

INTEGRATING EQUALITY AND HUMAN RIGHTS - SITES OF INTEGRATION

NEIL CROWTHER, NOVEMBER 2014

FOCUS ON 3 AREAS

- **Disability rights**
- **Public bodies**
- **Engaging with the international human rights framework**

DISABILITY RIGHTS

POSITIVE LIBERTY

‘The vision of rights embodied in the (disability) Convention is... based upon the recognition that individuals with disabilities are not self-sufficient monist entities, but rather depend upon collective social action to make provision for their basic rights. The Convention therefore articulates a very different vision of rights from that embedded in the US Constitution, for example, where individual rights are primarily conceived as imposing negative constraints upon the state in order to maximise individual autonomy’

O’Cinneide, C. (2009). Extracting protection for the rights of persons with disabilities from human rights frameworks: Established limits and new possibilities. In O. M. Arnardóttir, & G. Quinn (Eds.), The UN Convention on the rights of persons with disabilities: European and Scandinavian Perspectives (pp. 163–198).

SUBSTANTIVE FREEDOM

‘In truth, all persons (whether disabled or not) depend on social supports at least at some point in their lives (especially when young or at the onset of old age) to make freedom and choice a reality. This underlying reality is simply more obvious in the case of persons with disabilities (though not for all of them). If one sought tangible proof of the interconnectedness of both sets of rights [i.e., civil and political, on the one hand, and economic, social and cultural, on the other] then disability is the obvious example. It is plainly not enough to enact anti-discrimination laws to break down arbitrary barriers. It is also necessary to assist people in getting past those barriers. The deeper paradox — one that obtains for all persons — is that personal freedom ultimately relies on social solidarity.’

Arnardóttir, O. M., & Quinn, G. (2009). The UN Convention on the rights of persons with disabilities: European and Scandinavian perspectives.

DISABILITY RIGHTS

- **Non-discrimination laws alone insufficient to address specific barriers to the enjoyment of rights of disabled people** e.g. denial of legal capacity, 'life and death' decision making, deprivation of liberty, rights to independent living
- **European Convention on Human Rights insufficient alone to secure human rights of disabled people** e.g. right to legal capacity contingent in supports with decision making, right to vote contingent on reasonable accommodations
- **Substantive freedom/equality** – removing barriers, accommodating differences, providing practical and financial supports - not 'equal treatment' e.g. reasonable accommodation
- **Intersectionality** – especially two way relationship between disability & poverty creating 'accumulated disadvantage'
- Idea of '**capability deprivations**' powerful way to conceptualise this

AMARTYA SEN ON DISABILITY & POVERTY

- ‘of the . . . poverty disadvantage for individuals living in families with a disabled member, only about a sixth can be attributed to income.’
- ‘the bigger problem is not this “earnings handicap” but the “conversion handicap” from which disabled people suffer in not being able to lead as good a life as non-disabled people can with exactly the same income.’
- If this conversion handicap is assessed by the extra income that disabled people need to ameliorate the costs of disability there is a very sharp rise in the number who can be seen as poor (in the sense of falling short of the poverty line income adjusted for the extra income needed to alleviate the conversion handicap).’
- A study in the United Kingdom found that the poverty rate for disabled people was 23.1% compared to 17.9% for non-disabled people, but when extra expenses associated with being disabled were considered, the poverty rate for people with disabilities shot up to 47.4%

PUBLIC BODIES

REASONS FOR INTEGRATION IN RELATION TO PUBLIC BODIES

Issues facing public bodies often span equality and human rights e.g.

- Right to private and family life of Roma, travellers and other minorities.
- State surveillance and anti-terrorism measures are often directed towards members of minority ethnic or religious groups ('suspect communities')
- Older people's human rights are often violated as a result of institutionalised ageism
- Questions regarding life and death decision making and treatment in relation to people with long term health condition (defined as 'disabled' under equality law)

GREATER THAN THE SUM OF THEIR PARTS?

- UK Commission for Racial Equality found its investigation into the alleged ill-treatment of black juvenile detainees hampered by the fact that ill-treatment was a general phenomenon applied across the board to all detainees, irrespective of their ethnicity
- This made it difficult to argue that race discrimination was at the heart of the issue (as distinct from inhuman and degrading treatment), which in turn limited the Commission's ability to intervene.
- The EHRC was able to bring both anti-discrimination law and the requirements of Article 3 ECHR to bear in its investigation into the use of force against young men being held in detention.

AN INTEGRATED APPROACH REQUIRES PARITY OF LAW AND POWERS

- Task force which recommended the powers of the EHRC envisaged it *‘promoting mainstreaming of equality and human rights in the public sector where there are clear synergies between work in these two areas and scope for joint delivery.’*
- In practice this largely hasn’t happened.
- Key challenge in creating an integrated approach in the UK is that the Human Rights Act demands compliance but does not set out the steps required to achieve it, where the Public Sector Equality Duty demands and defines steps to eliminate discrimination and to promote equality but does not define compliance.
- EHRC also cannot provide individual assistance in relation to freestanding human rights complaints
- Moreover, public bodies regard these as separate issues and areas of law

OPPORTUNITY FOR IRELAND

- An integrated public sector equality & human rights duty – the first of its kind globally - is therefore a good opportunity but requires a common ‘theory of change’ or ‘process duty’ to underpin it e.g. impact assessment, involving marginalised groups, objectives and action plans
- Need to answer: How should public bodies pay due regard to human rights? What does a human rights compliant/respecting public body look like?
- May also need strong communications strategy to encourage public bodies and stakeholders to recognise and embrace potential for integration

ENGAGEMENT WITH THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

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- ICCPR, ICESR, CEDAW, CERD, CRPD & respective treaty bodies
- Ad hoc group on a Convention on the Rights of Older Persons, emerging work on LGBT and transgender rights, specific UN agencies e.g. UN Women
- Council of Europe – ECtHR, Committee on Social Rights

ENGAGEMENT WITH THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

- Opportunity to promote alignment of broad laws, public policies and practices with principles of non-discrimination and respect for human rights – not confined to anti-discrimination law - through citing international law and standards in submissions to government and Parliament
- Through shadow reporting and other forms of engagement - an opportunity to use treaty bodies to promote State accountability to an external authority
- Shaping jurisprudence by citing international law and standards in amicus curiae submissions e.g. Burnip case UK
- Contributing to the development of international human rights standards and norms, building regional and international alliances
- An opportunity for comparability with other countries

KEY CHALLENGES

SEPARATED BY HISTORY

- ‘Equality and human rights may be different dialects of a common language, but mutual comprehension should not always be assumed.’
- Separate histories, underlying values, framing in politics and public discourse, laws, institutions, communities of interest and expertise, theories of change
- Considerable institutionalised resistance and barriers to integration

See: Crowther/O’Cinnede 2013 Bridging the divide – integrating the functions of equality and human rights bodies in the European Union

DOESN'T ALWAYS MAKE SENSE TO INTEGRATE

- *Complete* integration not possible or desirable
- Areas of human rights without a non-discrimination component
- Vertical v horizontal application (i.e. human rights law rarely applies *directly* to non-State actors)
- Domestic/EU anti-discrimination law often more practical and specific in tackling specific instances of discrimination and in duty bearers understanding their responsibilities
- Not always strategically or politically valuable to use human rights or discrimination arguments – sometimes better to choose
- Separate domestic legal frameworks for equality and human rights (hence opportunity in Ireland with single equality and human rights public duty)

DON'T FORGET PUBLIC SUPPORT

In many countries public, political or media hostility often exists either towards anti discrimination law or human rights law – can tying them together help overcome toxicity or does it risk dragging the other down?