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Empowering Right-Holders: Inclusion, Refugee Protection, the Digital Age

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It is a great pleasure & honour to be here among so many friends.

I have been asked to discuss the empowerment of rights holders. Most of my work has to do with reminding duty-bearers of their responsibilities. Thankfully, I also work with rights bearers and try to empower them in various ways. They also empower me through their courage & determination.

My reports and public pronouncements are meant to give political & legal ammunition to activists, national human rights structures, reform-minded civil servants and politicians to push for change. They are also meant to provide political cover, so people can say: "I would never say this, but the Commissioner did, and he must be right..."

When I visit some of the nastiest places in Europe – the migrant detention facilities, the psychiatric institutions, the Roma settlements – I listen to the people there and then try to amplify their voices, to convey their messages to people in power. I sometimes get the feeling that people there draw hope from my visits: hope that they have not been forgotten, hope that I might be able to draw political or media attention to their plight. I work hard to try to ensure that that hope is not misplaced.

But real empowerment comes from participation that leads to change, change for the better, and that is becoming far too rare in Europe these days. Instead, we are seeing backsliding in many places: backsliding on inclusion, backsliding on refugee protection, and backsliding in digital rights. Let me just mention a few examples from the last year and a half of my work, with a focus on EU countries.

Backsliding in inclusion

Forced evictions of Roma have become almost an epidemic in Europe and this hinders social inclusion, and especially school inclusion. Recently, I sent letters on this issue to the authorities in Bulgaria, France, Hungary, Italy and Sweden.

The promise of inclusion enshrined in the UN Convention on the Rights of Persons with Disabilities (UNCRPD) often remains only a promise. Over the last year, I examined the unsatisfactory situation with inadequate legal capacity regimes, segregated schooling and/or insufficient progress on deinstitutionalisation in Belgium, Bulgaria, France, Hungary and Slovakia.

Backsliding in refugee protection

I continue to receive regular reports about pushbacks of migrants from various EU countries. I intervened as a third party at the European Court of Human Rights on a case of alleged pushbacks from Spain to Morocco.

I intervened on another case about Dublin returns to Hungary, which has created a legal environment in which it is virtually impossible to receive international protection in the country.

Many countries are making their asylum and family reunification policies more restrictive in the misguided hope that this will stem arrivals. I recently sent a letter on the topic to the Danish authorities, intervened via the media in Austria when changes were proposed here, and sent a long memo on the topic to the United Kingdom.

Backsliding in digital rights

Many countries are adopting or discussing bad surveillance laws, which pose risks to the right to private life, especially on-line, and could threaten the confidentiality of journalistic sources and lawyer-client privilege. I just published a report analysing such a law in Poland, I sent a memorandum to the United Kingdom government on the topic, and intervened several times in the French debate on this issue.

While these kinds of interventions might serve as indirect empowerment, monitoring visits, especially to places of human rights relevance, have a powerful direct awareness raising potential.

In the context of this conference, this means meeting victims of discrimination and hate crimes. This is why I have gone to parks and squats to meet victims of racist attacks and visited Jewish communities and mosques. This means meeting asylum-seekers and refugees in reception centres, detention centres, refugee camps, and in campsites in the centre of cities. This means meeting internet activists and bloggers; and of course this means meeting human rights defenders who may be under threat because of the work they do.

Of course, it will ultimately be civil society and governments who empower rights-holders.

Looking at governments first, one issue concerns the effectiveness of raising awareness of right-holders where duty bearers are ignorant of their obligations. To help address this gap, I prepared a number of research studies, which highlight government obligations in a number of areas.

These include areas of focus of this forum. For example, I just published an issue paper on migrant integration; in 2014 and 2015 I prepared issue papers on the rule of law and the internet and on democratic and effective oversight of national security services.

Looking at indirect empowerment, our work should focus on facilitating access to institutions and organisations that can provide help. Crucial partners in this endeavour are national human rights structures. Our priority should be on making these institutions really accessible.

By this I mean especially two things. First, these institutions must be strong and independent – if not, people will not trust or use them. Secondly, they have to be well resourced so that they can reach potential users.

In addition to national human rights structures, we must continue to work with NGOs providing legal assistance and services and with the legal profession. However, most people who need assistance have few resources. This means that there is a need for a reliable system of free legal aid and sustainable funding for NGOs for litigation and legal assistance programmes.

Another way international organisations can assist these key partners is by improving their practical knowledge of human rights standards. The Council of Europe, for example, does this through its European programme for human rights education for legal professionals (HELP), which provides high-quality, tailor-made training tools to European legal professionals.

Lastly, we can improve empowerment of communities affected by human rights violations and exclusion by working with members of these communities who may be more able to reach out to those most in need. Through its Roma education programme for instance, the Council of Europe has been training mediators in delivering quality mediation between Roma communities and local authorities for the past five years. Since 2011, more than 1300 mediators have been trained in 22 countries.

International organisations can and should help to create the conditions that enable the exercise of rights. One essential aspect of this is working for the protection and empowerment of human rights defenders.

I consider some activities to be especially useful. First, maintaining contacts with and visiting human rights defenders who are under pressure or direct threats. Second, it is important to ensure that the legal framework regulating activities of NGOs and the relevant practice are in conformity with applicable standards. Third, I have supported cases of human rights defenders through third-party interventions before the European Court of Human Rights.

In the current negative environment for human rights, we will have to be creative, clever, and tough. We will need to combine strategic patience with impatience, even anger at the backsliding all around us. Group therapy sessions such as this conference can surely help. I hope we can all manage our anger and harness it towards achieving real change. That will empower us all.