

# Article 7: The Equality and Non-Discrimination Provision

Appendix E to the Report of the  
Global Citizenship Commission<sup>1</sup>

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# 1. Introduction

The right to non-discrimination and the right to equality (together, *equality rights*) are fundamental norms of international human rights law. The emerging global consensus is that these are two distinct rights, whereby the right to non-discrimination is narrower in content and subsumed in the right to equality. Non-discrimination is a central and essential element of equality.

Equality (and non-discrimination subsumed in it) has a triple status in the UDHR and subsequent human rights instruments: it is a general principle, an autonomous right, and an accessory right.

## General principle

In the UDHR, equality—“equal and inalienable rights” of “all members of the human family”—is a general principle, the recognition of which is the “foundation of freedom, justice and peace in the world.” (Preamble, first recital). “Equal rights of men and women” in particular are reaffirmed in the fifth recital. Article 1 then proclaims: “All human beings are born free and equal in dignity and rights.” Article 1 can be regarded as expressing both a general principle of the human rights framework and a right to be equal in respect of the enjoyment of rights.

## Autonomous right

The first sentence of Article 7 of the UDHR reads: “All are equal before the law and are entitled without any discrimination to equal protection

of the law.” This provision enshrines an autonomous, free-standing right to equality with two discernible elements to its content: equality before the law and equal protection of the law.

## Accessory right

Article 2 of the UDHR provides a right to non-discrimination attaching to all other human rights recognized in the UDHR: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

This provision includes an accessory (subsidiary) right to equality, or, to be more precise, as many separate accessory rights to equality as there are human rights recognized in the UDHR (e.g., a right to equality in respect of the enjoyment of the right to life; a right to equality in respect of liberty and security of person; and a right to equality in respect of freedom of expression, etc.).

The second sentence of Article 7 also affirms non-discrimination as an accessory right. “All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

The fact that the three different aspects of the status of equality are all rooted in the UDHR is important for the subsequent development of equality rights in international human rights law. The enshrinement of an autonomous right to equality has great practical value. For example, in some jurisdictions, a separate, stand-alone right to non-discrimination that is not dependent on, and subsidiary to, other rights can be relied upon to strengthen equality in socio-economic areas of life in respect of which the state does not recognize relevant rights (e.g., the right to employment, education, or health).

## 2. Evolution of the legal framework

International human rights law has continued to recognize the “triple status” of equality. Most notably, the International Covenant on Civil and Political Rights (*ICCPR*) contains a freestanding equality clause (Article 26), and both the *ICCPR* and the International Covenant on Economic, Social and Cultural Rights (*ICESCR*) include accessory rights to non-discrimination (Article 2(1) and Article 2(2) respectively). Moreover, a number of specialized treaties prohibit discrimination and promote equality in respect of certain categories of people defined by race, sex, age (children), and disability. The specialized treaties include the International Convention on the Elimination of All Forms of Racial Discrimination (*ICERD*) (1965), The Convention on the Elimination of All Forms of Discrimination Against Women (*CEDAW*) (1979), the Convention on the Rights of the Child (*CRC*) (1989) and the Convention on the Rights of Persons with Disabilities (*CRPD*) (2006). Each of the general and specialized treaties are monitored by an expert committee which conducts country reviews, issues general comments or recommendations, and considers individual complaints.

The body of documents setting out treaty body views on equality rights is too vast to be summed up here. Still, we can note certain features of these sources: first, the inconsistent interpretations of the main concept of discrimination even within the documents produced over time by the same treaty body;<sup>2</sup> second, the extremely rich and

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2 See, e.g., contrasting interpretations by the HCR of “indirect discrimination” in Communication No. 998/2001, *Althammer v Austria*, 8 August 2003; Communication No. 1106/2003, *Godfried et al. v Austria*; and Communication No. 976/2001, *Derksen v The Netherlands*.

detailed consideration of a number of elements of equality rights and the application of the relevant treaties in giving effect to these rights; and third, the evolution of interpretations on the content of the right, from formal / procedural toward substantive equality, and related evolutions regarding both the purpose and frameworks of promoting equality.<sup>3</sup>

Apart from the treaty-based monitoring mechanisms, the Universal Periodic Review (*UPR*) has generated a large number of recommendations related to equality rights. However, as there is no category capturing equality and non-discrimination as distinct issues in the UPR information database, it is difficult to generate the relevant statistics.<sup>4</sup> This difficulty of categorization reflects the permeating, cross-cutting, and truly ubiquitous nature of equality rights in the UN system; it is challenging, for example, to isolate equality rights from thematic entries such as “racial discrimination”, “women’s rights”, “sexual orientation and gender identity”, or indeed the more general categories of civil and political rights, and economic, social and cultural rights.

Modern non-discrimination law has also developed within a number of national jurisdictions, based on evolving national and sub-national equality legislation.<sup>5</sup> In recent years, experts prefer to talk about “equality law”, which has subsumed non-discrimination law, reflecting the evolution of the right to equality subsuming the right to non-discrimination. In the words of the late Professor Sir Bob Hepple QC, who was Chair of the Equal Rights Trust:

The shift of focus from negative duties not to discriminate, harass or victimise, to positive duties to advance equality, justify the re-invention

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3 Among the main interpretative documents issued by treaty bodies, two should be referenced in particular: UN Human Rights Committee, General Comment 18, Non-discrimination, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994); and UN Committee on Economic, Social and Cultural Rights, *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)*, 2 July 2009, E/C.12/GC/20.

4 UPR Info Database, available at: <http://www.upr-info.org/database/>

5 Schiek, D. et al., *Non-discrimination Law*, Hart Publishing, Oxford and Portland, Oregon, 2007, pp. 8-9. Note that in some countries, such as the UK, the term “discrimination law” is preferred: see, e.g. Palmer, C. et al., *Discrimination Law Handbook*, Hart Publishing, 2007.

of this branch of the law as equality law, of which discrimination law is an essential but not exclusive part.<sup>6</sup>

In states where equality law exists and is relatively strong, it has undergone evolutions over the last five decades which, whilst country-specific, can be described in terms of global trends. Some authors have referred to “generations” of equality law.<sup>7</sup> In terms of the aims of equality law, there has been a developing conception answering the question: what do we wish to equalize? Accordingly, there has been a movement from equality of treatment through equality of opportunity and on towards equality of participation or equality of capabilities.

In terms of the conceptual frameworks of equality law, the trends can be summed up as follows: from an approach that is individualistic and defensive to one that is collectivistic and proactive; from a patchwork of norms to a unitary (unified, integrated) framework; from regulation of contractual relations in employment and other areas to a human rights approach; clarifying the definitions of discrimination, harassment, and victimization and applying them consistently across all protected characteristics; widening the circumstances in which positive action (affirmative action) is allowed; increasing focus on the interconnectedness of the different types of inequalities and disadvantages; expanding positive duties on public sector bodies to advance equality in respect of all protected characteristics; and the beginning of attempts to relate status equalities with socio-economic equality (e.g. in the UK there is a new duty on public authorities “to have due regard to socio-economic disadvantage when taking strategic decisions.”<sup>8</sup>)

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6 Hepple, B., *Equality: The New Legal Framework*, Hart Publishing, 2011, p. 1. This shift in terminology can be seen in the UK with the move from the Sex Discrimination Act 1975 and further non-discrimination laws to the Equality Act 2010.

7 Hepple, B., see above note, p. 11 presenting a table summing up five generations of equality law in the UK.

8 Article 1 of Equality Act 2010 (not yet in force).

### 3. Progress in implementing the right

The UN human rights system has played an important role in promoting equal rights. However, almost 70 year after the adoption of the UDHR, discrimination is far from being eliminated and inequality is far from being reduced. Indeed, certain inequalities appear to be growing, and discrimination on forbidden grounds<sup>9</sup> continues to be a pervasive social evil and source of injustice.

Below is a very brief summary of prevailing patterns of discrimination on prohibited grounds, in the form of a highly selective list of examples.

*Sex (gender) discrimination* exists in numerous forms, in law or in practice, in virtually all countries. Violence against women is a common form of gender discrimination,<sup>10</sup> and includes sexual harassment and assault of women and girls. According to Human Rights Watch, Papua New Guinea is one of the most dangerous places in the world to be a woman, with an estimated 70 percent of women experiencing rape or assault in their lifetime. Other forms of violence against women, including child marriage and female genital mutilation, continue despite laws prohibiting them. Criminal law in numerous countries is biased against women and girls in the way it defines and prosecutes rape. Personal status laws governing marriage, separation and divorce, child custody, and inheritance overtly discriminate against women in a

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9 In the UDHR, these are sex, race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status. Further grounds have been added by subsequent instruments.

10 Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 19 (11th session, 1992), Violence against women, Para 1.

long list of countries (Bangladesh, Egypt, Indonesia, Iran, Israel, Jordan, Kuwait, Lebanon, Libya, Saudi Arabia, Tunisia, and dozens of others). And discriminatory nationality laws in 27 states mean that women cannot pass on their nationality to a foreign husband or to their children.

Women in many countries are subject to discriminatory restrictions in respect of dress codes. For example, in Indonesia, in 2014, there were 279 discriminatory local regulations targeting women and girls; many of these related to dress requirements, with mandatory hijab also imposed on Christian girls in some areas. On the other hand, in some secular states, including Belgium and France, women are prohibited from wearing a full face veil in public places, and in Turkey women are not allowed to wear the hijab in universities. Finally, gender discrimination in employment is found in almost every country, to varying degrees. In Iran, employment of women is restricted in coffee shops, certain restaurants, and other public spaces; in Sudan, women are not permitted to work in certain positions in the oil industry. The gender pay gap persists, although it is falling in most of the OECD countries.

Discrimination based on *race, ethnicity, colour of skin*, and similar characteristics is pervasive, and most ethnic minorities in the world today suffer various forms of discrimination and exclusion. Institutionalized discrimination against Haitians in the Dominican Republic keeps persons of Haitian descent from registering their children as citizens, shutting the children out of schooling and health care. People of African descent are discriminated against on the basis of their skin color throughout South America, as well as in Egypt and Sudan, while Roma remain to date the most disadvantaged and systematically excluded minority throughout Europe. In the occupied West Bank, Israel continues its discriminatory and punitive demolitions of Palestinian homes: building permits are difficult or impossible for Palestinians to obtain in East Jerusalem or in the 61 percent of the West Bank under exclusive Israeli control (Area C), whereas a separate planning process readily grants Jewish settlers new construction permits in those areas.

Discrimination on the basis of certain characteristics analogous to race—*caste, clan, tribe, and culture*—persists in many countries today. Caste-based discrimination of tribal communities is a continuing problem in India and Nepal. Clan-based discrimination against internally displaced

persons defines life in Somalia's capital Mogadishu, perpetrated by government forces, allied militia, and private individuals including camp managers. Discrimination against *indigenous groups* is also a type of racial discrimination and is widespread. 27 percent of Australia's prison population consists of indigenous Australians, who account for only 3 percent of its general population. Indigenous Australians are more likely to face stigma and discrimination in employment and access to goods and services. Ethnic profiling is a widespread pattern of racial discrimination, and is employed by police in many countries, including Germany, France, the United States, and the United Kingdom.

Discrimination on the basis of *religion* is on the increase in many regions today. In the Middle East, sectarian divisions propel violence and war. Abuses by Shia militias of Sunnis in Iraq have bred the rise and spread of what is now Daesh. In Europe, anti-Semitism and Islamophobia are arguably getting stronger. In many predominantly Muslim states, Christian minorities experience discrimination, as do minority Muslim sects such as the Ahmadiya in Indonesia and Pakistan. As ethnic minority members often have a religion that is different from that of the majority, the map of discrimination patterns features numerous cases of *ethno-religious* discrimination. One of the most worrying examples is China's crackdown on Uighurs in Xinjiang, where discriminatory policies include prohibitions on wearing beards and veils, restrictions on fasting, and overt discrimination with respect to religious education. Massive discrimination against Muslim Rohingya, especially after the 1982 discriminatory nationality law, including through disenfranchising them for the November 2015 national election, is today's most serious human rights issue in Myanmar.

Discrimination on the basis of *language* often takes place in the course of nation building projects, in newly independent states. For example, in Latvia after independence (1991), discriminatory policies affected the over 40 percent strong Russian speaking community, most of whose members were not fluent Latvian speakers. While language distinctions in recruitment are often justified by the nature of the job and fluency in a certain language can be an essential job requirement, the discriminatory legislation required Latvian language fluency for jobs in which it was clearly unnecessary, e.g. for cleaners in public sector institutions.

Discrimination on the grounds of *sexual orientation* and *gender identity* is also pervasive. At present, over 90 states continue to criminalize same sex relationships between consenting adults. In recent years, the gains of the LGBT communities in the West have been offset by increasing discrimination and persecution of LGBT persons in the rest of the world. In Russia, in June 2013, a law prohibiting “propaganda” of homosexuality was adopted. The law uses the pretext of protecting children to ban any work in support of LGBT equality, and to demonize LGBT people and activists. In Armenia, Belarus, Bolivia, Brazil, Georgia, and dozens of other states, violence and discrimination against LGBT persons are deeply entrenched and enjoy impunity. For instance, in Bolivia, in 2014, the Ombudsman’s Office reported that those responsible for the deaths of 55 LGBT persons since 2004 had not been brought to justice. In Guyana, Kenya, Malaysia, and Ukraine, transgender persons face arbitrary arrest, physical and sexual assault, imprisonment, discriminatory denial of health care and employment, and other abuses.

*Disability* discrimination affects an estimated 10 percent of the world population. Forms of disability discrimination include denial of physical access to buildings and means of transportation, denial of reasonable accommodation in employment, isolation and segregation of children with disabilities in schools, and undue restrictions on legal capacity. A 2014 survey by the Fundamental Rights Agency concluded that persons with disabilities face considerable obstacles to political participation all over the EU Member States, while in 15 EU states people with intellectual or psychosocial disabilities under legal guardianship are stripped of their voting rights. Persons with intellectual and mental disabilities are among the most vulnerable human beings in today’s world, in particular when they are in closed institutions, from mental hospitals and residential homes to prisons and police detention cells.

*Nationality* and *migration status* are also important grounds of discrimination. In Lebanon, for example, migrant domestic workers are not covered by the labour law and are subject to restrictive immigration rules based on the *kafala* system, the visa sponsorship system that ties workers to their employers and puts workers at risk of exploitation. An example of discrimination on the basis of *family status* is the differential treatment, in numerous states, of unmarried persons. In Morocco,

Article 490 of the Penal Code criminalizes consensual sex between unmarried people. *Age-based discrimination* exists in patterns such as abuse of the elderly, denial of reasonable accommodation in access to information (when, for example, vital information is only available online and elderly people with poor IT skills are unable to access it), undue age restrictions in admissions to educational institutions, refusal to employ older workers, and mandatory retirement when it is not based on failure to meet occupational requirements but only on age.

Discrimination on the basis of *political opinion* is frequently experienced by persons with oppositional and dissenting political views or affiliations, and can take a huge variety of forms, from politically motivated torture and ill-treatment in custody to pressure on employers to dismiss them or on universities to expel them. Finally, millions of people in the world are victims of systemic forms of discrimination based on their *socio-economic status*, and in this regard, indirect discrimination is particularly relevant. For example, the distribution of public health care resources in a way that puts a poorer community at a particular disadvantage in respect to health care would constitute indirect discrimination on the basis of socio-economic status.

## 4. Current outlook and challenges

Most states around the world are parties to international and regional human rights treaties that contain prohibitions on discrimination. But anti-discrimination legislation is inadequate or non-existent in a majority of countries. Many states have a constitutional protection of equality consonant with UDHR, but national constitutions rarely contain a definition of discrimination and are usually formulated in very general terms at the level of legal or political principle. These equality provisions in the constitutions are seldom applied directly or even invoked by the courts. Public awareness of discrimination is vague: people do not know what conduct or policies amount to a violation of equal rights provisions and what remedies should be available to victims. And the case law on discrimination—international and national—is still weak, compared to case law related to other rights.

The anti-discrimination struggle remains very fragmented, as does its conceptual framework. Different grounds of discrimination (e.g., gender, race, religion, sexual orientation and identity, language, disability, age, etc.) are regulated differently and there is little cooperation of NGOs and government agencies across the different strands of equality. In certain national and regional legal systems, equality legislation has evolved in the last few decades. It contains legal concepts, definitions, approaches, and jurisprudence, some of which have taken the protection against discrimination and the realization of the right to equality to a higher level. However, the disparity between international human rights law and national as well as regional approaches to equality hinders progress. For instance, there are different definitions of discrimination in the leading jurisdictions where equality law has evolved (European

Union, UK, etc.) and international human rights law.<sup>11</sup> A major effort is required to modernize and integrate legal standards related to the protection against discrimination and the promotion of equality.<sup>12</sup>

The most striking feature in the global picture of the protection from discrimination and the promotion of equality is the large differences among states in respect to having legal and policy frameworks related to equality. With constitutional protection purely rhetorical, most states lack a developed, or indeed any, legislative and policy framework related to equality that would give effect to equality rights enshrined in international human rights law and/or their own constitutions. At the other end of the spectrum, up to 30 percent of UN Member States (Canada, South Africa, the USA, and all European Union Member States) have comprehensive and well-developed equality laws and policies, covering extensive, closed or open-ended lists of grounds (sex, race, religion, sexual orientation, disability, etc.) and areas of life (administration of justice, government and public functions, employment, education, health, provision of goods and services, etc.), and providing legal definitions of prohibited conduct as well as effective remedies.<sup>13</sup>

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- 11 One key difference is European law, unlike international human rights law, relies on concepts of “direct discrimination”, “indirect discrimination” and other forms of prohibited conduct, and does not—as a matter of principle—provide a general definition of discrimination. By contrast, the HRC has provided (in GC18, Para 7) a general definition of discrimination, based on pre-existing ground specific definitions in ICERD and CEDAW: *“While these conventions deal only with cases of discrimination on specific grounds, the Committee believes that the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”*
- 12 See the Introduction to *Declaration of Principles on Equality* (London, Equal Rights Trust, 2008) signed by Bob Hepple and this author.
- 13 Often, governments and other stakeholders in states where equality law is underdeveloped or missing are not aware of this field. Many states have group specific or area specific laws that they would typically point at when asked about their equality legislation. For example, these can be declarative framework laws about the advancement of women, social cohesion, disabled persons, etc.; however, these pieces of legislation do not qualify as equality legislation if—as the case most often is—they do not contain enforceable equality rights. Accordingly, these states do not have any relevant jurisprudence resulting from discrimination claims considered by courts.

## 5. Realizing equality rights in the 21st Century<sup>14</sup>

To strengthen the promotion and protection of equality rights in 21st Century, it is vital that all states adopt comprehensive anti-discrimination or equality laws. Certainly, it has become customary for UN treaty bodies, when reviewing a state party's performance under a particular treaty, to include a standard recommendation in their concluding observations to this effect. This recommendation is based on a number of treaty provisions, similar to ICCPR Article 2(2):

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Further, the UN should take steps to integrate and modernize the conceptual framework, the instruments, and the institutional mechanisms for advancing equality rights. Taking each of these in turn:

### Conceptual framework

The UN should embrace and promote the Unified Human Rights Framework on Equality which emphasizes the integral role of equality

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<sup>14</sup> The suggestions outlined in this section are illustrative and non-exhaustive proposals for promoting and protecting equality rights in the 21st Century.

in the enjoyment of all human rights, and seeks to overcome the fragmentation, inconsistencies, and gaps in the field of equality law, policies, and practices. The Unified Human Rights Framework on Equality is a holistic approach that recognizes both the uniqueness of each different type of inequality and the overarching aspects of different inequalities. The Unified Framework brings together: (a) types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation, and gender identity, among others; (b) types of inequalities in different areas of civil, political, social, cultural, and economic life, including employment, education, and the provision of goods and services; and (c) status inequalities (race, gender, etc.) and socio-economic inequalities.<sup>15</sup>

This conceptual framework is expressed in the Declaration of Principles on Equality,<sup>16</sup> adopted in 2008 and endorsed by thousands of experts and activists on equality and human rights from all over the world.<sup>17</sup> The 27 principles on equality are based on legal concepts that have evolved in UN, regional, and national jurisprudence. Although many of the terms employed in the Declaration are sufficiently well established, the resulting conception of equality in its entirety opens a new space for standard development in the international human rights system.<sup>18</sup> As defined by the Declaration, the right to equality has as its

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15 In the long run the governing principle of equality will be strengthened if the different strands are brought together. For example, it should not be necessary for a disabled black woman in Canada to have to choose the correct pigeonhole in which to put her case, whether it be race, or gender, or disability. Equality is an over-arching principle: there is no hierarchy of grounds of discrimination.

16 *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008.

17 Since its adoption, the new framework expressed in the Declaration has been used as the basis for those developing anti-discrimination and equality legislation in a number of countries and has received increasing support at the international and regional levels. In 2009, the UN Committee on Economic, Social and Cultural Rights (CESCR) made use of a number of key concepts from the Declaration in its *General Comment 20: Non-discrimination in economic, social and cultural rights*. In 2011, the Parliamentary Assembly of the Council of Europe adopted a Recommendation calling on the 47 Council of Europe Member States to take the Declaration into account when developing equality law and policy. The Declaration has been described by judges as “the current international understanding of the principles on equality (*Naz Foundation v Government of NCT of Delhi and Others* WP(C) No. 7455/2001, Para 93.)

18 Petrova, D., “The Declaration of Principles on Equality: A Contribution to International Human Rights,” in *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, p. 31.

elements the equal enjoyment of all human rights, as well as the equal protection and benefit of the law.<sup>19</sup> Most importantly, it encompasses equal participation in all areas of life in which human rights apply. Equality is not only a right to be free from all forms of discrimination, but also a right to substantive equality in practice. Under this approach, positive (affirmative) action is a necessary element of the right to equality.<sup>20</sup>

## Instruments

The UN should also adopt a Declaration on Giving Effect to Equality Rights, as a step towards integrating and modernizing its role in promoting equality. The UN Declaration should be based on the Declaration of Principles on Equality, and its purpose should be to spell out the general principles and essential elements, both substantive and procedural, of national equality legislation.

The *general principles* of national equality legislation will include, for example: the need for specificity and detail (as opposed to framework Acts); the participation of stakeholders in making laws and policies; the duty to educate the public on equality rights; and the prohibition of regressive interpretation. The *substantive elements* will include, for example: the provision of legal definitions of the right to equality and the right to non-discrimination; a legal definition of discrimination which should itself define all forms of prohibited conduct, including direct and indirect discrimination, harassment, denial of reasonable adjustment, incitement to discrimination, etc.; a formulation of the

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19 Principle 1 of the Declaration defines 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" (*Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 1, p. 5.)

20 Principle 3 of the Declaration states: "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." (*Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 3, p. 5.)

principle of positive action; the specification of rights holders and duty bearers; and obligations to gather information, including statistics, which is relevant to inequalities. *Procedural elements* will include, for example: procedures and mechanisms available to victims who wish to complain; standing rules; rules of evidence; rules of proof of discrimination, including the critical procedure of the reversal of the burden of proof in civil proceedings; remedies and sanctions; and specialized bodies.

## Institutional mechanisms

Finally, the Human Rights Council should introduce a new special procedure, which may be either a Working Group on Equality or a Special Rapporteur on Equality, whose mandate would be to monitor states' compliance with their obligations under international human rights law to give effect to equality rights. This mandate would be based on the Declaration on Giving Effect to Equality Rights recommended above.