

## **Mainstreaming Equality: An International Perspective Working Paper 6**

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### **Introduction**

This paper discusses the approach to equality and human rights, and the mainstreaming of equality in a number of countries which appear to be leading the field. The focus was primarily on English speaking nations and information is presented in relation to the U.S., Canada, New Zealand and Australia. To add an additional dimension, the position of Norway as a socially progressive Scandinavian country was also explored. However, we were restricted by the amount of information on the English language pages of the Norwegian government website.

This paper explores two key aspects of mainstreaming. Firstly mainstreaming relates to the practical auditing of decisions, policies and plans within public bodies and government organisations to ensure that equality issues are considered. For example, when drawing up a policy on holiday entitlement, the NHS, as a public body in the UK must consider how the policy will impact on men and women, and ensure that both genders are treated equally due to the Gender Equality Duty (2007). In addition mainstreaming can be taken to mean the way the equality strands are protected within the legislation, and to what extent each strand has access to redress once discrimination has occurred. To achieve mainstreaming, all strands should have legal protection and representation, preferably under a single Act and Commission.

### **New Zealand.**

There is a fairly clear pathway to ensuring equality in New Zealand, via an emphasis within Government on Human Rights. There is a Human Rights Act (1993 – passed 5 years before the UK domestic legislation) which is regulated by the Human Rights Commission (established by the Human Rights Act 1977), and within this Act there is certainly acknowledgement of equality and non-discrimination. The HRA (1993) was amended (Human Rights Amendment Act 2001) at which time the Human Rights Commission merged with the Office of the Race Relations Conciliator, and new Race Relations and Equal Opportunity Commissioner posts were created. So from 2001, New Zealand has supported mainstreaming by reducing the number of bodies protecting and promoting equality. Also in support of mainstreaming, the Human Rights Amendment Act (2001) placed a duty on Government, government agencies and anyone who performs a public function to be accountable for unlawful discrimination under the HRA

(1993), thus it was recognised that discrimination and inequality exist in national policies and their application.

Human rights legislation in New Zealand has its foundations in the New Zealand Bill of Rights (1990) which protects the rights of individuals, companies and incorporated societies from the actions of those in positions of power (including the government, government departments, the judiciary, state-owned enterprises and local authorities). No new piece of NZ legislation can be passed until it has been assessed as complying with the Bill of Rights. The Bill of Rights (1990) draws on the UN Declaration of Human Rights, whereas subsequent human rights legislation has stronger equality themes. For example the NZ Bill of Rights (1990) refers to the following rights: Life and security of the person (including right not to be tortured); democratic and civil rights (including right to vote and freedom of expression, thought and conscience); non-discrimination and minority rights; search, arrest and detention; criminal procedure; right to justice. Under non-discrimination and minority rights, people have the right not to be discriminated against on the grounds of sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment, status, family status and sexual orientation. In addition people belonging to an ethnic, religious or linguistic minority have the freedom to practice their religion or use the language of their minority. This provides the foundation for the 1993 HRA.

In 2003 an audit was published to determine the extent to which human rights were protected or promoted in legislation, policy, government process and in practice. Within this audit the Government looked particularly at non discrimination and participation of individuals in decision making, with a focus on a number of equality strands, including the minority indigenous population. There is an emphasis on:

... the fundamental right to be who we are and to be respected for who we are - whether a disabled person, Pakeha, Māori Pacific, Asian, gay, lesbian, a transgender or intersex person, male, female, young or old – is still not a reality for all New Zealanders. (Human Rights Commission (NZ) (2004) *Human Rights in New Zealand Today: Executive Summary*, page 1)

In addition to the general emphasis on mainstreaming equality, publications address particular issues such as rights in pregnancy and Muslim women's dress code (See, for example, '*Employer's guidelines for the prevention of pregnancy discrimination*' or '*Muslim women Dress Codes and Human Rights*' (NZ Human Rights Commission: <http://www.hrc.co.nz/home/hrc/resources/resources.php#hrcguidelines> 14.08.07).

Although most anti-discrimination legislation comes from the Justice ministry, some comes via the Human Rights Commission and some from specialised ministries, for example the Ministry of Women's Affairs.

## **Australia**

Australia does not have a Human Rights Act, although it does have a single equalities commission established under the terms of the Human Rights and Equal Opportunity

Commission Act (1986). Instead, it has a number of pieces of legislation relating to particular aspects of equality such as the Racial Discrimination Act (1975); Sex Discrimination Act (1984); Disability Discrimination Act (1992) and Age Discrimination Act (2004).

The Human Rights and Equal Opportunity Commission (and the founding Act of 1986) go some way to co-ordinate equality protection, promotion and information. The commission consists of commissioners representing human rights, disability, race discrimination, sex discrimination and Aboriginal and Torres Strait Islander social justice. Likewise, the Act has been amended multiple times and co-ordinates the individual equality acts by defining discrimination and how it relates to race, age, disability and so on (Human Rights and Equal Opportunity Commission Act, (HREOCA) 1986, Part 1, 6A, section 3). In addition the Commission is charged with the duty of ensuring compliance with the individual equality acts.

In addition to Federal legislation, Australian states also have their own equality acts, for example, the New South Wales Anti-Discrimination Act 1977 makes it unlawful, within that territory, to discriminate on the ground or race, sex, marital status, disability, homosexuality, age and transgender and covers areas like employment, trade unions, education, access to places and vehicles, but does not relate to state policy or administration. The cascade down, from a general federal law to more refined state law follows the U.S. and Canadian models. It allows for variation within each state, though with one commission there is perhaps less ambiguity over who is protected than in the U.S.

## **Canada**

The Canadian Human Rights Commission oversees the Canadian Human Rights Act (1985) and the Employment Equity Act (1995). Both pieces of legislation promote equal opportunity and non discrimination. The Canadian Human Rights Act (1985) refers to the Act as being a pathway to equality, and emphasis is placed on the prohibition of discrimination based on 'race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability (defined as and previous or existing mental or physical disability, including disfigurement or substance dependence) or conviction ...'. The Canadian HRA (1985) places duties on employers and individuals (including businesses) to avoid discrimination and to promote equality. The Act thus recognises that discrimination can occur at Government policy level as well as within a business/client relationship.

It is the emphasis on ending discrimination that takes the Human Rights Act beyond human rights and into the field of equality. It is unlawful, under the 1985 Act to discriminate or harass an individual, to deny access to the provision of goods, service facilities or accommodation; deny access to commercial premises or residential accommodation; to refuse employment or continued employment, or to differentiate adversely against an employee; to discriminate during employment application or advertisement; or to pay men and women unequal wages for the same work. A person

who feels that they have been discriminated against on more than one ground can still make a claim through the Canadian Human Rights Tribunal and so in this way, the Act can be seen to successfully mainstream equality as multiple discrimination is recognised. It is not clear from the wording of the Act to what extent a person needs to prove that they belong to a category included in the protected list before they are eligible for protection.

There is increasing recognition within Canadian public policy of the need for more sophisticated inter-sectional analysis, focusing on inter-categorical and intra-categorical variation in the experiences and outcomes of particular social groups. However, as noted by Siltanen (2006) for a range of methodological and practical reasons, there is considerable scope for the further development of such analyses at Federal and state levels.

### **United States of America**

Fundamental to the US Constitution, ratified in 1791, is the Bill of Rights which protects the rights of the individual in a number of domains including freedom of speech and religion, freedom of assembly and petition, the right to be free of unreasonable search and seizure, of cruel and unusual punishment and compelled self-incrimination. In addition the Bill of Rights restricts some of the powers of Congress from making any law that prohibits or restricts religion, or from depriving any person of life, liberty or property without a fair trial. Supporting this was the Declaration of Independence, written in 1776, which was a treaty of the existing 13 states against the continued British colonisation. The Declaration of Independence asserted the equality of men and this principle continues to be influential at least at the level of rhetoric, although it is not formally written into US law.

The Equal Employment Opportunity Commission regulates and upholds six acts of the US Federal Government: The Civil Rights Act (1964); the Age Discrimination in Employment Act (1967); the Equal Pay Act (1963) Titles 1 and V of the Americans with Disabilities Act (1990); the Civil Rights Act (1991) and section 501 of the Rehabilitation Act (1973). Despite having one Commission, the US still continues to treat equality strands as discrete entities. Racial equality continues to be a major pre-occupation since this is central to many social divisions within the US. The Civil Rights Act, passed in 1964, prohibits discrimination in employment and other social policy fields on the grounds of sex, color, religion, national origin or race. The Act also allows for some positive measures to encourage equality of outcome where this produces social justice, even though other groups may be disadvantaged by this. For example, this would allow advertisements of employment to target groups currently underrepresented.

As discussed, at the Federal level, equality and human rights have limited impact, and this may be due to the emphasis placed on State law to protect and enshrine the rights of individuals. Even within State law there is variation as some cities have their own policies to further protect the rights and freedoms for some groups, for example the

growth of the LGBT community in San Francisco has led to this being the city where gay rights are most closely protected.

A brief comparison of three States (Idaho, pop. 1 466 465; Alabama, pop. 4 447 100, and New York State, pop. 19 306 183) demonstrates the variation. The State of Idaho has its own Human Rights Commission which regulates three State laws around general commission duties and gender equality. It is also the responsible body in Idaho for regulating three Federal laws, the Civil Rights Act (1964), the Age Discrimination in Employment Act (1967) and the Americans with Disabilities Act (1990). As well as employing seven civil rights investigators, Idaho's Commission also acts as an umbrella to coordinate over 150 affiliated organisations, for example, the Idaho Refugee Service program; Hispanic Business Association and Disability Action Center – Northwest. However apart from the Commission itself, there is no framework for mainstreaming, and the rights and the freedoms of the different groups are defined by the category to which they belong.

Alabama offers a different perspective. There is no equality or human rights commission, or anything that approaches this remit. However, the amendment to the Constitution of Alabama (1901) prohibits discrimination or preferential treatment based on race, gender, color, ethnicity, or national origin by public bodies. There is little information available about how the amendment is upheld, or how a complaint under the amendment might be dealt with as there is no obvious commission or tribunal system. It is difficult to determine if this simple directive is sufficient to protect the rights to equality, but it does in principle support the idea of mainstreaming as there is little distinction between the groups, and as it is part of the Constitution of Alabama it should inform all State law passed post-2001.

New York State has a Division of Human Rights which protects the right not to be discriminated against on the basis of race and color, creed, national origin, sex, age, disability, sexual orientation, marital status, familial status or military status. There is further support to those living in New York City as they have their own network of human rights organisations, which covers a large number of strands. There seems to be little differentiation between the groups, though gender and disability groups seem to have a higher profile.

## **Norway**

The information from Norway is limited to the English-language pages of their Government website. There is an Equality and Anti-Discrimination Ombud (similar to our understanding of a Commission) and their remit is protected by the Anti-Discrimination Ombud Act (2005), which also relates to the affiliated tribunal. This act prohibits discrimination and promotes equality. The Ombud is also responsible for regulating the Gender Equality Act (2002). The Ombud has the following mission statement:

Everyone has a right to self-development, and to utilise his/her abilities and live his/her own life, irrespective of gender, social background, religion, sexual orientation, disability or ethnic background.  
[www.regieringen.no/en/topics/equality.html?id=922](http://www.regieringen.no/en/topics/equality.html?id=922)

The Ombud is based within the Ministry of Children and Equality but supports all strands currently supported by UK legislation. Equality strands may also have protection from other Ministries, for example the Ministry for Culture, Leisure and Belief Systems or the Ministry of Immigration and Social Inclusion. Therefore the pattern of support will depend on the group to which you belong and the case you are bringing.

The Anti-Discrimination Ombud Act (2005) brings together the Gender Equality Act of 1978 and 2005, employment legislation and Owner-Tenant and housing legislation. It also formally pursues the conventions of the United Nations International Convention on the Elimination of all Forms of Discrimination against Women (1979) and All Forms of Racial Discrimination (1965), thus complying with International ideals.

The Ombud is instructed by the Act (2005) to promote genuine equality irrespective of gender, ethnicity, national origin, descent, skin colour, language, religion or belief in all areas of society, and formally includes the category of employment. In addition the Ombud has a duty to promote equal treatment irrespective of political views, membership of an employee organization, sexual orientation, disability or age. Public bodies must demonstrate their process of promoting equality if asked to do so by an Anti-Discrimination Tribunal. This may, in practice, mean that public bodies need to consider equality at the planning stage of all decisions and policies.

The Gender Equality Act (2002) places public bodies under a duty to make ‘active, targeted and systematic efforts to promote gender equality in all sectors of society’ (Gender Equality Act (2002) Norway, Section 1a). A similar duty is placed on employers. In addition, enterprises that have a duty to prepare an annual report or budget, must also account for the measures (implemented and planned) to promote gender equality and prevent differential treatment, and in this way achieve mainstreaming. The Gender Equality Act (2002) also places a duty on all schools and educational institutions to ensure that teaching aids must be based on gender equality. Whilst gender equality legislation appears to be quite highly developed, similar measures do not seem to apply to other equality strands.

## **Conclusion**

This paper has presented a broad overview of approaches to equality and human rights in four English-speaking countries and in Norway, which was chosen to exemplify a Scandinavian approach to equality. Information was drawn from policy documents and legislation, however the data available were not consistent and so comparisons between countries must be regarded as tentative.

All of the countries reviewed have equality and human rights legislation. In some countries such as Canada and New Zealand, considerable progress has been made to unify legislation and political institutions promoting equality and human rights. These two countries also appear to have made considerable efforts to audit the success of their approaches. Despite seeking to mainstream equality, it is evident that particular measures are targeted at particular groups and considerable difficulties remain in developing unified policies and intersectional approaches to, for example, gender equality. This is partly due to technical difficulties in gathering and analysing statistical data in ways which allows inter- and intra-categorical comparisons to be made. However, there continues to be an aspiration for greater progress to be made in inter-sectional policy development and analysis. In Canada, efforts are also being made to harmonise approaches to equality and human rights at federal, state and local levels.

In other countries such as Australia and the United States, it is evident that progress has been made in terms of establishing a single equality and human rights commission with enforcement powers across strands, but different bodies of legislation continue to exist in relation to particular equality groups. At federal level in both these countries there appears to be a lack of audit in relation to the effectiveness of various pieces of policy and legislation. Furthermore, it is evident that considerable diversity exists at state and city level in terms of the enthusiasm with which federal legislation is translated into local policy and enforcement. Sexual orientation is one of the areas where there is evidence of great diversity with regard to the strength of local protection measures.

As an exemplar of the Scandinavian approach, Norway has established a central enforcement mechanism which operates across strands. There appears to have been far more progress in relation to some strands than others, notably gender. Far less attention appears to have been paid to race equality, and there appears to be an aversion to ethnic monitoring in employment and other areas in Norway, as in many other European countries. This seems to be based on an assumption that if equality principles are publicly affirmed, it is not necessary to have audit mechanisms in place to check whether they are being adhered to in practice. In Norway, equality appears to have a higher profile than human rights.

Overall, it is evident in this brief review that many countries are moving in the direction of adopting a unified approach to equality and human rights, although in some countries more progress has been made in relation to establishing joint enforcement mechanisms than unified equality legislation. Canada appears to be at the forefront of establishing a common approach to equality and human rights, although difficulties in dealing with issues of scale (federal, state and local) and of inter-sectional data gathering and analysis are acknowledged.

## **Reference**

Siltanen, J. (2006) 'Gender, diversity and the shaping of public policy in Canada Scottish Affairs 56, Summer 2007, 88-101.