RECENT TRENDS IN THE DEVELOPMENT OF EQUALITY AND NON DISCRIMINATION LAWS

Public Lecture hosted by the
Citizens' Constitutional Forum Limited (CCF)
1 September, 2010
Marine Studies Lecture Theatre,
University of the South Pacific, Suva.


USP Library Catalouging-in-Publication Data

Petrova, Dimitrina
Recent trends in the development of equality and non discriminations laws : A Public Lecture / by Petrova Dimitrina. - Suva, Fiji : Citizens' Constitutional Forum, 2010.

p. ; cm.

ISBN 978-982-339-021-4

1Fiji Equality Rights 2 Non Discrimination Laws
3 Sovereignty I.Citizens' Constitutional Forum II. Title

Citizens' Constitutional Forum Limited
23 Denison Road, Suva
GPO Box 12584, Suva, Fiji Islands
Tel:(679) 330 8379 Fax: (679) 330 8380
Email: ccf@kidanet.net.fj
Website: www.ccf.org.fj

EQUALITY

Contents

Dr. Dimitrina Petrova

Non Discrimination Laws

EQUALITY

Acknowledgements

The European Union, through the Head of Delegation of the European Union for the Pacific, illustrates its ongoing commitment to Good Governance, Human Rights and principles of Sustainable Democracy as a development partner whose support has made this event and subsequent activity come to fruition.

EQUALITY

Foreword

This is the seventh of an annual lecture series which began in 1998 initially intended to address the various facets of the much lauded 1997 Fiji Constitution. By the time this lecture was presented on 1st September, 2010, Constitution had been abrogated following the April 9th Court of Appeal declaration that the 2006 military coup under Commodore Voreqe Bainimarama was unlawful. A new legal order is in place and the country governed by a series of promulgated decrees. At the time of writing, Public Emergency Regulations (PER) are still in place, hence CCF has had to first acquire a permit from the government in order to fulfill the requirements of holding the public lecture. The above should also explain why the original project title "CCF Constitutional Lecture Series" has for the moment been renamed as "CCF Public Lecture".

The Citizens' Constitutional Forum is fortunate and honored to obtain by invitation the services of Dr. Dimitrina Petrova, who is the founding Executive Director of the London–based Equal Rights Trust, an international human rights organization launched in January 2007 to promote equality as a fundamental human right. Amongst her distinctions she was in 1990-1991 a member of the Bulgarian Parliament, to which she was elected as a result of her activism in Bulgarian dissident groups under communism.

Again CCF is pleased that the University of the South Pacific, through the School of Government, Development and International Affairs, is a joint sponsor of the lecture. CCF expresses its gratitude and appreciation for this partnership and in particular for USP providing the venue for the event.

Rev. Akuila Yabaki
CEO,CCF

EQUALITY

Introduction

By Tessa Mackenzie, Chair, Citizens' Constitutional Forum Limited (CCF)

Your Excellencies, the Attorney General of Fiji and Honourable Minister, senior government representatives, the invited diplomats, representatives from civil society organisations, the private sector, invited distinguished guests, and ladies and gentlemen.

The Citizens' Constitutional Forum warmly welcomes you this evening to this Public Lecture. A special warm welcome to our honoured guest from London, UK, Dr. Dimitrina Petrova, who is to deliver this lecture. Dr. Dimitrina Petrova is the founding Executive Director of The Equal Rights Trust, an international human rights organisation launched in January 2007 to promote equality as a fundamental human right. Dr. Petrova's writings include over 75 publications on human rights, equality, democracy, politics, and social sciences. She is also a former member of the Bulgarian Parliament and as an MP she participated in the drafting of the 1991 Bulgarian Constitution. She is the recipient of several awards, including the Human Rights Award for 1994 from the American Bar Association and the Dutch Geuzenpenng Award in 2001. Her work has also been honored by Human Rights Watch, which selected her as one of its international monitors in 1994. And the list goes on.

Tonight, Dr. Petrova will be speaking on the "Recent trends in the development of equality and non-discriminations law." I would like to now give very briefly the context of this lecture from CCF's perspective.

This lecture is part of CCF's program of bringing international experts to speak on specific important and relevant matters so that we can gain from their knowledge and experience. Our aim is to simply educate our people to better understand the issues that affect our lives and to allow all citizens who want to do so, to engage in the

debate so that together we can build a nation that is peaceful and just. The lecture also aims to generate interest, discussion and debate on such topics related generally to equal rights and non-discrimination.

The lecture by Dr. Petrova will, amongst other things, discuss the relevance of the principles on equality to improving equality law, policies and practice right here in Fiji.

CCF has made submissions to the Committee on the Elimination of Racial Discrimination, called CERD, since 2002, to document racially discriminatory events and to encourage government to take action to rectify wrongdoings. CCF also made submissions to the government and international bodies against bills and legislations which may be discriminatory.

In 2006, CCF produced a book titled, '*Let's All Celebrate*' to promote multiculturalism, racial harmony and tolerance.

On 21 July of this year, CCF launched a short film to promote racial harmony and tolerance, titled *'Enduring Hope'.* This was the first time that CCF had produced a fictional film to promote multiculturalism.

Finally I would like to thank Professor Vijay Naidu and the University of the South Pacific, through the School of Government, Development and International Affairs, who are joint sponsors of this evening's lecture. CCF is grateful for your assistance and appreciates the partnership that exists between our two organizations.

Once again, a warm welcome to everyone.

Dr. Dimitrina Petrova

Lecture Proper (Edited Version)

Good evening, now I know that I have come a very long way. I absolutely did not expect that I would be awarded or greeted in this way. But for me this just adds to the very very big challenge to speak to you tonight. But first of all thank you very much to the Citizens' Constitutional Forum for inviting me to come and give a lecture from the perspective of international human rights. One big challenge that I want to share with you first of all is that I have noticed that as I cross meridians and parallels, the meaning of words changes, traditions and ways of meeting people change, and I will not be sure tonight whether the words that I will use, I will be conveying the same meanings that you have. That's why I will make a proposal to you. The proposal is this - I will stop from time to time and I will ask you whether everything is clear because I suspect that some words have different meanings.

The law, that is, non discrimination law, and now there is a development toward equality law.

The title of my lecture will be "The Recent Trends of Equality and Non Discrimination Law Impact." Let me first make one clarification about the difference between these two terms, that is, Non Discrimination and Equality Law. Are these two different things or not? In fact, I would say what the Chair of the Board Professor Sir Bob Hepple QC (Chair of Equal Rights Trust) said, that what used to be known as non discrimination law has now evolved into equality law. So these are actually two stages. The law, that is, non discrimination law, and now there is a development toward equality law. First let me tell you what the structure of tonight's lecture will be.

To begin I will say a few things about the recent trends in the development of equality law. Then I will stop for a moment in order

to make a connection between non discrimination law, minority rights and indigenous rights. Then I will turn to the issue of international standards on equality and here I will introduce the document, that the Equal Rights Trust has facilitated, which is the Declaration on the Principles of Equality. Following that I will again present the basic concepts of Equality Law. I will again turn briefly to the question of minority rights and indigenous rights and if there is time, I also would like to make a couple of specific comments on some recent developments in Britain where in April the Labour Government, actually one of the last acts the Labour Government could pass through Parliament, was the Equality Act 2010. And if I have a few moments, I will say a few things about that Equality Act itself.

So let's start with the introduction. Let's only hope that there is such a thing as universality of human rights. There are some terms at least that can have a shared meaning. Equality Law has made good progress in the last ten years in a number of countries, not so many, but at least about thirty to forty states around the world, including South Africa. We have to put South Africa first because in the last ten to fifteen years Jurisprudence coming from South Africa has been ahead of the world in progressive interpretation of the Principles of Equality.

Equality Law has made good progress in the last ten years in a number of countries, not so many, but at least about thirty to forty states around the world, including South Africa

Countries that are member states of the European Union have also made huge progress recently on Equality law. Canada has made consistent steps forward, while Australia and the United States, which was a leader in the field back in the sixties and seventies, has somewhat stalled in developing the understanding of Equality. And also let me single out the United Kingdom, of which I know a little more and as I mentioned back in April, we had royal consent for the Equality Act 2010, which is part of the fifth generation of Equality legislation in the United Kingdom following approximately forty five, to be precise forty three years of development of Equality legislation in the United Kingdom.

However there is the bad news: that over the sixty years following the adoption of the Universal Declaration of Human Rights, and given that all member states of the United Nations have an obligation to implement the principles of Non Discrimination into comprehensive national Equality legislations, this has not happened. The reality is that most states in the world have no comprehensive Anti Discrimination or Equality legislation or policies. What do they have then? There is a range. If we wish, we can create groups and categories of countries, states around the world as situated on a continuum from the point of how much or how strong the comprehensive Anti Discrimination Equality legislations and policies they actually have now.

The extreme case would be the states that have nothing, nothing at all. They have not signed any international legally binding human rights instruments, have no constitution and have no recognition of human rights. Then there are many states, that have an acknowledgement that a right to equality or non discrimination should exist, that have what we call an equal protection clause in their constitutions, but not much more. There are some countries that have this plus a few scattered standard requirments, usually in the labour code in the areas of employment and sometimes in other pieces of legislation.

Kenya is an example, a typical example of states that have two or three separate acts that deal with women's rights, discrimination on grounds of race, ethnicity, tribal membership standards and some legislation about disability that also have some norms related to non discrimination in their employment law, in their health law and housing

Then there are a large number of countries that have certain acts. Kenya is an example, a typical example of states that have two or three separate acts that deal with women's rights, discrimination on grounds of race, ethnicity, tribal membership standards and some legislation about disability that also have some norms related to non discrimination in their employment law, in their health law and housing law. But they still do not have what would qualify as comprehensive anti-discrimination legislation. I hope

that in the lecture I will somehow create an idea of what comprehensive means. So what boxes have to be ticked in order for us to be able to say that a certain state has comprehensive anti discrimination law?

All that we can hope for is to learn some lessons from other countries. In some areas of human rights, international standards exist, and are very clear, simple and can be presented in a little bullet pointed document of a couple of pages. Unfortunately in the area of equality and non discrimination, if we look at international human rights law, this will not be the case. In legally binding international human rights law as well as in so called soft law, it would in the various declarations, recommendations and numerous documents produced by the various mandate holders of the United Nations, for example, you would be hard pressed to glean international standards in the area of non discrimination and human rights. For this reason Equal Rights Trust looked into the possibility of actually deriving such standards, and this resulted in the declaration of Principles on Equality that I will come to later.

Declaration of the Principles on Equality

So the purpose of this lecture is to present current international standards on equality, which are the Principles of Equality. Now let us look at a couple of facts about the evolution of ideas on equality. It is a long story,that is not completely possible to re-trace. Equality is one of the oldest ideas of human rights, it's not possible to even begin to trace its origins completely.Therefore, all we can do is to schematize and or simply boldly state, what is the very rich history of a very rich and very controversial idea of equality. If we have the arrogance to look for a trend and ask "okay where is there any arrow pointing from the past to the future related to equality?", that trend has to be expressed as a movement from formal equality to substantive equality and beyond to transformative equality. Let us look in a little more detail at the aims of equality law. Equality law as I have mentioned earlier, has been in Britain through at least five generations in equality legislation.

One generation of acts is then being replaced by another being replaced by another and so on. These various equality laws have

different purposes. At first the purposes have been modest. They have simply been the purposes of introducing equal treatment. So the first purpose, the most basic, primitive, but inevitable purpose of equality law, is to ensure fairness at this most basic level . This is where equal treatment would mean, as in the ancient Greek Aristotelian sense, same treatment, as Aristotle said, “treating the likes alike”. And this is what has been termed formal or procedural equality. The first generation of laws introduced, for example to protect women’s rights or those of racial groups, have aimed at no more than that, just to ensure that, for example, you cannot have a sign that says no blacks, no dogs, or Irish.

Aristotle said, “treating the likes alike”.

Another purpose of equality law, which in fact is even more ancient but it also accompanies the purpose of equality law throughout the evolution of equality laws, is the respect for equal worth and equal dignity of all persons.This is of course found in Article 1 of the Universal Declaration of Human Rights - that people are equal in their dignity and their rights. The subsequent international human rights law include the Bill of Rights, which consists of the two cabinets, the International Cabinet on Civil and Political Rights and the International Cabinet on Economic, Social and Political Rights, then a number of legally binding conventions such as the Convention Against Torture, the Convention on the Elimination of all forms of Racial Discrimination, the Convention on the Elimination of all forms of Racial Discrimination Against Women, the Convention of the Rights of the Child and the Convention on the Rights of Migrant Workers and their Families.

So we have a whole range of conventions,that are legally binding instruments and then international human rights law, which also has an element of soft wall to it, which is a number of authoritative interpretations by law treaty bodies and by others as well by the international board of trustees. Then apart from that we also have regional jurisdictions such as that of the Organization of American States and Council of Europe where the European Court of Human Rights has made a huge difference in Europe in the last 50 years. There is the ECJ – European Court of Justice, which is the jurisdiction of the European Union, and the African court, has barely started. There is no jurisdiction for Asia, unfortunately, but

there is a movement to create a new human rights regime .So after international human rights law we have respect for equal worth and equal dignity enshrined in virtually all constitutions around the world.

In South Africa, for example, Section 9 of its Constitution identifies equality as respect for equal worth and equal dignity. The Constitutional Court of South Africa, in a number of cases, has ruled a violation of the right to equality wherever they have seen an assault on dignity, for example, a man who was fired from being a flight attendant on an airline because he had contracted HIV. This was seen as an assault on dignity and therefore as a violation of the Right to Equality, which is a central right in the South African Constitution.

If we look further at equality, we can now discern two or three more purposes; 'equality of opportunity', 'equality of results and outcomes', and something you can consider as in between the two or as a higher stage, depending on the political use people put it to but it can be termed, 'equality of capabilities and participation'. And that last paradigm, 'equality of capabilities and participation' is the one, the Equal Rights Trust and its partners have enshrined in the new reaches the current highest stage of development of international standards on equality. It can be interpreted as coming between 'equality of opportunity' and 'equality of outcome'. I personally believe that it is something, that is higher. I'll try to explain why. 'Equality of Opportunity' is when we are no longer content with formal equality, when we understand that even if we have the same treatment, we have not achieved a degree of justice yet because we have not overcome barriers that are neutral for example there can be rules for jobs which does not say anything about men and women but that are formed in such a way that women have much more difficulty in accessing those jobs. This goes for the other rights too.

In South Africa, for example, Section 9 of its Constitution identifies equality as respect for equal worth and equal dignity.

Let's say, I know in Fiji, land ownership is a very big issue, so there

can be a law, formulated in a way that absolutely includes nothing about ethnicity or race but the impact, the effect, regardless of the purpose, is to disadvantage some groups . So that is a law, which deals only formally with discrimination would not be able to deal with such injustice. It will therefore bring an opportunity, as a stage where legislation is already trying to deal with that level of injustice, where we have prepared a neutral policy, provision,of practice or criteria, but the impact, the effect of which, is disadvantaging.

Now, 'equality of outcome' is what the radical left and communist regimes wanted to achieve. They wanted to not just create political opportunity, which they took for granted, but they wanted to go further to make sure we not only all have equal opportunity but in fact are in the running for fulfillment in life, for realizing our potential as human beings and in fact achieve it.

As you know, the communist regimes tried to achieve that purpose, but at the expense of freedom. The principle of political integrity is that these aims do not justify the means, do not justify the goal. The means were not right. The communists were saying, that in order to achieve full equality we will temporarily have some people perform some functions, policing other people for example, and the state was supposed to fade…to disintegrate and so on. But it was becoming stronger, so the communist regimes were actually doing the opposite of what they were aiming at. They were aiming at benchmarks in the realm of freedom, but people were made unfree on the way to that freedom. So somehow the means that were employed betrayed the goal. It just did not work out. People became disillusioned because they had to live with those means and could no longer care in their lifetime about the goal, which seemed more and more distant because the means betrayed the goal.

As you know, the communist regimes tried to achieve that purpose, but at the expense of freedom.

Therefore the question is :" what is :the right measure of equality?"

which goes towards equality of results, but not at the expense of freedom, and not by imposing on people and not sacrificing their liberties. Probably the equality of opportunity is also not enough. In order to ensure equality of opportunity in a formal way it may not be what takes to actually get people to realize their potential. So we have to reach towards substantive full equality. The European Union calls full equality in practice. In order to get there we have to care about the means as well as the results.

In Europe at the moment there is a racially based disadvantaged group called the Roma people (the gypsies). Much has been done that can qualify as equal opportunities but the reality is that not changed much. The Roma remain unequal. Their life expectancy is 15 years less than that of the rest of the population. They do not go to school, they don't achieve, they're unemployed etc etc. So if we just say everybody has the opportunity but do not, take special measures then their attitude will not change much. So actually we want formulate purpose of equality law differently and take a wider view than some contemporary intellectuals. Equality lawyers have come up with another paradigm,described as equality of capabilities or equality of participation: and then we come to the definition of equality.

In Europe at the moment there is a racially based disadvantaged group called the Roma people (the gypsies).

Just to sum up we have a global trend wherever there is development of equality legislation it follows that trend. Starting first with trying to deal with just the blatant, overtly discriminating law -apartheid for exmaple, an advertisement in a newspaper which says for these waitress jobs we want only women younger than 25. That's blatant and discriminatory .

In the United Kingdom this trend was expressed in the leap. In the fourth generation Equality law, when it moved from the negative light of non discrimination to a positive obligation, a positive duty of the government, the state to promote equality. This is the movement I mentioned at the very beginning from non discrimination to equality law. The precursor of this was the Northern Ireland Fair Employment Act, that had to deal with a very unequal and explosive situation between Protestants and Catholics. That

legislation imposed on everybody, on the government and the employers, duty to monitor the workforce to ensure that people not only had equal opportunity to apply for jobs everywhere that had more than 10 employees; that if, for example, in three years time the employer had huge discrepancy between how many Catholics and how many Protestants were employed, they were obliged by the law to take corrective measures in order to achieve a balance. In fact this law worked very well. The situation in Northern Ireland has changed enormously. Experts who evaluate the results of this policy say that there is a stable situation, at least in the area of employment.

This paradigm of substantive equality law then crossed the Irish sea in 2000 to Britain, where the fourth generation of Equality law was introduced : first in the Race Relations Amendment Act, which apart from legislation prohibiting discrimination and defining both direct and indirect discrimination, also imposed a duty on the government to apply positive or affirmative action in order to equalize opportunity.

This paradigm of substantive equality law then crossed the Irish sea in 2000 to Britain, where the fourth generation of Equality law was introduced

Now to discuss how non discrimination relates to minority rights,which in turn relates to indigenous rights. Here it is worth noting that in the beginning there was tension between minority rights and non discrimination, that characterized legislation policies twenty years ago, or even as little as ten years ago.

This has now moved towards convergence of the two types of legislation, the two paradigms, or the two ways of thinking. Actually to put it simply, this is the question of equal rights or special rights. There was a time when equal rights and special rights were seen by people as opposing paradigms. You either had equal rights and that meant same treatment, identical treatment or you had special rights, that meant some groups deserve special legislations, and special treatment. It was a matter of “we would prefer A or B, but not both as they are two different things.”

Equal rights or equality evolved from being about equal treatment

aradigm of
ntive equality law
rossed the Irish
2000 to Britain,
the fourth
tion of Equality
s introduced

to being about different treatment, being about substantive equality. If we now look at the of the way equality law is today in the most developed jurisdictions where it exists, it would seem that in fact special rights are no longer needed. Minority rights are simply not needed as a separate piece of legislation because they are incorporated within equality law and because equality law itself takes care of it. It puts the emphasis on treating people and groups in such a way that they have equal opportunity and equal chance, therefore introducing different measures for different groups is unnecessary.

It is therefore no longer about equal rights or special rights, because equal rights are not same rights. They are something much more complex. They are different rights for different people but in a just way according to different needs.The same goes for indigenous rights. With this difference and for historical reasons, the whole indigenous rights movement has had even more difficulties than the minority rights movement. And as you know neither minority rights nor indigenous rights are in any international legally binding conventions.

There have been attempts to introduce conventions. So far this has not been successful. It seems that for both movements, while they seek to have minority rights and indigenous rights enshrined in legally binding conventions, they are actually being overtaken by the development of equality law. That incorporates minority rights and indigenous rights.

You either had equal rights and that meant same treatment, identical treatment or you had special rights, that meant some groups deserve special legislations, and special treatment.

Minority rights also derive from Article 27 of the International Convention on Civil and Political Rights. There is also the Declaration of 1991, but it is not a convention. A Declaration merely expresses political will but it is not legally binding. In Europe, however, there is a legally binding instrument. This is the framework convention on national minorities. It works very well. It actually creates special rights but it now converges with the new regime and somehow these two, equality and the minority rights, are more and more coming together and

beginning to overlap. As for indigenous rights, there is virtually no legally binding international instrument. There is again a Declaration, of 2007, on Indigenous rights. It is therefore important from the point of view of equality law, and from the point of view of advocating legislation in the area of equality, to try and incorporate indigenous issues in the equality law regime rather then rely on a separate regime of indigenous rights, which may or may not come. It is better to have good equality legislation, that will take care of indigenous rights.

There are also no legally binding definitions of minority rights and indigenous rights.The interpretation by the courts is that the question of minority is a matter of fact and not a matter of law. That is what, for example, the European Court of Human Rights says, that is, we do not recognize dissident groups within the country as minorities, and that there is nothing wrong with this. It is then a matter of fact and as long as the fact is that some people consider themselves minorities, then they are minorities and therefore they should have those rights, that is at least relevant to Europe. A definition that has, if we try to compose a definition, a definition that has broad consensus among experts, is that we have a minority when we have stable ethnic relations and when the group in question is different from the rest of the population and is its numerically small in that it is less than 50%. When the group is less dominant than the that is stronger or that holds power or that has most of the advantages in society, and is a group, which wishes to preserve a separate identity, then a group, that meets all these criteria; can be characterized as a minority. There are hundreds of minorities around the world that meet this criteria. A negative example is the Blacks in South Africa. They would not meet the criteria because they are not numerically a minority. Another example is the Jews in Germany and other European countries, today. They will not meet the criteria because they do not wish to preserve themselves as a separate cultural identity and have refused to have minority rights. In Hungary for example, there is a law, a minorities law, which gives special rights to 12 national and one ethnic minority, ethnic minority being the Roma.

There are also no legally binding definitions of minority rights and indigenous rights.

The national minorities are those minorities that also have connection to other state. For example, the Romanians lived in Romania and Bulgaria. The Roma have no state so they are an ethnic and not a national minority. The Jews have refused to be covered by this legislation because they say they prefer to be citizens of Hungary . So that has to be the final decision.

Maybe groups that have emigrated to the United States in the last century want to blend into melting pot. The do not want to be differentiated, so they will probably not qualify as minorities. The indigenous groups, are a complicated issue as there is no legal definition for them. But there is among experts, an agreement of what would constitute an indigenous group. The key to contemporary understanding of indigenous is the political role that a cultural group plays. That that is because of other criteria that can be also applied to non indigenous groups. So what we have in the explanatory note of the United Nations Declaration of 2007 is the phrase, 'a politically under privileged group who share a similar identity different to the nation in power and who also meet other criteria which is that they are formally or currently inhabited the region either before or after its subsequent colonization or existed alongside other cultural groups during the formation and/or reign or were largely isolated from the influence of the claimed governors of a nation state'. Furthermore have maintained at least in part the distinct cultural, social, organizational, and/or linguistic characteristics and in doing so remain differentiated in some decree from the surrounding populations and dominant culture of the nation state.The above criteria is usually added in order to include people who are self identified as indigenous and/or those recognized as such by other groups. Whether we need self identification only, is a complex question. Is it sufficient if I say I am something, is that sufficient or not? Do I have to also be recognized by others as belonging to that identity?

The national minorities are those minorities that also have a corresponding other state. For example the Romanians have Romania and Bulgaria.

QUESTION & ANSWER BREAK

Woman Participant: *You have been stating the various positions for a minority group, which is inclusive of 5 elements, that you spoke about. Just for clarification for that group to be able to fall under that minority group, does it have to have all those 5 elements at once or to have at least one element.*

Dimitrina: *I have to first of all stress again that there is no international legally binding definition of what is a minority. These are elements that have a broad consensus. But because there is no internationally accepted legal definition, every subject of international law, and in turn every state, can say we do not recognize something or the other. Actually ,the same can be said of minority rights as well because minority rights are recognized only in a limited way in article 27 of the ICCPR,a modest article formulated in negative terms. No state shall deny two members of ethnic religions, or linguistic minorities ,the right to enjoy their culture, to profess and practice their religion or to speak their own language. That is accepted as everyone's right. Therefore within these rights there is no positive obligation of the state to actually do anything to promote the culture. However progressive interpretation by the human rights committee, is the supervisory treaty body, which is responsible for the proper implementation of this treaty, interprets Article 27 to also carry with it a positive obligation. So some states have been found in violation of Article 27 for not doing enough. But this is one, as compared to other rights.It is not a very strong right and yet it is very necessary if we are serious about equality.*

I have to first of all stress again that there is no international legally binding definition of what is a minority. These are elements that have a broad consensus.

LECTURE PROPER CONTINUES

Let us know look at the current challenges to equality law. There is no simple list that can be presented as bullet points on equality principles or as an internationally legally binding list of criteria of

principles of equality. This does not mean that there are no criteria. There are, but you will find them in different instruments, created at different times, and in such a way that there is no consistency in the terminology.

Four years ago when the Equal Rights Trust wanted to look into this issue, we put together the best experts in the world in a steering committee. Our intention was to create a compendium of all the international standards relating to equality covering women's rights, racial justice, disability, age, in all areas of opportunity including administration of justice, employment, education and so on. Once we started doing that, it became immediately clear that the words have different meanings across the different instruments and it depends, for example, when the instrument was created. Even the basic term 'discrimination' meant different things. For example, in international human rights instruments of the older generations discrimination was only a bad thing.

Discrimination could not be excused. If you said that something is discrimination it had to be prohibited. But in some common law jurisdictions, for example in the United Kingdom, in South Africa, and everywhere in the Commonwealth, the terminology was about fair and unfair discrimination. So we decided to extract the principles, that are contained in international instruments and in leading jurisprudence and to present them as a very short document of 27 principles. We did not decide that there would be 27 principles, that is just what we ended up with. This document was actually seeking to meet the challenges of equality law at the international and domestic level. We believe we have met these challenges by creating this instrument, the Declaration of the Principles of Equality. The challenges were that we had to first look at the limits of principles of non discrimination and then the need to broaden the meaning of non discrimination and to support substantive equality.

Discrimination could not be excused. If you said that something is discrimination it had to be prohibited.

Then there is a need to integrate minority rights and indigenous rights. An interesting point especially for lawyers,is that there were

two different works, two different paradigms, and two different professional guilds. One was the view of international human rights lawyers and the other of the equality lawyers. They spoke different languages. They had different terminologies and they did not agree amongst themselves. So what was needed was to put the two expert communities together to create principles, to capture the better parts of both worlds. Another thing that had happened in almost all countries is that they had developed quite chaotically and in a patchwork way had made various laws to meet urgent and current societal needs. So they had various fragmented sets of non discrimination law. Some on race, some on gender, some on disability, some on indigenous rights, some on minority rights and so on and so forth. These laws were not consistent across grounds of discrimination and would not also inconsistent across all areas of life. So it was the case that in the same country, for example if a member of a racial minority was treated differently and badly, let's say in employment, it was prohibited by the law. But if you move out of employment and are talking about the health care system, the same bad treatment would be legal. So that would be another injustice. The same minority identity, but different legislation. So it was a mess.

Then there is a need to integrate minority rights and indigenous rights.

A chaos of legal practices so to speak. Each state currently, is making progress in this area, is trying to simplify the situation because by now the law has become too complex and needs to be harmonised, streamlined, to fill the gaps, to modernize equality law.This is something that the principles we put together are also helping to do, to guide efforts of legislators in achieving that feat. We needed to fill the gaps, streamline and create consistency across the various laws that have emerged at different times.The other challenge that has to be met is the relationship between status based equalities and the socio-economic ones. This is very important. If you speak about equality, two things that were fundamentally different.This was due to the cold war divide. The West was keen on civil and political rights, civil liberties and by equality. What the West wanted to achieve was equality on the

basis of gender, race and religion, but not on the basis of income or socio economic status. The socialist or the communist camp on the contrary, downplayed the liberties or just dismissed them and said that the important thing is socio-economic equality.They basically advocated that closing the gap between poor and rich was the most important thing.

To this day, and probably for ever, there will be people who will disagree on this. What is more important is to have socio economic equality or have equality of what is called status or identity equality, that is equality across racial groups regardless of gender, regardless of sexual orientation, regardless of religion, disability, age, genetic characteristics, physical appearance and other features? Somehow these have been defined as two different conversations. Our position of those who have signed and joined the declaration of principles of equality, is that this divide between the two types of equality is simply unfortunate. It is a historically produced divide, that needs to be bridged. It is better when we talk about equality to try to embrace both kinds of equality and to have laws, which because they are not policies,will not go a very long way to overcoming poverty, to closing the gap between poor and rich. At least they will promote that possibility. This will help is not forget about the other area of equality.This divide will probably remain the biggest challenge.

So that would be another injustice. The same minority identity, but different legislation.

Capitalist United Kingdom a few months ago passed the Equality Act 2010 . Article 1 of that act passed by the British Parliament, with royal consent in the 21st century is about socio-economic disadvantage. Article 1 says that there is a public sector duty. In this matter and lists hundreds of public sector bodies held responsible. They are listed in a special schedule at the end of the act. Schedule Y states there is a duty to have due regard to reducing socio-economic disadvantage in all their policies. This is really a very important development because while it does not create individual rights to claim discrimination on grounds of poverty, it at least has the aim of identifying public sector bodies to act on this issue.

This makes it possible, if not for an individual to claim individual ights, possible for groups of people to challenge a policy on the basis that it would increase the gap between the poor and rich. In the future, not under the Tories now but in the future, this provision will probably be implemented. It is not yet inforce and the Tories will not enforce it quickly because legitimatise its aims there is public debt to pay,even though there is economic downturn and so on but the act has been adopted .The Tories did not oppose it so in principle they agree that one day this will be a reality.

Finally let us go to the Declaration, adopted in 2008, containing 27 principles on equality that have been agreed upon by a group of experts through several stages of consultations including a conference attended by 75 experts in April 2008. These were legal experts in the area of human rights and equality from the two separate legal communities on this occasion they came together and agreed the language and principles, that everybody a year earlier had said was impossible. The Declaration is now a document, that everybody accepts, and even courts of law quote it in their respective jurisprudence. The Declaration reflects a moral and professional consensus, initially among these 128 human rights and equality experts. Now hundreds of other signatories adding their name to the declaration and recently became so numerous that we decided not to appeal for more signatures.

The Declaration, adopted in 2008, containing 27 principles on equality that have been upon agreed by a group of experts through several stages of consultations including a conference attended by 75 experts in April 2008

The major characteristics of the Declaration: One that: It defines the right to equality as a basic human right and in doing so combines human rights and equality law concepts. It provides a global expression of equality for discriminated people. It assures consistency in the way different nations treat the right to equality. It ends in consistency in the rights afforded to different discriminated groups within the same societies and nations and so ends the current hierarchy of discrimination. Now what does it integrate in reality? What gaps does it close? First the gap between the

human rights law and the equality law approach. The equality law approach has origins in employment law and it is quite technical and legal.

These very different approaches in the Declaration converge and in fact we see that also, in recent jurisprudence and legislation that is beginning to emerge, this convergence is beginning to occure. This then reinforces the connection between civil and political rights on one hand and economic social and cultural rights on the other. The greatest sucess will be when this unfortunate product of the cold war division, is completely and finally over-come.

Then the discrepancies between the different grounds of equality, gender, race, disability, religion and age are dealt with. Then the discrepancies across areas of life such as employment, adminis-tration of justice, education, health, the status based equalities of socio-economic rights are also dealt with.

Let us now discuss the major concepts, that is, the legal defini-tions of what is direct discrimination, what is indirect discrimina-tion, what is harassment, how to prove discrimination and so on. So these are the elements of equality law. I will say that if one day, if it has to be the people of Fiji who sit around the table and start talking about creating equality law, what will be the major structural elements of that law?

The major characteristics of the Declaration: It defines the right to equality as a basic human right and in doing so combines human rights and equality law concepts.

First will be to look at what grounds of discrimination should be prohibited and of course some grounds will be non controversial. Everybody will want to prohibit discrimination on grounds of gender and on grounds of race. Probably they will discuss the issue of whether or not to prohibit discrimination on grounds of sexual orientation. This is controversial in some parts of the world. There is unfortunately no international legally binding instrument yet on sexual orienta-tion. So gays, lesbians and so on are not well

protected,internationally. But in Europe and a number of other jurisdictions, notably South Africa they are. So that is the first issue to decide: What grounds of discrimination should be covered by anti discrimination and equality law ?

Then the second question will be what areas of life should be covered? Employment, health, administration of justice, political functions, public functions, political parties, media and so on. The law will probably have this structure. It will go area by area there will be, for example, a section about employment, a section about health and so on. If we skip to the end, the very very very end, to give you an idea of the British Equality Act so you know what it looks like: it has 218 sections. These sections go area by area, about employment, about education, about public functions and so on. It has 16 parts and 28 schedules, which define for example when it comes to disability; separate schedule defines exactly, what diseases will be recognized as a disability. When it comes to public sector limits certain duties, the schedule will then define, which exactly are those limits,and so on. The whole thing is a massive 239 pages.

There is unfortunately no international legally binding instrument yet on sexual orientation. So gays, lesbians and so on are not well protected, internationally.

We are talking about therefore, is a large document.There is the common law tradition to, which Fiji, I think, belongs. Law tends to be larger and longer. In the continental laws they tend to be more precise. I think the Dutch law, which is comprehensive and excellent anti discrimination law, goes a long way to substantive equality, is up to 70 pages long. The Swedish law is also something like 50 to 70 pages long. Common law legislation about equality tends to be longer. The South African law is very long. So Fiji would be looking at areas of life that have to be regulated and then there will also be the very important question of who should be bound by the legislation? Is it only the government or also non state actors? There can be choices, there can be a consensus that private sector bodies, for example big employers ,should also be bound by such legislation.

Making equality law is a fascinating process in which many interests come around the table and start negotiating. There can be a variety of choices. These are choices people will need to eventually make. There are some basic things, decisions about some basic human rights and I am sure every legislator and civil society helping legislators usually would opt. Then there is a range of choices that may or may not be made. There will be concerns to what will be the protected characteristics, what will be the the areas of life, the scope of application and importantly there will be legal issues about the ways discrimination is proven. This will be extremely important because discrimination is difficult to prove. In fact discrimination is almost impossible to prove unless there is a special provision in the law, that creates the possibility for the so called reversal of the burden of proof. Usually the proof is in the hands of the discriminator. It is extremely difficult to go to court and to prove that somebody was treated less favorable in comparison to another person in a similar situation because the evidence is not usually in the hands of the weaker party – the claimant.

Making equality law is a fascinating process in which many interests come around the table and start negotiating.

Discrimination law is beautiful, in that if it is well developed, it arranges for the so called reversal of the burden of proof. In South Africa as well as the European Union this procedure is an obligation. Courts have to first hear the claimant, and then they hear the facts from which they can infer that discrimination could have occurred. At this point the court is obliged to shift the burden of proof onto the defendant. The defendant then has to to prove not a negative, as some people think, but there were other legitimate reasons for the less favorable treatment which is claimed. So they either deny the fact or acknowledge that yes there was unfavorable treatment but for reasons that have nothing to do with discrimination. Yes, we fired her but not because she is a woman. Here is why etc. If they can prove it then they win the case. If they cannot prove it then the

court has to make an inference. The logic of the Court in anti discrimination law is not the usual logic of criminal law and other types of law. The logic is that there is first a presumption of discrimination, then a shifting of the burden of proof, then an inference that discrimination occurred if the defendant fails to prove an innocent reason, a reason unrelated to the discriminatory characteristics, of race, gender or whatever is claimed.

There are a number of other issues but the important thing is to come to the point, where people realize that they need equality and anti discrimination law. That this is central to the protection of human rights and it is best when the process of making that law is inclusive of all equality factors.

Discrimination law is beautiful, in that if it is well developed, it arranges for the so called reversal of the burden of proof.

In Britain for example, the consultations with civil society,and other parties lasted for 14 years. The Equality Act of 2010 is a result of this 14 year consultation during which time there was an older generation of laws operating. This is a development I only wish someday I will see happen in Fiji. And if you allow me, I will end on that note and thank you very much for your attention.

Dr. Dimitrina Petrova

Slide Presentation

Recent Trends in Equality and Non-discrimination
Dr Dimitrina Petrova
Executive Director
The Equal Rights Trust

Slide 2
Recent Trends in Equality and Non-discrimination
Dr Dimitrina Petrova
Executive Director
The Equal Rights Trust

Slide 3
Non-discrimination, minority rights and indigenous rights

- Trend: from tension between non-discrimination and minority rights frameworks to convergence in a new understanding of equality
- Trend: incorporating indigenous rights in an integrated framework of equality
- International law enshrining ND, MR and IR
- Legal definitions and related problems

Slide 4

Minorities indigenous groups

- Minority – no legal definition in IHRL but broad consensus that elements include:
  - Stable ethnic, religious or linguistic charactersistics
  - Different from the rest of the population
  - Numerically smaller than 50%
  - Non-dominance
  - Wish to preserve a separate cultural identity

Slide 5

Indigenous groups

- Key to a contemporary understanding of "indigenousness" is the political role a cultural group plays, for all other criteria usually taken to denote indigenous groups (territory, race, history, subsistence lifestyle, etc.) can, to a greater or lesser extent, also be applied to majority cultures.
- Therefore, "a politically underprivileged group, who share a similar identity different to the nation in power" (UN Declaration 2007), and who also meet other criteria: formerly or currently inhabit a region either before or after its subsequent colonisation or annexation; *or* existed alongside other cultural groups during the formation and/or reign of a colony or nation-state; *or* independently or largely isolated from the influence of the claimed governance by a nation-state,
- and who furthermore have maintained at least in part their distinct cultural, social/organisational, and/or linguistic characteristics, and in doing so remain differentiated in some degree from the surrounding populations and dominant culture of the nation-state.

Slide 6

The current challenges in equality law

- The limits of the principle of non-discrimination: need to enshrine a broader right to equality: from formal to substantive equality and beyond
- Integrating minority and indigenous rights approaches in a unified framework of substantive equality
- The limits of the human rights and equality law approaches: need for a synthesis of equality law the independent status of non-discrimination as a separate right)

Slide 7

The current challenges in equality law 2

- The limits of single ground approaches to equality (inconsistencies across grounds and areas of discrimination; multiple identities and multiple discrimination)
- The relationship between status based equalities (gender, race, religion, etc.) and socio-economic disadvantage

Slide 8
The Declaration of Principles on Equality 2008

- 27 *Principles on Equality* were agreed by a group of experts in several stages of consultations,
  - including a conference in April 2008 bringing together academics, legal practitioners and human rights activists from all regions of the world.
- The *Declaration* reflects a moral and professional consensus initially among 128 human rights and equality experts – followed by hundreds further signatories (individuals and institutions)
- The Declaration – a step forward in the unified approach to equality – 4 types of synthesis

Slide 10
The Declaration of Principles on Equality:
Key Features 2

- Defines the right to equality as a basic human right and, in doing so, combines human rights and equality law concepts.
- Provides a global expression of equality between discriminated people.
- Ensures consistency in the way different nations treat the right to equality.
- Ends inconsistencies in the rights afforded to different discriminated groups within the same societies and nations and so ends the current hierarchy of discrimination.

Slide 11

The Declaration of Principles on Equality: What does it integrate?

Key Features

- The international human rights and equality law The CPR and ESCR approaches – false dichotomy
- The single-ground equality strands (for particular identities such as gender, race, disability, religion, age)
- The discrepancies bewteen areas of life (administration of justice, employment, education, provision of goods and services, health, housing approaches
- , etc.)
- The status based equalities (gender, race/ethnicity, religion, etc.) and socio-economic equalities

Slide 12

The Declaration of Principles on Equality: Contents

Part I Equality
Part II Non-Discrimination
Part III Scope and Right-holders
Part IV Obligations
Part V Enforcement
Part VI Prohibitions

Slide 13

Definitional issues in the unified framework on equality
Part I: Equality
1 The Right to Equality

The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.

Slide 14

Definitional issues 2
2 Equal Treatment

Equal treatment, as an aspect of equality, is not equivalent to identical treatment. To realise full and effective equality it is necessary to treat people differently according to their different circumstances, to assert their equal worth and to enhance their capabilities to participate in society as equals.

Slide 15
Definitional issues 3
3 Positive Action
To be effective, the right to equality requires positive action. Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.
To be effective, the right to equality requires positive action. Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.

Slide 16
4 The Right to Non-discrimination
The right to non-discrimination is a free-standing, fundamental right, subsumed in the right to equality.

Slide 17
Non-discrimination in the DPE
5 Definition of Discrimination

- Discrimination must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds.

Slide 18

Non-discrimination 2

- Discrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.

- Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception, whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.

Slide 19

Non-discrimination 3

- Discrimination may be direct or indirect.
- An act of discrimination may be committed intentionally or unintentionally.
- Direct discrimination occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.
- Indirect discrimination occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

Slide 20

Direct Discrimination

'prohibited grounds' includes:

- perceived to have a characteristic associated with a prohibited ground
- Association with persons to whom a prohibited ground applies
- one of the prohibited grounds being an effective cause for less favourable treatment

the 'but for ….' test

Slide 21

Direct discrimination 2

- for certain prohibited grounds direct discrimination cannot be justified (limited exceptions)

- motive or intention is irrelevant - the issue is less favourable treatment or detriment
- can be intentional or unintention

Slide 22

Direct discrimination 3

- what is a 'comparable situation'?
- who is an appropriate comparator?
- 'would be' - hypothetical comparator possible
- conduct specific to particular ground - is a comparator needed?
- what is 'a detriment'?

Slide 24

Indirect discrimination occurs:
when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a a particular disadvantage compared with other persons, unless that provision criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary'

Slide 25

Indirect discrimination - clarifications

- 'provision, criterion or practice' - can be written or unwritten, formal or informal
- 'provision, criterion or practice' – says nothing on its face regarding any prohibited ground
- 'would put persons …at a disadvantage ' - can challenge 'provision' etc. before it has been applied

- **particular disadvantage':**
  - may be obvious
  - may be based on common knowledge
  - in some cases may need statistics or expert

- **'compared to other persons' -** who are the comparators - actual or hypothetical – to whom same provision, criterion or practice is applied

Slide 25
Indirect discrimination – clarifications 3
justification needs to be rigorously tested:

- does the provision, criterion or practice have a legitimate aim?
- 'appropriate and necessary: could this aim be achieved by other means?
- test of proportionality: weigh discrimination against needs of discriminator

Slide 26

Harassment

- Harassment constitutes discrimination when unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Slide 27

Reasonable accommodation for different capabilities

'…necessary and appropriate modifications and adjustments, …, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others.

It should not be an obligation to accommodate difference where this would impose a disproportionate or undue burden on the provider.'

- under EU law employers must make reasonable accommodation for disabled people; and it amounts to discrimination if they fail to do so.
- accommodation by employers could include:
  - modification of premises
  - altering hours of work or place of work
  - acquiring or modifying equipment
  - re-allocation of duties
  - modifying procedures

Slide 28

Reasonable accommodation for different capabilities

reasonable':

- will the measure achieve its aim?
- does it impose 'disproportionate burden' on the organisation?
  - degree of disruption to work of the organisation
  - financial costs and organisation's financial resources
  - availability of financial or other assistance

Slide 29

Affirmative or positive action
To be effective, the right to equality requires positive action.

Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.'

Slide 30
Affirmative or positive action 2

- special measures where there is evidence of historic/ institutional disadvantage
- Test: to achieve substantive equality
- time limited - discontinue when objectives have been achieved

Slide 31
Affirmative or positive action 3
possible areas for affirmative/positive action:

- lower rates of participation in
  - particular jobs,
  - education,
  - political life,
  - civil society
- disparities in health/mortality rates for particular ethnic group

Slide 32
Exceptions
'direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.'

- starting point is that there should be no direct discrimination
- for any exception, in each case the circumstances must be tested to see if they meet these criteria – the law should not provide for blanket exceptions.

Slide 32
Exceptions 2
for example: a genuine occupational requirement:

- difference of treatment based on a characteristic related to one or more prohibited grounds will not constitute discrimination where, by reason of
  - the nature of the particular occupational activities concerned or
  - the context in which they are carried out

such a characteristic constitutes a genuine and determining occupational requirement provided that

the objective is legitimate and the requirement is proportionate.'

Slide 33

The scope of application of the protection of equality, right-holders and duty-bearers

- Scope: the right to equality applies to all areas of activity regulated by law
- Right-holders: individuals, groups, legal persons
- Duty-bearers: a) states: duty to respect, protect, promote and fulfil the right to equality; b) non-state actors: should respect the right

Slide 34

44

Right to redress: access to justice

'Persons who have been subjected to discrimination have a right to seek legal redress and an effective remedy'

- Access to judicial/administrative procedures
- Appropriate legal aid

'States must not create or permit undue obstacles or restrictions to effective enforcement of the right to equality.'

Slide 35

Victimisation

States must introduce … such measures as are necessary to protect individuals from any adverse treatment or adverse consequences as a reaction to a complaint or proceedings aimed at enforcing compliance with equality provisions.'

Slide 36
Victimisation 2
protected acts'

- complaining of discrimination
- proceedings in relation to discrimination
- supporting/assisting another person to complain/bring proceedings relating to discrimination

not limited to acts by the original 'victim'

Slide 37
Evidence and proof
In civil proceedings:

- When persons who allege that they have been subjected to discrimination establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination,
- it shall be for the respondent to prove that there has been no breach of the right to equality.'

Slide 38
Remedies and sanctions
Sanctions for breach of the right to equality must be effective, proportionate and dissuasive.'

- Remedies for the victim – compensation for loss and harm
- Sanctions for the respondent (and other potential respondents) – to deter future discrimination:
  - financial sanctions
  - Requirements to change policies and practices

Slide 39
Positive duty

- States must take the steps that are necessary to give full effect to the right to equality in all activities of the State both domestically and in its external or international role. In particular States must
- (a) Adopt all appropriate constitutional, legislative, administrative and other measures for the implementation of the right to equality;
- (b) Take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that conflict or are incompatible with the right to equality;

Slide 40
Positive duty 2

- (c) Promote equality in all relevant policies and programmes;
- (d) Review all proposed legislation for its compatibility with the right to equality;
- (e) Refrain from adopting any policies or engaging in any act or practice that is inconsistent with the right to equality;
- (f) Take all appropriate measures to ensure that all public authorities and institutions act in conformity with the right to equality;
- (g) Take all appropriate measures to eliminate all forms of discrimination by any person, or any public or private sector organisation.

Slide 41

The Declaration of Principles on Equality

Endorsers statements

I have no doubt that making the Declaration legally binding would change the current European reality. The European Union should not only adopt the Declaration but also promote it world-wide."

Renate Weber, MEP

Slide 42

Minority and indigenous rights

- Equality legislation and policies can strongly contribute to or even fully incorporate these rights –
  - A. Through opening towards substantive equality:
    - Developing the notion of indirect discrimination
    - Developing positive duty to promote equality
    - Acceptance of positive action measures
  - B. Through the reach and scope of equality provisions:
    - Ratione personae: (i)open or more extensive list of grounds: language, religion, ethnicity, nationality, colour, racial or ethnic origin, descent, (ii) reaching out to cover the private sphere
    - Ratione materiae – application to broader scope of rights and non-subsidiary understanding

Slide 43

The British Equality Act 2010

- Enacted after 14 years of campaigning
- Replaces 9 previous Acts and over 100 further regulations
- Implements fully 4 main EU Dircetives
- Has 218 sections, organised in 16 parts , and 28 schedules – 239 pages
- There will be further detailed regulations in secondary legislation and guidance in codes of practice

Slide 44

British Equality Act 2010: main features

- Adopting a unitary or integrated perspective of equality law enforced by a single Commission
- Clarifying the definitions of discrimination, harassment, victimisation etc
- Expanding positive duties on public authorities to advance equality in respect of all protected characteristics
- Widening the circumstances in which positive action is allowed
- A new duty on public authorities to have due regard to socio-economic disadvantage when taking strategic decisions

Slide 45

Thank you for your kind attention. For more information:

www.equalrightstrust.org
The Equal Rights Trust
126 North End Road
London W14 9PP
UK
info@equalrightstrust.org
www.equalrightstrust.org