

Equality Bodies and National
Human Rights Institutions
*Making the Link to Maximise
Impact*

An Equinet Perspective

November 2011

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Introduction

1. Purpose

Equinet is the European network of equality bodies. It has a membership of thirty three equality bodies. Equinet works to enable these equality bodies to achieve their full potential by developing staff skills within equality bodies, by supporting the strategic capacity of equality bodies and by identifying and communicating the learning from the work of the equality bodies to policy makers.

Each year Equinet publishes a number of *perspectives* to inform policy development at European and national level. These *perspectives* draw from the work and experience of the equality bodies. This *perspective* is focused on the relationship between equality work and work on human rights and between the bodies with responsibilities in each of these areas.

This *perspective* is based on a survey of the experience of equality bodies, members of Equinet, of making links between their organisations and national human rights institutions. It seeks to establish a framework within which to analyse and understand this experience. It aims to establish principles and proposals to ensure that the links developed between equality bodies and national human rights institutions contributes to maximising the impact of these bodies.

2. Rationale

Three European Union Directives (2000/43/EC¹, 2004/113/EC² and 2006/54/EC³) require Member States to establish or designate bodies for the promotion of equal treatment on the grounds of gender and of racial or ethnic origin⁴. The terms of this requirement specify that these bodies 'may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights'.

A number of equality bodies were established as part of pre-existing national human rights institutions. Some equality bodies have been merged with national human rights institutions or have had their mandate extended to include a human rights mandate. Other equality bodies are expected to receive a human rights mandate or to be merged with a human rights body in the near future. This is a moment when policy makers are increasingly exploring the potential overlap between human rights and equality and the links between the institutional infrastructure responsible for each area. It is timely therefore to look at the experience of linking national human rights institutions and equality bodies so as to inform current policy thinking on this issue.

Most equality bodies have seen advantages in making links with national human rights institutions. Some equality bodies have developed a strong track record of work within a merged entity holding a human rights and an equality mandate. Some equality bodies have however experienced proposals to merge equality bodies and national human rights institutions as a threat to their independence and effectiveness. Others report difficulties in operating within entities holding both an equality and human rights mandate.

¹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

² Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services

³ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

⁴ Article 13 of Directive 2000/43/EC; Article 12 of Directive 2004/113/EC and Article 20 of Directive 2006/54/EC

It is important to ensure that any linkage established between equality bodies and national human rights institutions is developed in a manner that maximises the impact of these bodies. This perspective seeks to enable and support such an outcome.

3. Approach

The preparation of this *perspective* was initiated with a presentation to the European group of National Human Rights Institutions by Equinet. This presentation set out a draft set of concepts that should underpin linkages between equality bodies and national human rights institutions. It sought to open up a dialogue with national human rights institutions about these linkages and, in particular, to gather responses that would inform this perspective.

The second step in the process of preparing this *perspective* was a meeting of the Equinet Working Group on Policy Formation. The Working Group discussed the concepts to inform the perspective and the ground that needed to be covered by this perspective. The proposed framework for the perspective and the first draft of the perspective were also a focus for comment from members of the Working Group.

The core input for this *perspective* was a survey of Equinet members to establish the scale, nature, and form of the linkages they have developed with human right bodies. Particular attention was given to exploring the experience of bodies with a dual mandate to promote equality and human rights. This survey provides the backbone on which the perspective has been drafted.

The *perspective* was presented in draft form at the Equinet High Level Meeting in November 2011 in Brussels that brought together senior representatives of all member organisations. The High Level Meeting was also attended by the Chair of the European Group of National Human Rights Institutions. The *perspective* was finalised on the basis of the debate at this meeting.

The Concepts

1. Equality/Human Rights

Equality and non-discrimination are fundamental principles in human rights and, in effect, make all human rights universal. Equality and non-discrimination underpin the enjoyment of human rights. All international human rights instruments establish that human rights are to be enjoyed without discrimination. The promotion and fulfilment of human rights needs to respect and take account of the diversity of the population and to advance inclusion and equality.

Since the adoption of the Universal Declaration of Human Rights (1948), the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the International Covenants on Civil and Political Rights (1966) and on Economic, Social and Cultural Rights (1966) the international community has found it necessary to adopt more specialised Conventions to protect the human rights of particular groups through, for example, CERD⁵, CEDAW⁶ and the UNCRPD⁷.

A human rights based approach to equality/non-discrimination can ensure that the promotion of equality is rights based and advances the fulfilment of human rights. A human rights based approach to equality/non-discrimination advances the needs of groups experiencing inequality of rights and holds Government and public bodies to account in relation to these rights.

⁵ International Convention on the Elimination of All Forms of Racial Discrimination (adopted by the UN General Assembly resolution 2106 of 21 December 1965)

⁶ Convention on the Elimination of All Forms of Discrimination against Women (adopted by the UN General Assembly resolution 34/180 of 18 December 1979)

⁷ United Nations Convention on the Rights of Persons with Disabilities (adopted by the UN General Assembly resolution 61/106 of 13 December 2006)

An equality based approach to human rights ensures that human rights are enjoyed by all no matter what societal groups they form part of. An equality based approach ensures that initiatives to protect, promote and fulfill human rights take account of the diversity of rights holders. It ensures that human rights are advanced in a manner that contributes to a more equal society.

Equality is thus not only a fundamental principle in human rights but also a tool for examining other human rights. For example, the right to housing, even though it is universal, might depend on the economic and social development level in a particular country. But the right to equality/non-discrimination will nevertheless apply in whatever country.

2. Diversity of institutions

Equality bodies are diverse. This diversity will shape and inform the scale, nature and form of the links they might make with national human rights institutions. This diversity is evident in the scale, length of history, legal basis, structure, mandate and function of the equality bodies.

The diversity of function is particularly important in this regard. Two principal types of equality body have been identified in this regard - tribunal type equality bodies and promotion type equality bodies. Tribunal type equality bodies are predominantly concerned with generating findings on discrimination while promotion type equality bodies are predominantly concerned with providing legal advice and support to victims of discrimination and supporting good practice by employers and service providers.

National human rights institutions are also diverse in function, structure, mandate and legal basis. This diversity must also be taken into account in considering linkages between equality bodies and national human rights institutions.

3. A framework for possible linkages

There are four different forms of linkage that provide a framework from which to analyse the links developed between equality bodies and national human rights institutions.

1. *'Mutual exchange'* where equality bodies and national human rights institutions acquaint themselves with each other's work, approach and analysis.
2. *'Joint action'* where equality bodies and national human rights institutions move beyond the exchange of knowledge and information to develop and implement joint initiatives.
3. *'Joint planning'* where equality bodies and national human rights institutions develop strategic plans and business plans together in order to avoid duplication, to develop joint work and to achieve a synergy between the work of each body.
4. *'Merger'* where a single body has a mandate in relation to both human rights and equality.

The form of linkage chosen should be influenced by the particular jurisdictional context and by the interplay already developed between work on human rights and work on equality in the jurisdiction. It should be informed by the experience in other jurisdictions and reflect the learning from this experience. It should respond to the risks inherent in the different forms of linkage as well to the potential in these different forms of linkage.

4. Purpose in making links

Links between equality and human rights work have sought to address a range of different purposes. These include:

- Cost issues and the reduction in costs that can accrue from linking or merging the two mandates.

- Effectiveness issues where the integration of or linking of the two mandates can enhance the impact of the body or bodies on human rights and equality issues in their society and could enable greater access to their services.
- Efficiency issues where linkages between human rights and equality bodies can address potential overlap or duplication in the work of both bodies and can inform and strengthen the work of bodies.

Purpose will also inform the form that links between equality bodies and national human rights institutions might take. A singular purpose based on cost issues however is unlikely to assist effectiveness and efficiency of the bodies. It is important that all three potential purposes are pursued.

5. Potential in making links

The potential in the linkages grow with each different form from 'mutual exchange' to 'merger'. Each new form of linkage usefully builds on the previous form. In this way it is helpful to see linkages between equality bodies and national human rights institutions as a process of necessary evolution that starts with 'mutual exchange' and develops through 'joint action' to either 'joint planning' or 'merger'.

Each form of linkage holds potential:

- '*Mutual Exchange*' enables learning among staff in the equality bodies and national human rights institutions. Each mandate holds useful learning for those working on the other mandate. '*Mutual Exchange*' enables duplication and overlap to be avoided and it allows for cross referral between the bodies, thereby also helping victims of discrimination and human rights violations.
- '*Joint Action*' enables a pooling of knowledge and resources that allows the bodies to do more than they could with their own resources and to do it to greater effect.
- '*Joint Planning*' creates the conditions for a better integration of effort to promote human rights and to promote equality. It allows for all the benefits of '*mutual exchange*' and '*joint action*'. It offers a strategic potential to enhance the impact of both bodies.
- '*Merger*' is the most complex of the linkages and therefore its implementation requires the most careful attention. '*Merger*' offers real potential in terms of enhancing the standing of both equality and human rights mandates, strengthening the legal interventions on both issues, broadening the scope of intervention on issues of equality and human rights, and providing greater accessibility to those alleging discrimination or human rights violations. Bodies that hold a dual mandate have an increased capacity to deal with complex cases that involve both equality and human rights issues or that involve a conflict between human rights and equality issues. However it is necessary to create appropriate conditions to realise this potential.

6. Risks in making links

There are risks in making links between equality bodies and national human rights institutions. Clearly the greater risks exist at the level of linkages based on a 'merger' of the mandates and it is these that are principally focused on below. The risks in such a situation are multiplied where the rationale for merger is solely economic and cost cutting. Inappropriate linkages or linkages that are poorly constructed undermine:

- The useful emphasis on the promotion of equality that results from the existence of a separate body for the promotion of equality. This emphasis is necessary in the context of significant and persistent inequalities that persists across all Member States.
- The distinct focus on equality and on human rights that can be secured by separate bodies. This distinction can assist more accurate perceptions by, and accessibility for, those who might need to avail of their different services.

Inappropriate linkages between work on equality and on human rights can end up as a contest between these two fields for the resources and attention required by each field. These risks are exacerbated where insufficient resources are allocated to the merged body. There are instances where linkages have resulted in a near invisibility for either the promotion of human rights or the promotion of equality rather than a reinforcement of the promotion of each.

There are different traditions, legal underpinnings and approaches in the promotion of human rights and the promotion of equality. Legal provisions in relation to equality can go beyond those in relation to human rights *inter alia* where positive duties are applied in equal treatment legislation. Inappropriate linkages can result in a clash of traditions, legal procedures and approaches that undermines the effectiveness of the work in each field. These risks are exacerbated where the mandates accorded in relation to human rights and equality are not clear or are not linked.

The Experience

1. Survey

Equinet surveyed its members in June 2011 to explore their experience and views on making links between equality bodies and national human rights institutions. Twenty five organisations responded to the survey. These organisations were located in twenty three different jurisdictions. Sixteen of the organisations responding were promotion type equality bodies and nine were tribunal type equality bodies.

In six instances it was reported that there were no national human rights institutions present in the jurisdiction. In these instances links with between equality bodies and national human rights institutions were obviously not possible. However in one such instance the equality body reported linking equality and human rights issues into its work and in another the equality body reported making links with other organisations working on human rights.

It is evident from the survey that this is an area of ongoing change. Two equality bodies reported on recent decisions that would involve them merging with a human rights body in one instance and taking on human rights functions in another. Two equality bodies reported ongoing debate in relation to merging equality bodies and national human rights institutions in their jurisdiction. Two equality bodies reported ongoing debate and work on the establishment of a human rights body in their jurisdiction.

The UN Convention on the Rights of Persons with Disabilities and the requirement to maintain, strengthen, establish or designate a framework, including one or more independent mechanisms to promote, protect and monitor implementation of the Convention emerges in the survey as a stimulus for change in the relationship between equality bodies and national human rights institutions. Three respondents identified this potential in the Convention. In one instance debate on the independent mechanism has opened up debate on possible merger of the human rights and equality bodies. In one instance there was joint designation of the equality body and the human rights body as the independent mechanism. In another instance the Convention is identified as a focus for potential joint action.

A specific set of detailed questions were addressed to equality bodies that already formed part of entities with functions in relation to both equality and human rights. These questions sought to identify the approach taken by the body to this dual mandate and the advantages, barriers, factors for success and challenges in such a merger. Ten bodies responded to this detailed questionnaire. Six of these bodies were tribunal type equality bodies.

A shorter questionnaire was addressed to equality bodies that currently have a single equality mandate. These questions sought to explore the nature of the links developed with national human rights institutions and the opinions of these equality bodies on further developing

these links. Fifteen bodies replied to this simpler questionnaire. Five of these bodies were tribunal type equality bodies.

Six of the equality bodies, which responded to the shorter questionnaire, reported no substantive links developed with national human rights institutions in their jurisdiction. This is due to the absence of a human rights body. One of these bodies was a tribunal type equality body.

2. Linking by way of mutual exchange

Six equality bodies reported links with national human rights institutions that were essentially based on mutual exchange of information and knowledge. One of these bodies is a tribunal type equality body.

Mutual exchange is largely organised around regular meetings although it can be based on building personal relationships between key staff. In one instance it happens within a larger coordination group of Ombudsman bodies. In another instance it was enabled by the presence of the director of the equality body as an observer on the human rights body. In a further instance an institutional relationship between the equality body and the human rights body is established in law.

The focus for mutual exchange is principally around legal casework. There is some evidence of mutual exchange in relation to national reports on international human rights obligations. Mutual exchange has also taken the form of solidarity where one body takes on to publicly support a position taken by the other body.

There is an ambition expressed by a number of these equality bodies to deepen the links they have with national human rights institutions. This is expressed in terms of developing more formal arrangements such as meeting points to share information and knowledge or a cluster within which independent bodies could work together on the basis of equality. It is also expressed in terms of moving towards joint actions and developing better coordination of communication and planning.

3. Linking by way of joint action

Two equality bodies reported links with national human rights institutions that involved joint action. One of these bodies was a tribunal type equality body.

The joint work reported was focused on providing training, implementing awareness raising and collaboration on specific issues including Roma, education of children with disability and Roma children, discrimination on the ground of nationality/ethnic origin and the UN Convention on the Rights of Persons with Disabilities.

In one instance an institutional link was created with the head of the equality body appointed ex-officio as a Board member of the human rights body.

The value of joint work is noted in terms of the initiative of two independent bodies affording additional strength to common recommendations on legal and policy matters.

4. Linking by way of joint planning

One equality body reported links with a human rights body that were essentially based on joint planning. This was a promotion type equality body.

The tool to enable this joint planning is a memorandum of understanding between the two bodies. The implementation of this memorandum of understanding is facilitated by regular meetings of the Commissioners of both bodies.

This body was confident in presenting this approach as the most effective form for arranging links between equality bodies and national human rights institutions. A similar approach was also identified by another body as the best means of extracting the maximum benefit from linking equality bodies and national human rights institutions while retaining the organisational independence of each body. This latter is seen as an important pre-requisite for ongoing effectiveness.

5. Linking by way of merger

Ten bodies reported holding some form of dual mandate that covered both equality and human rights. Six of these bodies were tribunal type equality bodies.

In two instances the dual mandate was established by according a human rights mandate to a body with an already established equality mandate. In seven instances the dual mandate was established by according an equality mandate to a body with an already established human rights mandate. In one instance the body was originally established with a dual mandate covering equality and human rights.

Three distinct approaches to implementing this dual mandate emerge in the survey:

- The *'two pillar approach'* is the most common. In this approach human rights work and equality work are assigned to two distinct sections in the organisation. A number of working groups then take up any transversal issues that arise and ensure adequate communication between the two pillars. The two pillars have separate communication strategies. An importance is attached in some instances to ensuring each pillar has access to equal resources.
- The *'integration approach'* is less common and less developed. In this approach a single vision or conceptual framework that embraces both mandates and a multi-disciplinary competence among the leadership and staff across the two mandates are seen as key factors for success. This approach can include initiatives with an equality focus and initiatives with a human rights focus alongside the joined up initiatives. It can start with a human rights proofing of equality work where human rights have been added to an already existing equality mandate or with an equality proofing of human rights work where equality has been added to an already existing human rights mandate.
- The *'mixed approach'* draws from the two other approaches above. In this approach there are distinct departments within the organisation that have specific responsibilities for human rights initiatives and equality initiatives. There are other departments within the organisation that integrate a human rights focus and an equality focus within their work. These integrated departments would deal with cross-cutting tasks like communication and research work.

The bodies with this dual human rights and equality mandate all report gains from holding a dual mandate. These gains include:

- Enabling the equality mandate to benefit from the protection of international standards that have been developed for national human rights instruments and institutions.
- Moving beyond the limitations of equality legislation with its defined grounds and its requirement for a comparator to prove discrimination.
- Strengthening the voice and influence of the body due to the dual mandate held.
- Enabling situations that involve an interaction of both discrimination and human rights violations to be effectively addressed.
- Achieving cost reductions and enabling cost effectiveness.
- Securing a simplicity from a citizen perspective once there is only a single institution to be approached.

There are, however, barriers and challenges identified by the bodies that have this dual mandate.

Inadequate resources and limited competencies are identified as one significant barrier. Some symmetry between the powers held in relation to equality and to human rights is reported as necessary. The body needs to have adequate and coherent powers to make an impact in relation to both equality and human rights just as it needs adequate and sufficient resources to implement all of its powers to best effect. Human resources are also deemed to be important for success in implementing a dual mandate. Staffing levels need to be sufficient and staff need to hold relevant skills and multi-disciplinary competences.

There can be tensions between the equality and human rights mandates that result in barriers. Each area of work is based on a different legal base and this can limit aspirations for an integrated approach. Stakeholders aligned to each area can be different and mistrustful of each other and their different viewpoints can be difficult to manage. This issue can extend to Government where there is a fragmentation of responsibility for equality and for human rights across different Government departments. Government can end up dealing with the body as two bodies under the one roof.

Further tensions can arise between the two mandates due to different traditions in relation to equality and human rights and different methods of work evolved in relation to each area. These tensions can build on perceptions of equality as related to the group and solidarity and of human rights as related to the individual and freedom. Such tensions can also manifest themselves in the manner in which the dual mandate body seeks to present itself to the public. Communication narratives can be competing due to the different cases that can be made for equality and for human rights.

Finally issues are also identified in the allocation of resources between equality related and human rights related work. The balance of resources and the definition of organisational priorities are complex tasks. Some importance is attached to ensuring that both mandates are treated equally.

Conclusion

1. Principles

The experience and work of equality bodies in making links with national human rights institutions suggest a number of core principles that should guide these linkages in whatever form they take. These core principles include:

- Equality and human rights are intrinsically linked. In this context it is important to develop active links between work on equality matters and work on human rights matters. While these links need to be formal they can and should take a range of different forms.
- Equality bodies and national human rights institutions should be full and empowered participants in any decision making in relation to the form of linkages between equality bodies and national human rights institutions that is required in any jurisdiction.
- Any form of linkage developed between the promotion of equality and the promotion of human rights should make the work in each field more effective and efficient. Cost considerations should not be the sole factor in devising any such linkages.
- Parity of esteem between the work of promoting human rights and that of promoting equality should be evident in the allocation of resources between and the priority accorded to the work in each area where separate bodies are concerned and, in particular, where a single body is responsible for both mandates.
- Linkages should enable a multi-dimensional approach (equality and human rights) to issues and initiatives. They should also allow for a singular or unique focus on human rights matters or equality matters where this is relevant and appropriate.

- Stakeholders with a remit in relation to equality and to human rights should be engaged in the development and implementation of linkages between equality bodies and national human rights institutions.

2. Factors for success

The experience and work of equality bodies in linking with national human rights institutions suggest a number of factors that are required for the success of such linkages. These include:

- A coherent legal basis for the promotion of equality and the promotion of human rights. In particular it is important to have a symmetry of powers accorded to an independent body or bodies for the promotion of equality and of human rights.
- An adequacy of resources such that equality bodies and national human rights institutions, whether together or separate, can implement all of the powers they are accorded to full effect, and can deploy adequate and competent staff in each area of work.
- An appropriate provision and balancing of resources such that parity can be achieved between resourcing work on equality and work on human rights, particularly within a single body with a mandate for both these areas.
- Support and engagement from stakeholders with a remit in equality and in human rights in devising and implementing the links between equality bodies and national human rights institutions.
- The development of a strategic approach by the equality bodies and national human rights institutions to making links. This approach would allow for adequate preparation to provide foundations for effective linkages. It enables the links made to grow from initial approaches based on '*mutual exchange*' to whatever the mutually desired outcomes might be.
- Devising appropriate institutional structures to formally underpin the form of linkage chosen by the bodies and to enable an integrated perspective on human rights and equality.
- Developing a multi-disciplinary competence among staff that encompasses and enables an equality and a human rights perspective on their work.

3. Proposals for further action

There is a growing policy focus on this issue of linking equality and human rights work and the bodies with a mandate in each area. There is a concern that this growing focus is prompted by economic difficulties and the demands to reduce public expenditure. It would be important that policy debate on these linkages should be stimulated and concerned with issues of effectiveness and efficiency in promoting human rights and equality.

The experience of the equality bodies in this field affirms that making linkages between equality bodies and national human rights institutions is important for the effectiveness and efficiency of each.

This experience establishes that these linkages can and should take a diversity of forms and do not necessarily require merger into a single body. These different forms of linkage should be a focus for support, resources and analysis.

This experience also establishes that it is necessary to take action to create the conditions for linkages between equality bodies and national human rights institutions if these linkages are to contribute to effectiveness and efficiency. These conditions include legislative reform to create a coherent legal basis, investment to make the necessary resources available and action to develop a multi-disciplinary perspective that encompasses equality and human rights and that builds a shared conceptual framework in both fields.

A range of different actors can contribute to linkages between equality bodies and national human rights institutions that enhance efficiency and effectiveness:

- The European Commission could usefully take up the issue of standards for equality bodies that would match the standards already established for national human rights institutions and that would address the particular role, situation and experience of equality bodies. These standards could usefully address what is expected where equality bodies form part of a human rights body or are merged with a human rights body.
- Equinet could usefully open up a dialogue with the European Group of National Human Rights Institutions to explore the design and operation of the links developed between equality bodies and national human rights institutions and in particular where a single body has responsibility for both mandates.
- The European Group of National Human Rights Institutions could usefully develop a perspective on making links between national human rights institutions and equality bodies from the viewpoint and experience of human right bodies. This would serve as a useful basis for ongoing exchange on this theme with Equinet.
- Equality bodies could usefully review and further develop their links with national human rights institutions on the basis of the experiences described in this perspective and in particular against the principles established on foot of these experiences.
- National policy-makers could usefully provide support for effective links between equality work and work on human rights by taking into account the learning from the experiences set out in this *perspective* and tailoring this to their own national context and by basing any policy or legislative action in this area on the principles and factors for success identified.

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