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“Effective and independent structures for promoting equality”

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REPORT
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Introduction

This expert workshop offered the possibility to explore and debate the ideas and measures required to:

- establish equality bodies;
- support equality bodies;
- ensure equality bodies are effective and independent;
- realise the potential of equality bodies.

It was highlighted that this debate needed to take account of the diversity of equality bodies. This diversity is evident in the functions accorded to equality bodies – equality bodies that are primarily promotional and equality bodies that are primarily quasi judicial in particular. It is evident in the grounds covered by equality bodies – in particular equality bodies with a mandate in relation to one ground and equality bodies that cover a number of grounds. Diversity is evident in the structure and scale of the equality bodies. It is also evident in the history, and length of history, of the equality bodies.

The starting point for the debate was deemed to be the unique nature of the equality bodies. They are statutory bodies but not an agent of the state because they must be independent. However they are not part of civil society as they are statutory bodies. This uniqueness is the strength of the equality bodies – their source of added value. This uniqueness is a source of challenge to equality bodies as there is a fine line to be sustained in their work to hold this unique space.

Purpose of Equality Bodies

The debate on equality bodies was located within some level of shared understanding of the purpose of equality bodies. Three dimensions to this purpose were identified:

- to implement functions set out in equal treatment legislation;
- to realize the mandate accorded to the equality body under equal treatment legislation – this can include combating discrimination, promoting equality, promoting positive action and promoting good relations;
- to achieve an impact on society – to contribute to social change, to contribute to collective development that goes beyond the individual claimant to encompass the whole society.

This broad definition of purpose provided a useful context within which participants explored what is needed to establish, support and realize the potential of equality bodies. The debate on independence, effectiveness, stakeholder participation and under-reporting took place within this perspective of impact. In this way issues and ideas were identified at three different levels:

- issues and ideas that relate to the INTERNAL operation of the equality bodies;
- issues and ideas that relate to the EXTERNAL influences on equality bodies;
- issues and ideas that relate to the INTERNATIONAL context for equality bodies.

Finally, in this debate, it was acknowledged that equality bodies are not an island within their different jurisdictions. They form part of a wider machinery for promoting equality and combating discrimination. The nature, extent and ambition of this wider machinery in each jurisdiction will determine what is needed to secure independent and effective equality bodies.

Independence

The independence enjoyed by the equality body was identified as a factor in the extent to which the equality body makes an impact.

What independence looks like in practice was a focus for examination. Independence is about the equality body being able to determine its own priorities, to allocate its resources as it sees fit, to make decisions in relation to its own staff and to exercise all of its powers as, and when, it deems necessary. It is about how

the organization is structured vis a vis Government. It is about the equality body articulating a critical voice – especially in times of crisis.

At an INTERNAL level independence was deemed to be about a de facto independence which is visible in what is done by the equality body and how the equality body goes about its business. A key measure of independence is the extent to which the leadership of the equality body wants to be independent. The key internal challenge is to build a culture of independence within the equality body.

At an EXTERNAL level independence was identified as being linked to the way in which the equality body is structured, how its accountability is organised, and how its leadership is appointed.

One barrier to independence was seen to lie in the structuring of the equality body as part of a Government Ministry. This does offer some independence from stakeholders other than Government. However it creates a situation where de facto independence becomes difficult to practice. A stand alone legal entity offers the best structure for independence from a de jure and de facto perspective.

Equality bodies have to be accountable. However it was demonstrated that the manner in which this accountability is organized can limit the independence of the equality body. There are examples where accountability is to a Government Department. This accountability can involve agreement on a broad direction of travel for the equality body, approval of corporate plans, and agreement on management statements and financial memoranda. Accountability can, in other examples, be structured to the national Parliament. This might appear to offer more potential for independence, but in both cases examples of interference in independence were given. It is important to broaden accountability across a range of stakeholders and to break the funder: owner link that can be evident.

The leadership of an equality body was named as an important factor in its de facto independence. This raises the issues as to who appoints the senior management of the body and the Commissions that govern them, and as to how these appointments are made. Open, transparent and independent systems of appointment need to be, but are not, the norm.

INTERNATIONAL bodies were identified as having played a valuable role in under-pinning the independence of equality bodies through the publication of standards. Examples include the United Nations Convention on the Rights of Persons with Disabilities, the Paris Principles, the European Union equal treatment Directives, and the ECRI policy recommendations. The ECRI policy recommendations emphasise safeguards for independence that include sufficient funds and appointment procedures for staff and Commission members. The relevance of the Paris Principles with regard to equality bodies is also underscored by the 2010 report on NHRIs in the EU Member States by the European Union Agency for Fundamental Rights (FRA). However a key issue identified as arising at this level was the need to secure implementation of these standards at national level.

Effectiveness

The effectiveness of an equality body was identified as a factor in the extent to which the equality body makes an impact.

One key INTERNAL determinant of effectiveness was seen to lie in the ability of the equality body to be strategic. A strategic approach is planned on a multi-annual basis with indicators and targets through which to assess impact. It involves making use of all powers accorded to the equality body, both its powers to promote equality and to enforce the legislation. It involves identifying the best mix of these powers to be deployed in the particular context. It involves finding the best fit for the work of the equality body within the wider machinery in the jurisdiction playing a role in promoting equality and combating discrimination. A strategic approach is about the quality of decision making within the equality body, in particular the quality of decision making in the allocation of scarce resources.

Resources given to the equality body, the functions accorded to the equality body and the structure established for the equality body were identified as key EXTERNAL determinants of effectiveness.

Inadequacy of resources was seen to be an issue for many equality bodies. This inadequacy can often reach a point where the equality body is unable to implement some of its powers or is unable to implement

any of its powers to the critical mass sufficient to make an impact. There is a need to be able to answer the question as to what is a sufficient level of resources – there will always be limitations but what is enough for impact? There was a need identified for some measure of what resources are required for the equality body to achieve its purpose. The answer to this question will be country specific but will involve consideration of:

- population size and economic circumstances;
- value for money;
- the wider machinery in place to promote equality and combat discrimination;
- the resources required for the equality body to implement all of its functions;
- the resources required for the equality body to produce a critical mass of outputs sufficient to make an impact;
- the resources required for the equality body to operate strategically and to address the causes of discrimination.

The range of functions accorded to the equality body was seen to influence the potential for effectiveness, in that effectiveness requires the deployment of an integrated mix of core functions by the equality body. There were instances given where this range of functions is not available to the equality body. The ECRI policy recommendations point to the need for a range of competencies for equality bodies including the provision of assistance to victims, investigative powers, initiation and participation in court proceedings, monitoring and advice on legislation, awareness raising and promotion of good practice. The functions of the equality bodies need to cover the full spectrum of enforcement work, knowledge development work, awareness raising work and promotion of good practice work.

The structure of the equality body was seen as a determinant of effectiveness. The key questions raised in this regard were:

- A multi-ground or a single ground structure?
An equality body with a single ground mandate, on the one hand, can develop significant expertise on that particular ground. An equality body with a multi-ground mandate, on the other hand, can promote an approach to equality without hierarchies, offer an administrative simplicity to employers and service providers and can address the situation of groups at the intersections between the grounds.
- A stand alone body or a body embedded within another similar body promoting rights?
Examples of this embedding were given where ombudspersons or human rights institutions took on the role of equality body. There needs to be common ground between the bodies where an equality body is embedded within another body. The determining factor needs to be whether or not the embedding makes the fight against discrimination more effective? Will the embedding enable a prioritization of equality issues? Often a merging of bodies can be a means of undermining their work. Where there is overlap of function between bodies this could better be seen as a valuable means of spreading the safety net for those who are experiencing discrimination. Duplication must be avoided but there were instances of good practice given in this regard where the bodies involved developed memoranda of understanding and shared planning practices. The 2010 FRA report on NHRIs highlights the need for cooperation between equality bodies and other bodies promoting rights.
- A single body combining quasi judicial and promotional functions or two bodies to separate these different functions?
The ECRI policy recommendations point out that another body could be set up to adjudicate complaints through legally binding decisions.

At an INTERNATIONAL level equality bodies were identified as having had their effectiveness enhanced by support from European Commission funding programmes such as PROGRESS. International human rights instruments, and the reporting processes under these, were also seen to have offered strength through which to seek and secure social change at national level. Again however there is the dilemma where international mechanisms have limited capacity to actually secure national implementation.

Stakeholder participation

Stakeholder participation was identified as a factor in the extent to which an equality body makes an impact.

At an INTERNAL level this stakeholder participation can be achieved within the governance structures of equality bodies. This participation broadens the accountability of the equality body and affords an ownership of the equality body that goes beyond the institution that funds the equality body. However it was identified as important that this participation is not in a representative capacity. It has to act in the corporate interests of the equality body and the participants have to engage with the agreed corporate vision.

At an EXTERNAL level the independence of the equality bodies was seen to allow them to cooperate with other stakeholders. Equality bodies are unique but they are not alone. In particular it is important for equality bodies to cooperate with other institutions that might have overlapping roles such as national human rights institutions or ombudsmen bodies. Equality bodies cannot do everything, they need to cooperate and interact with a broad range of other societal actors. In this way equality bodies can be part of building, stimulating and supporting a wider machinery in society to advance equality and combat discrimination. It was identified as important in this work to watch for and avoid capture by stakeholders. Strong and effective relationships are possible while maintaining independence.

At an INTERNATIONAL level regional cooperation was seen to have increased the standing of equality bodies. Regional cooperation, such as Equinet, was identified as offering peer support to be more effective. External assessment by ECRI was identified as offering hope and impetus to equality bodies in difficult circumstances.

Under-reporting

Under-reporting was identified as posing a potent threat to the ability of equality bodies to have an impact. Under-reporting was discussed as a product of many factors including fear of reprisal, lack of awareness of rights, lack of awareness of supports available, inequalities in the relationship between discriminator and discriminated and lack of confidence in achieving a successful outcome, as well as the time taken for the case to be resolved. Under-reporting was not deemed to be the sole responsibility of the equality body but rather as an issue that needs to be taken up by a broad range of stakeholders.

At the INTERNAL level equality bodies were deemed to be challenged to engage in a strategy to minimize under-reporting. This strategy could include activities such as:

- outreach and direct contact with groups experiencing discrimination;
- communication strategies to make the equality body visible;
- mutual education to build trust in the equality body and to develop the knowledge of equality body staff;
- profile the outcomes of cases to give confidence in the possibility of success;
- ensure low threshold accessibility to tribunal-type settings;
- establish a local/regional presence;
- set-up simple and transparent processes that would not discourage victims from reporting.

At the EXTERNAL level it was seen as necessary to mobilize the wider machinery for equality and non-discrimination behind the challenge of eliminating under-reporting. Research is important in documenting and understanding the problem. Resources are required to broaden the range of advocacy supports available to groups experiencing discrimination. A culture of rights needs to be promoted across society.

At an INTERNATIONAL level research work done by the European Union Agency for Fundamental Rights was discussed as assisting the understanding of this issue and the peer support work of Equinet was noted as supporting the need to prioritise action to address this issue.

Way forward

The vulnerability and fragility of equality bodies emerged as an overarching challenge at the expert workshop. In a number of jurisdictions there are incidents of:

- political interference in Board appointments;
- threats to and cuts in funding of equality bodies beyond what might be expected in economic recession;
- lack of recognition of the equality bodies and limited understanding of their potential and role;
- the functions of equality bodies being expanded without additional resources being made available;
- merger of equality bodies with inappropriate organisations.

In moving forward it will be important that:

1. New international standards are established that enable a more even development of independent and effective equality bodies in all jurisdictions. These standards will need to be dynamic in a changing context and to respect that one size does not fit all situations. They will need to focus on the functions, structure, accountability, leadership and resources of the equality bodies. They will need to focus on the operations of equality bodies and the importance of developing a strategic approach. They will need to respect and build on the relevant UN Conventions, the Paris Principles, the relevant EU equal treatment Directives, and the ECRI policy recommendations.
2. The case is made and disseminated for independent and effective equality bodies such that Governments recognize the need for advocacy, litigation and investigation work by equality bodies and understand the relevance and need for equality bodies in making a difference in people's lives.
3. International financial supports are further developed that would be specific to the needs of, and directly accessible to, equality bodies so that the equality bodies are enabled to be strategic in deploying all their functions and so that they can meet standards set for equality bodies.
4. Equality bodies deploy their functions and use their resources in a strategic manner, go about their activities in an independent manner and offer a critical voice in this time of economic crisis.
5. National authorities create the conditions necessary for independent and effective equality bodies in the organizational structure they establish for, the functions they accord to, the accountabilities they require from, and the resources they allocate to the equality body.
6. All stakeholders give consideration to the development and emergence of a new generation of equal treatment legislation that would be:
 - more comprehensive in taking on other grounds such as socio-economic status;
 - more collective in moving beyond a reliance on individual enforcement and making provision for positive duties on organisations to advance equality and prevent discrimination.