in respect of SDG 16 (Promote just, peaceful and inclusive societies), through ensuring that the legal and policy framework for development is non-discriminatory; (3) in respect of the SDGs more broadly, through providing a means to accelerate progress towards other goals, particularly those focused on poverty, food, health and education (SDGs 1, 2, 3 and 4).

The Equal Rights Approach and Goal 10

Goal 10 is the clearest manifestation of the commitment to “leave no one behind” in the SDG framework. It calls for states to “reduce inequality within and among countries” and establishes seven targets aimed at reducing socio-economic and status-based inequalities. Target 10.3 explicitly calls on states to:

Ensure equal opportunity and reduce inequalities of outcome, including through eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and actions in this regard.

In effect, target 10.3 makes the adoption of comprehensive equality laws a functional necessity within the SDG framework. Properly understood, the requirement to adopt “appropriate legislation” to “ensure equal opportunity and reduce inequalities of outcome” necessitates the adoption of comprehensive equality legislation, as defined above. Accordingly, to a significant extent, target 10.3 reinforces states’ existing obligations under international human rights law:

⁵ *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principles 5 and 8. For a more detailed elaboration of the principles which should be reflected in comprehensive equality legislation, see: *Declaration of Principles on Equality*, available at:

<http://www.equalrightstrust.org/content/declaration-principles-equality>.

⁶ *Ibid.*, Principle 3, p. 5.

⁷ *Ibid.*, Principles 18-25. pp. 12-14.

⁸ *Ibid.*, Principle 3.

⁹ *Ibid.*, Principle 24.

almost all states are party to one or more instruments under which they are required to adopt comprehensive equality law.¹⁰

Beyond target 10.3, the adoption of an equal rights approach will provide states with a means to achieve other elements of Goal 10. Our experience indicates, for example, that the adoption of positive action measures would provide a powerful means to “empower and promote the social, economic and political inclusion of all” (target 10.2) and “progressively achieve greater equality” (target 10.4). This is because – as with the enactment of equality legislation – almost all states have an existing international law obligation to take positive action, where evidence of substantive inequality is found.¹¹

It should also be noted, at this point, that many of the equality obligations arising under Goal 10 – and the role of equality law in addressing these obligations – apply equally in respect of Goal 5: “achieve gender equality and empower all women and girls”. However, given the greater clarity on the operationalisation of Goal 5, arising from the – rightly – central role given to gender equality in both the MDG and SDG frameworks, we have chosen to focus on Goal 10.

The Equal Rights Approach and Goal 16

Goal 16 seeks the creation of “peaceful and inclusive societies for sustainable development”. While Goal 10 focuses explicitly on the reduction of inequalities as an end in itself, Goal 16 establishes a requirement to adopt equality laws as an essential element of the national framework for development. Target 16B requires states to “promote and enforce non-discriminatory laws and policies for sustainable development”, thus making the adoption of equality laws an essential precondition for the achievement of Goal 16.

Target 16B recognises that equality law is central to ensuring that the process through which states achieve sustainable development is equitable and inclusive. As noted above, comprehensive equality laws provide a range of legally-enforceable tools for ensuring equitable and inclusive development: they require states to assess the equality impact of decisions and policies, including as they relate to development; they provide a mechanism for individuals to challenge discriminatory development decisions in courts; and they require states to collect and analyse data on the position of marginalised groups and take positive action measures to address the inequalities they experience.

¹⁰ In total, 171 states are parties to the International Covenant on Civil and Political Rights (ICCPR) and 168 states are parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) (see: UN Office of the High Commissioner for Human Rights, “Status of Ratification”, available at <http://indicators.ohchr.org/> (accessed 5 June 2018)); Article 26 ICCPR states that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”, an obligation which the Human Rights Committee has noted requires the adoption of comprehensive equality legislation (see, for example: Human Rights Committee, *Concluding Observations: Iceland*, CCPR/C/ISL/CO/5, 31 August 2012, Para 6). The Committee on Economic, Social and Cultural Rights has stated that “adoption of legislation to address discrimination is indispensable” to comply with the right to non-discrimination under Article 2 ICESCR (Committee on Economic, Social and Cultural Rights, *General Comment 20: Non-discrimination in economic, social and cultural rights*, UN Doc E/C.12/GC/20, 2009, Para 37).

¹¹ See, for example: Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, 2009, Para 9, where the Committee states: “states parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination”. See also: above, note 5, Principle 3.

The Equal Rights Approach and other Goals

Beyond the direct relevance of comprehensive equality laws to targets 10.3 and 16B and to the wider goal of reducing inequality within and between countries, our experience indicates that such laws can play an important role in the achievement of other development goals, particularly those focused on poverty, food, health and education (SDGs 1, 2, 3 and 4).

Through our research, we have observed that status-based discrimination can lead directly to income poverty and prevent or limit an individual's food security, health and well-being and education. To examine just one of these areas, our recent global research study, *Learning Inequality*, analyses existing data from across the world to explore and map the various ways in which discrimination restricts access to education for certain children and governments have failed to rectify the issue through positive action measures.¹² It finds that there are multiple discriminatory barriers to primary education – from the direct and indirect costs of schooling to formal enrolment requirements and from geographical distance to the curriculum itself – which must be addressed for SDG 4 to be realised. By way of example, in Yemen, in a non-isolated case, a boy from the Muhamasheen minority dropped out of school as a direct result of the directly discriminatory abuse he received both from his teacher and other pupils as a result of his ethnicity. In Kenya, we found that the rate of children out-of-school is significantly higher among the Kenyan Somali population, as a result of particularly poor availability of accessible schooling in the country's North Eastern Province which is largely populated by Kenyan Somalis. While it is not clear whether this particularly poor infrastructure is a result of state resourcing based on prejudice or on the treatment of all provinces in the same way when the North Eastern Province needs particular resourcing, in case, this is an example of discrimination in access to education.

Having identified the evident and deep link between discrimination and children being out of primary education, *Learning Inequality* examines the potential impact which effective and comprehensive equality law can have in increasing access to education, thus contributing directly to the achievement of Goal 4. It concludes both that the adoption of an equality law approach to the problem of out-of-school children delivers significant practical, tactical and strategic benefits, and that the adoption of such an approach is imperative, if efforts to ensure education for all are to be effective.

Conclusion

Thus, in the view of the Trust, a comprehensive and effectively implemented equality law framework is necessary to the achievement of the SDG commitment to “leave no one behind”. Indeed, our position is that the adoption and implementation of such equality laws contributes to the achievement of the SDGs at three different levels: (i) equality law is an end in itself under the SDGs, in the context of SDG 10 and target 10.3 in particular; (ii) equality law is a means to ensure inclusive and sustainable development, as elaborated in target 16B; and (iii) equality law is a means to accelerate progress towards other SDG targets, particularly those focused on poverty, food, health and education.

By adopting and enforcing such comprehensive equality laws and ensuring well-resourced policies and public awareness raising to ensure the full implementation of these laws, states will

¹² Equal Rights Trust, *Learning Inequality: Using Equality Law to Tackle Barriers to Primary Education for Out-of-School Children*, 2017, available at: http://www.equalrightstrust.org/ertdocumentbank/Learning%20InEquality_e-version_1.pdf.

be acting in compliance with their existing international human rights obligations. They will be providing an effective, enforceable framework for ensuring equitable, inclusive and sustainable development. Most importantly, they will be providing those at greatest risk of being left behind with the means to challenge the discrimination which frustrates their development.