Training manual on discrimination

"Awareness-raising seminars in the areas of non-discrimination and equality targeted at civil society organisations"

- VT/2010/007 -

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THE MANUAL

This manual was produced by Human European Consultancy (HEC) in partnership with the Migration Policy Group (MPG).

Human European Consultancy manages and implements projects for external clients, such as for example the institutions of the European Union, the European Union Agency for Fundamental Rights and other inter-governmental organisations or agencies. Focal areas are human rights, equal treatment and non-discrimination, development of civil society and development and implementation of methodologies for improved result orientation, quality care and monitoring of implementation. Services include research and writing reports on relevant themes and issues in (EU Member) States and on the EU/ international level, organising meetings and

seminars for an expert audience and/or organising (a series of) trainings. – http://www.humanconsultancy.com.

The Migration Policy Group is an independent non-profit organisation committed to policy and legal development on mobility, diversity, equality and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society and generating effective responses to these challenges and opportunities. MPG has conducted a high number of studies, research and trainings in the field of anti-discrimination, including to equality bodies, civil society organisations, civil servants and practitioners. It is also coordinating a number of networks of experts in these areas. As the content manager of the European Network of legal experts in the field of non-discrimination, MPG continuously deals with European anti-discrimination legislation and national measures implementing EU law and manages annual country reports, comparative analysis, thematic reports or specific notifications. – http://www.migpolgroup.com.

This manual is produced in the framework of the project "Awareness raising in the areas of non-discrimination and equality targeted at civil society organizations" (VT/2010/007) that aims to design specific training material and activities for NGOs in order to help strengthen their capacity to deal with non- discrimination and equality.

The main purpose of the project is to improve of the impact and effectiveness of civil society organizations with regard to the implementation of equality and non-discrimination legislation and policy by conducting a series of national awareness raising seminars in 32 European countries.

The general part of this manual builds on two previous initiatives, carried out by MPG and HEC, namely "Mapping capacity of civil society dealing with anti-discrimination (2004)" and "Anti-Discrimination and Diversity Training (2006)". All training modules have been designed in the framework of this project after a needs assessment had been carried out in February 2011 in all target countries.

THE PROJECT TEAM

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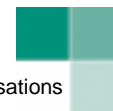
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INTRODUCTION

Welcome to the training manual on discrimination!

This training manual has been developed within the framework of the EU-funded project 'Awareness-raising seminars in the areas of non-discrimination and equality targeted at civil society organisations' – VT/2010/007, conducted in 32 European countries. These countries include all EU Member States (but not Luxemburg), Norway, as well as the four candidate countries, the Former Yugoslav Republic of Macedonia (FYROM), Iceland, Serbia and Turkey, and the acceding country Croatia.[1] The fifth candidate country, Montenegro, did not participate in the project.

The project is a European Commission initiative funded by the Community Programme for Employment and Social Solidarity – PROGRESS. It is carried out by Human European Consultancy (www.humanconsultancy.com), the Migration Policy Group (www.migpolgroup.com) and local partners in each of the 32 countries.

The project aims to strengthen the capacity of civil society organisations working on non-discrimination and equality by developing training materials and activities. NGOs have a vital role to play in making anti-discrimination policy and legislation understood and enforced on the ground. They are essential in speaking on behalf of and defending those they represent as well as raising awareness among both victims and potential victims of discrimination, who are all too often unaware of their rights, and also among the general public.

This manual is intended to be used by national trainers conducting national training seminars and to assist NGOs in their work to promote equality and non-discrimination. Participants in these national seminars come from a wide variety of non-governmental organisations and associations covering all grounds of discrimination: racial and ethnic origin (including Roma), religion or belief, age, disability and sexual orientation. Although gender is not specifically covered by this training project, gender-related aspects shall be mainstreamed into all activities.

The manual builds on the experience and material developed in previous EU-funded projects, such as *Mapping capacity of civil society dealing with anti-discrimination* (VT/2004/45) and *Anti-discrimination and diversity training* (VT/2006/009). These projects included mapping of the situation of civil society organisations as well as designing and implementation of a series of trainings to enhance the knowledge, insights and capacities of civil society organisations.

This project is an important follow-up as it complements the previous projects by aiming specifically to improve the impact and effectiveness of civil society

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[1] Liechtenstein and Luxembourg were not included in the project due to the fact that NGOs in these countries had alternative means of being trained: Serbia was potential candidate country at the start of the project, it was granted EU candidate status on 2 March 2012.

organisations regarding the implementation and promotion of policies in the field of equality and non-discrimination.

The manual presents the EU legal framework, including an overview of the general principles and sources of EU law which are relevant to non-discrimination, as well as the role of EU institutions and bodies and agencies (European Parliament, Council, Commission, Court of Justice of the European Union (CJEU) and the Fundamental Rights Agency (FRA)) in promoting and ensuring non-discrimination and equality. It also describes the importance of the role of NGOs in developing and implementing policy and legislation in the field of non-discrimination and equality.

During the preparation of this manual an assessment was carried out in all 32 countries involved in the project, aiming to identify the national needs and specificities. As a result, national trainers will be trained in modules which reflect the national needs and national context identified during the needs assessment phase:

1.   Collecting information and planning action
2.   Monitoring
3.   Advocacy
4.   Partnerships
5.   Media
6.   Situation testing
7.   Codes of conduct

This manual therefore contains specific sections on each of these topics. These sections form the core of the training manual.

1 BACKGROUND: INSTITUTIONAL AND LEGAL FRAMEWORK OF EUROPEAN ANTI-DISCRIMINATION LAW

Intended learning outcomes:

- For the participants to gain a basic, up-to-date, knowledge of the nature of EU law and institutions relevant to the area of non-discrimination; and
- For the participants to gain an understanding of the concept of discrimination as it is reflected by current European standards.

1.1 Introduction to the European Union

The European Union (EU) has 27 Member States which have transferred some of their sovereignty – or law-making authority – to the EU: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

At the time of writing Croatia is an acceding country to the EU. Subject to ratification by all the EU Member States and Croatia of the EU Accession Treaty between the EU and Croatia (signed December 2011), Croatia will become the EU's 28th Member State on 1 July 2013.

The following countries have the status of official candidate country to the EU: Iceland, the Former Yugoslav Republic of Macedonia, Montenegro (which did not participate in the present project), Serbia and Turkey.

The EU is also negotiating with potential candidate countries: Albania, Bosnia and Herzegovina, and Kosovo under UN Security Council Resolution 1244.

1.1.1 The EU institutions and their role in the areas of non-discrimination and equality

Among the European institutions and organs, **four distinct institutions and one independent agency** are entrusted with carrying out the tasks of the EU in the areas of non-discrimination and equality within the EU:[2]

EU institutions:
A. The European Parliament (representing the people of the European Union);
B. The Council of the European Union (representing national governments);

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[2] Action with regard to non-discrimination outside the EU is part of the EU Common Foreign and Security Policy (CFSP). The High Representative of the Union for Foreign Affairs and Security Policy (High Representative), appointed by the European Council, conducts the CFSP (article 18 TEU), assisted by the European External Action Service (EEAS), established by a decision of the Council of 26 July 2010, OJ L.201/30 of 3 August 2010, (article 27.3 TEU). See for the EEAS structure and legal basis http://eeas.europa.eu/background/organisation/index_en.htm.

C. The European Commission (representing and upholding the interests of the EU as a whole);

D. The Court of Justice of the European Union (upholding the rule of European law); and

EU agency:

E. The Fundamental Rights Agency (EU Agency providing EU institutions and EU countries with assistance and expertise relating to fundamental rights when they implement EU law).

A. European Parliament

- The Parliament has three main roles:
  o It shares with the Council the power to **debate and pass European laws** ;
  o It exercises **democratic supervision over all EU institutions** and, in particular, the Commission. It has the power to approve or reject the nomination of all Commissioners and it has the right to censure the Commission as a whole; and
  o It shares with the Council **authority over the EU budget**. At the end of the procedure, it adopts or rejects the budget in its entirety jointly with the Council.
- The monthly plenary sessions are held in Strasbourg (France) – the Parliament's 'seat'. Parliamentary committee meetings and any additional plenary sessions are held in Brussels (Belgium), whilst Luxembourg is home to the administrative offices (the 'General Secretariat').
- The 736 Members of the European Parliament (MEPs) are directly elected by universal suffrage every five years; any EU citizen may stand for election and EU citizens may vote in whichever Member State they live in.
- Committees are set up to deal with particular issues. There is a Committee on Employment and Social Affairs, one on Women's Rights and Gender Equality, a Committee on Foreign Affairs and one on Civil Liberties, Justice and Home Affairs. The Committee on Petitions responds to petitions submitted by individuals who consider that their EU-protected rights have been violated.

B. Council of the European Union

- Institution based in Brussels (Belgium), **main decision-making body of the European Union**.
- The Council has responsibilities in **decision-making and co-ordination:**
  o **To pass European laws**, in many fields legislating jointly with the European Parliament;
  o **To co-ordinate the broad economic policies** of the Member States;
  o **To define and implement the EU's common foreign and security policy**; based on guidelines set by the European Council (regular meetings of the heads of state or of government of EU members);

- o **To conclude international agreements** between the EU and one or more states or international organisations;
  - o **To co-ordinate** the actions of Member States and **to adopt measures in the area of police and judicial co-operation in criminal matters; and**
  - o **To approve the EU's budget**, jointly with the European Parliament.
- The Council consists of ministers of the Member States who meet within the Council of the European Union. Depending on the issue on the agenda, each country will be represented by the minister responsible for that subject.
- Presidency of the Council is held on a rotation basis by Member States for six month periods. In addition, the Foreign Affairs Council, composed of national foreign ministers, has a permanent chairperson - the EU's High Representative for foreign and security policy.
- The Council of the EU can issue regulations, directives, decisions, common actions, recommendations or opinions. It can also adopt conclusions, declarations or resolutions.
- The Council of the EU should be distinguished from **the European Council** which defines the general political direction and priorities of the European Union and consists of the heads of state or government of the Member States, together with its President and the President of the Commission. The European Council became one of the seven institutions of the Union, on December 2009, with the entry into force of the Treaty of Lisbon. Its President (currently Herman Van Rompuy of Belgium) is elected by qualified majority and has a term of office of two and a half years, renewable once.

C. European Commission

- Executive arm based in Brussels (Belgium).
- Among the main roles of the European Commission are the following:
  - o **To propose legislation** to Parliament and the Council;
  - o **To manage and implement EU policies** (e.g. anti-discrimination policies) and the budget;
  - o As **"guardian of the Treaties"**, the Commission checks that each Member State applies EU law properly);
- It consists of one Commissioner per Member State, proposed by the governments, appointed by the Council and approved by the European Parliament for five year terms, acting impartially and independently, with responsibility for a particular policy area.
- The Directorate-General for Justice consists of four directorates – Civil Justice, Criminal Justice, Fundamental Rights and Union Citizenship, and, since January 2011, also the directorate for Equality. The roles of DG Justice include:
  - o To promote the Charter of Fundamental Rights of the European Union;
  - o To coordinate and promote policy developments to combat discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. To promote awareness on equality and non-discrimination. To coordinate policy developments in respect to non-discrimination of ethnic minorities, in particular the Roma;

- o To enhance citizenship by promoting and protecting citizens' rights in their daily lives, ensuring they fully benefit from European integration, in particular from the right of free movement within the European Union;
- o To develop the European area of justice and to ensure legal certainty and a level-playing field for citizens, consumers and businesses in enforcing their rights within, and across, national borders;
- o To develop a coherent criminal justice policy for the EU based on mutual recognition of judicial decisions, harmonising minimum rules on criminal procedural law, such as the rights of victims and of people accused or suspected of crimes; and
- o To engage in a close dialogue with the EU institutions and national parliaments on the development of sound justice policies.

D. The Court of Justice of the European Union (the Court)

- Main court of the EU, based in Luxembourg.
- The role of the Court is to interpret EU law and ensure application in the same way in all EU Member States.
- The Court of Justice consists of one judge per Member State. The Court is assisted by eight Advocates-General whose role is to present reasoned opinions on the case to the Court of Justice. The judges are appointed by joint agreement of the governments of the Member States for renewable six-year terms.
- Main jurisdiction:
  - o Requests for a **preliminary ruling**: if a national court is in any doubt about the interpretation or validity of an EU law it may, and sometimes must, ask the Court for advice. The parties to the proceedings can ask the national judge to grant a request for such a referral, or the judge can decide spontaneously to refer the case. Any court may make a referral, but only the national court of last instance is obliged to do so. This advice is given in the form of a 'preliminary ruling' in which the Court may, for example, determine whether the national legislation complies with EU law. The national court to which the judgment is addressed is, in deciding the dispute before it, bound by the interpretation given. The Court's judgment likewise binds other national courts before which the same problem is raised;
  - o Proceedings for **failure to fulfil an obligation**: the Commission or Member States can initiate proceedings if they have reason to believe that a Member State is failing to fulfil its obligations under EU law. Following a preliminary procedure in which the Member State concerned is given the opportunity to respond to the complaints addressed, the Commission may bring an action for infringement before the Court; and
    Further jurisdiction securing the correct functioning of EU institutions: appeals on points of law only against judgments by the Court of First Instance, reviews of decisions of the General Court on appeals against decisions of the European Union Civil Service Tribunal, actions for

annulment of a measure adopted by an institution, body, office or agency of the European Union, actions for failure to act reviewing the lawfulness of the failure to act of the institutions, bodies, offices or agencies of the European Union.

- The Court of Justice may sit as a full court, in a Grand Chamber of 13 judges or in Chambers of three or five judges. Decisions are reached by majority. There are no dissenting opinions; judgments are signed by all the judges who took part in the deliberations and are read in open court.

E.   European Union Agency for Fundamental Rights (FRA)

The European Union Agency for Fundamental Rights (FRA) is an independent EU agency set up on 1 March 2007 and based in Vienna, Austria.

The FRA aims to provide EU institutions and EU countries with assistance and expertise relating to fundamental rights when they implement EU law.

The main task of the Agency is to collect and disseminate objective, reliable and comparable data on the situation of fundamental rights in all EU countries within the scope of EU law.

The FRA is also tasked with raising awareness about fundamental rights.

The Agency is not empowered to:

- Examine individual complaints;
- Exercise regulatory decision-making powers; or
- Carry out systematic and permanent monitoring of EU countries.

The organisation and functions of the FRA are laid out in its Regulation 168/2007. The Agency plans its research on the basis of annual work programmes and within the thematic areas listed in its Multi-annual Frameworks. The present Multi-annual Framework covers the period 2007-2012 and covers the following thematic areas:

(a)   Racism, xenophobia and related intolerance;
(b)   Discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation and against persons belonging to minorities and any combination of these grounds (multiple discrimination);
(c)   Compensation of victims;
(d)   The rights of the child, including the protection of children;
(e)   Asylum, immigration and integration of migrants;
(f)   Visa and border control;
(g)   Participation of the citizens of the Union in the Union's democratic functioning;
(h)   Information society and, in particular, respect for private life and protection of personal data; and
(i)   Access to efficient and independent justice.

The FRA works closely with other bodies and institutions, operating at both national and European level. It has a special cooperation agreement with the Council of Europe, and also cooperates with civil society through a Fundamental Rights Platform (FRP).

The FRA covers the EU and its 27 EU countries. In addition, candidate countries can participate in the work of the Agency as observers. The Association Councils (which exist for each candidate country) determine the particular nature, extent and manner of each country's participation in the work of the FRA.

Croatia has participated as an observer in the FRA since July 2010.

The Council of the European Union may also invite countries which have concluded a Stabilisation and Association Agreement with the EU to participate in the work of the FRA.

1.1.2 General principles and sources of EU law relevant for non-discrimination and equality

The EU must act within the limits of its powers as set out in the Treaties. The principle of subsidiarity regulates the lawfulness of the exercise of competence: in areas which do not fall within its exclusive competence (i.e. where competence is shared with the Member States) the EU can only take action if the objectives of that action cannot be sufficiently achieved by the Member States.

In cases of conflict, EU law is supreme over national law. The Court of Justice has held that the EU constitutes a new legal order for the benefit of which the Member States have limited their sovereign rights, and that a national court is under a duty to give full effect to provisions of EU law even if this means refusing to apply conflicting national law, whether adopted prior or subsequent to the particular piece of EU legislation.

The sources of EU law can be divided into three categories:
- Primary sources: the Treaties between the Member States and agreements with third countries;
- Secondary sources: Regulations, Directives, Decisions, Recommendations and Opinions as well as the instruments not listed in Article 288 of the Treaty on the Functioning of the EU (TFEU) such as communications and recommendations;
- Supplementary sources: General Principles of EU law developed through the case law of the Court.

Primary sources

Primary law (primary or original source of law) is the supreme source of law of the European Union, that prevails over all other sources of law. The Court of Justice is responsible for securing this primacy through a variety of forms of action, such as the

action for annulment (Article 263, TFEU) and the preliminary ruling (Article 267, TFEU).

The primary sources are:

- The Treaties establishing the European Coal and Steel Community (ECSC) and the European Economic Community (EEC) (the Treaty of Paris (18 April 1951), the Treaties of Rome – Euratom Treaty and the Treaty establishing the European Economic Community (25 March 1957)).
- The Maastricht Treaty on the European Union (7 February 1992)) and the Treaty on the merger of the executive institutions (8 April 1965).
- The major treaties amending the EU: the Single European Act (17 and 28 February 1986), the Treaty of Amsterdam (2 October 1997), the Treaty of Nice (26 February 2001) and the Treaty of Lisbon (13 December 2007, entered into force on 1 December 2009).
- The Protocols annexed to these treaties.
- Additional treaties making changes to specific sections of the founding treaties.
- The treaties of accession of new Member States to the EU (1972: UK, Ireland and Denmark; 1979: Greece; 1985: Spain and Portugal; 1995: Austria, Finland and Sweden; 2003: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia; 2005: Bulgaria and Romania).
- The Treaty of Lisbon enshrined the **binding force** of the Charter of Fundamental Rights in the founding Treaties. Furthermore, Article 6 of the Treaty on the EU confers the Charter with the same legal value as the treaties. For example, in March 2011 the Court of Justice Judgment in Case C-236/09, *Association Belge des Consommateurs Test-Achats and Others* based on Directive 2004/113/EC gave considerable weight to Articles 21 and 23 of the Charter in finding that taking the gender of the insured individual into account as a risk factor in insurance contracts constitutes discrimination.
- The Charter applies to actions by all EU institutions and bodies, but applies to Member States only when they are implementing EU law.
- The United Nations Convention on the Rights of Persons with Disabilities is the first human rights convention which the EU negotiated, signed and ratified. It will impose new obligations on the EU, as well as for all State Parties. However, the exact scope and limit of those new obligations is still to be analysed.

IN THE AREA OF NON-DISCRIMINATION AND EQUALITY, THE FOLLOWING PROVISIONS ARE RELEVANT:
CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

Art. 10: In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Art. 19: (formerly Article 13 TEC)

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1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative produce and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
2. By way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Art. 20: Everyone is equal before the law

Art. 21:

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Secondary sources

Article 288 TFEU lists the secondary sources of EU law: Regulations (having general application and binding in their entirety and directly applicable in all Member States), Directives (binding on all Member States as to the result to be achieved, but leaving to the national authorities the choice of form and methods of implementation), Decisions (binding in their entirety upon those to whom they are addressed) and Recommendations and Opinions (having no binding force).

*   **Regulations**
    o   Binding law;
    o   Directly applicable: come into force by virtue of their publication in the Official Journal of the European Union, from the date specified in them or, in the absence thereof, from the twentieth day following that of their publication;
    o   Do not require any national implementing measures;
    o   Can be relied upon in national courts by individuals; and
    o   General application – apply to and in all Member States.

- **Directives**
  - Binding law;
  - Enter into force either on the date specified in them or on the twentieth day after their publication in the Official Journal of the European Union;
  - But **require domestic implementing measures** within a certain time period from adoption;
  - Member States must ensure that they adopt implementing measures before the expiry of the time deadline so that national law reflects the terms of the Directive – this process is called **transposing** the Directive;
  - It is the responsibility of the national court to guarantee the full effectiveness of the general principle of non-discrimination as provided by the relevant Directives, setting aside any provision of national law which may conflict with EU law, even where the period prescribed for transposition of that directive has not yet expired;
  - Once the period prescribed for transposition has expired, Directives can be relied upon in national courts by individuals but only against the State or agents of the State and if certain conditions are met; and
  - Member States can be **liable for non-implementation** or for imperfect transposition of a Directive.

- **Decisions**
  - Binding law;
  - But only on those to whom it is addressed, e.g. a company which has been found in breach of competition law; and
  - Can be relied upon in national courts by individuals.

In the areas of non-discrimination and equality the secondary source of EU law used is the directive. The most important directives are the following Council Directives:

- **2000/43/EC** of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (also referred to as the Race Directive or the Racial Equality Directive);
- **2000/78/EC** of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (also referred to as the Employment Framework Directive or the Employment Equality Directive).

Gender equality Directives such as:

- 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;
- 2006/54/EC of the 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).

In 2008 the Commission proposed a Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside employment to bring the level of protection on grounds of age,

disability, sexual orientation and religion or belief to the same level as on grounds of race or ethnic origin under Directive 2000/43/EC. This directive has not yet been adopted, but Council negotiations on the proposal continue.

Supplementary law sources

Supplementary law consists of unwritten sources of European law which have judicial origin and used in cases where the primary and/or secondary legislation do not settle the issue.

The Court of Justice has developed general principles of law which include:

- equality/non-discrimination;
- proportionality;
- legal certainty/legitimate expectations/non retroactivity;
- the right to be heard.

The Court of Justice has issued several judgments interpreting **Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation** as well as Council Directives implementing the principle of equal treatment between men and women in employment and occupation and in access to and supply of goods and services, in particular 2004/113/EC and 2006/54/EC.

1.1.3 Non-implementation of EU law

Where an EU Member State, has not provided for the **full** and **correct** transposition of a Directive into national law by the time the date for implementation has passed, an individual may nevertheless be able to rely on the provisions of the Directives before national courts. This is known as the principle of **'direct effect'**.

The aggrieved individual will have to show that the provision relied on is a precise and unconditional principle which is sufficiently operational to be applied by a national court and which is therefore capable of governing the legal position of individuals. However, it is generally held that the principle of direct effect applies only to complaints directed against a public body or 'emanation of the State'.

As such, in relation to litigation between private individuals or entities, Directives also have so-called **'indirect effect'**. As discussed above, States and in particular domestic courts are obliged to do everything possible to achieve the results outlined in the Directives.

Indirect effect therefore requires domestic courts to interpret existing national law, as far as possible, in line with the Directive which should have been implemented.

For example, in the case of the anti-discrimination Directives it is ultimately for the Court of Justice to decide which terms have direct or indirect effect.

If a Member State **fails to implement** a Directive within the time frame provided, it is liable for damages thus caused to the individual. This is referred to as *Francovich* damages.[3]

Member States had to report to the EU on the application of the Racial Equality Directive (2000/43/EC) by 19 July 2005 and on the application of the Employment Equality Directive (2000/78/EC) by 2 December 2005 and every five years thereafter. The Commission reported on the implementation of the Racial Equality Directive and Employment Equality Directive in 2006 and 2008. Overall, the implementation of the directives has been perceived as positive and all Member States have transposed them into national law. Nevertheless, there are still a number of pending proceedings concerning the incorrect transposition of these directives.

NGOs should ensure that they provide the Commission with information which complements, supplements and if necessary criticises and corrects the information provided to the Commission by their national government under Article 19 of Directive 2000/78/EC and Article 17 of Directive 2000/43/EC.

Reference materials used:

Treaty on the Functioning of the EU (TFEU);
Charter of Fundamental Rights of the European Union;
Directive **2000/43/EC** of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; and
Directive **2000/78/EC** of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Additional resources:

European Court of Human Rights, Fundamental Rights Agency: *Handbook on European non-discrimination law,* 2010.

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[3] *Francovich* and *Bonifaci* v. Italy (Joined Cases C-6/90 and C-9/90) decided by the European Court of Justice in 1991. In the *Francovich* case the CJEU listed three conditions which are both necessary and sufficient to establish liability under this principle. These are:
- The rule that has been infringed should entail the granting of rights to individuals;
- The content of such rights must be ascertainable on the basis of the provisions of the Directive in question;
- There must be a causal link between the breach of the State's obligation and the loss and damage suffered by the injured individual.

In addition, the breach of EU law must also be sufficiently serious for the individual to be entitled to damages.

1.2 Brief introduction to the relevant Council of Europe non-discrimination and equality institutions and legal provisions

1.2.1 Relevant Council of Europe institutions

The Council of Europe was created at the end of the Second World War for the purpose of promoting European unity, protecting human rights and facilitating social and economic progress. It has 47 Member States, including all EU Member States and candidate countries. The Council of Europe has established several bodies with a specific mandate in protecting human rights and the rights of minorities in particular, such as:

a. The **European Court of Human Rights** (**ECtHR**) which oversees the implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The ECtHR and the Court of Justice of the European Union (CJEU) have entered a very dynamic dialogue, influencing each other and developing new standards of protection: thus, the ECtHR was influenced by EU law in finding indirect discrimination, deciding on a requirement of positive action, redefining the burden of proof and using statistical data and socio-legal tools in assessing a potential violation of Article 14, as was the case in *D.H. and Others v. The Czech Republic* (2007). Similarly, the CJEU now more often incorporates human rights concepts, such as human dignity, into its judgments, for example, *P. v. S. and Cornwall County Council*. Notably, the ECtHR is able to consider discrimination in areas which fall outside the scope of the Directives but fall within the remit of the rights guaranteed by the European Convention as provided by Article 14 or of rights provided for in national legislation in the case of the States Parties which ratified Protocol 14.

b. The Council of Europe **Commissioner for Human Rights** which is mandated to foster the effective observance of human rights and assist Member States in the implementation of Council of Europe human rights standards, identify possible shortcomings in the law and practice concerning human rights and provide advice and information regarding the protection of human rights across the region;

c. The **European Committee of Social Rights** which monitors compliance with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter;

d. The **Advisory Committee on the Framework Convention for the Protection of National Minorities** (FCNM) which monitors the implementation of the FCNM; and

e. The **European Commission against Racism and Intolerance** (ECRI) which is the Council of Europe's independent human rights monitoring body specialised in combating racism, racial discrimination, xenophobia, anti-Semitism and intolerance.

1.2.2 Relevant provisions

− European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides some protection against discrimination limited to enjoying other rights provided by the Convention.[4]

− Protocol No. 12 to the Convention,[5] which entered into force on 1 April 2005, introduced a general prohibition of discrimination. At the time of writing (May 2011), of the 32 countries involved in this project, Croatia, Cyprus, Finland, the Netherlands, Romania, Serbia, Slovenia, Spain and the Former Yugoslav Republic of Macedonia have ratified and will therefore be bound by Protocol No. 12.

When all effective national legal remedies have been exhausted, a person may, if the case concerns issues covered by the European Convention on Human Rights and its optional protocols, apply to the European Court of Human Rights in Strasbourg. This can be done under Article 14 of the Convention provided another Article is also engaged or, if the country has ratified it, under Protocol 12 to the Convention.

- (Revised) European Social Charter

The Council of Europe's European Social Charter also includes general provisions on non-discrimination (Article E) as well as specific provisions regarding the rights of different potentially vulnerable groups: children and young persons, women, persons with disabilities, migrant workers and the elderly.

Collective complaints can also be made under the European Social Charter to the European Committee of Social Rights if the Member State concerned has accepted the collective complaints procedure (of the 32 countries involved in this project, the following states have accepted it: Belgium, Bulgaria, Croatia, Cyprus, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia, Sweden and the Former Yugoslav Republic of Macedonia. Only Finland has also accepted the rights of national NGOs to submit complaints against the European Social Charter under the collective complaints procedure.

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[4] ECHR Art. 14: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

[5] Protocol No. 12 of the ECHR entered into force on April 1, 2005, as for March 2011 it has 18 ratifications and 19 signatures not followed by ratifications. Art. 1:1.The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2 No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Reference materials used for this section:

European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and its Optional Protocols; Extracts of examinations of the advisory opinions prepared by the Advisory Committee on the Framework Convention for the Protection of National Minorities; Extracts of the country reports prepared by the European Commission against Racism and Intolerance or by the European Committee on Social Rights; Fact sheets produced by the European Court of Human Rights on: homosexuality, racial discrimination, mental health, Roma and Travellers and transsexuals' rights;[6] and European Court of Human Rights, Fundamental Rights Agency: *Handbook on European non-discrimination law, 2010.*

1.3 Brief introduction to the relevant United Nations non-discrimination and equality institutions and legal provisions

Within the United Nations Organisation a comprehensive system for the protection of human rights, including the right to equality as a human right, have been developed, including:

- the International Covenant on Civil and Political Rights (ICCPR), the enforcement of which is monitored by the Human Rights Committee (HRC);[7]
- the International Covenant on Economic, Social and Cultural Rights (ICESCR), the enforcement of which is monitored by the Committee on Economic, Social and Cultural Rights (CESCR);[8]
- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the enforcement of which is monitored by the Committee on the Elimination of All Forms of Racial Discrimination (CERD);[9]
- the Convention on the Elimination of All Forms of Discrimination Against Women, the enforcement of which is monitored by the Committee on the Elimination of Discrimination Against Women (CEDAW);[10]

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[6] Fact sheets available at:
http://www.echr.coe.int/ECHR/EN/Header/Press/Information+sheets/Factsheets/.

[7] ICCPR, Art. 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[8] ICESCR, Art. 2 2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[9] ICERD, Art. 1 1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

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- the Convention on the Rights of the Child, the enforcement of which is monitored by the Committee on the Rights of the Child (CRC);[11] and
- the Convention on the Rights of Persons with Disabilities, the enforcement of which is monitored by the Committee on the Rights of Persons with Disabilities (CRPD).[12]

Where the State is a party to the First Optional Protocol to the International Covenant on Civil and Political Rights, or has accepted the right of individual petition under the Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of Discrimination Against Women or the Convention on the Rights of Persons with Disabilities, individual complaints can be brought to the relevant Committees.

NGOs should also ensure, by means of alternative reports, memos and submissions, that they alert the Committees which examine the State's periodic reports under the ICCPR, ICERD, CEDAW, CRC and CRPD to instances of discrimination or failure to give full effect to their obligations to ensure equal treatment.

In 2006 the UN Human Rights Council established the **Universal Periodic Review** (UPR) which is a unique process that involves a review of the human rights records of all 192 UN Member States once every four years.

The UN General Assembly Resolution 60/251 mandated the Council to, "Undertake a universal periodic review, based on objective and reliable information, of the

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[10] CEDAW, Art. 1. For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

[11] CRC, Art. 2.1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

[12] CRPD, Art. 2. "Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;
See also Art. 3 and 5.1. States Parties recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. 2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. 3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided. 4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States."

In the context of the UPR, NGOs have an important role both in participating in the debates at the domestic level and in the preparation of the national reports, as well as being able to submit information which can be added to the 'other stakeholders'' report which is considered during the review. They can also encourage human-rights-friendly governments to raise particular issues during the review.
Information NGOs provide can be referred to by any of the States taking part in the interactive discussion during the review at the Working Group meeting. NGOs can also attend the UPR Working Group sessions and can make statements at the regular session of the Human Rights Council when the outcome of the State reviews are considered.

Materials used for this section:

Extracts from the **relevant** parts of the examination of the national periodic reports to the CEDAW, ICERD, CRC and HRC Committees.

Office of the High Commissioner for Human Rights, *Technical guidelines for the submission of stakeholders*; and

FIDH Delegation to the UN, *The Universal Periodic Review handbook* (2009).

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2   BACKGROUND: LEGAL FRAMEWORK OF EUROPEAN ANTI-DISCRIMINATION LAW

The stated purpose of the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC) is to "lay down a framework for combating discrimination on grounds of [racial or ethnic origin][disability, religion or belief, age or sexual orientation] with the view of putting into effect in the Member States the principle of equal treatment". **The Directives implementing the principle of equal treatment between men and women (2006/54/EC – the recast directive – employment and occupation; 2004/113/EC – access to and supply of goods and services) have more or less the same purpose.** Taken together, the EU anti-discrimination directives, therefore, prescribe:

- a minimum standard of protection against discrimination to be set out in national laws; and
- minimum obligations on Member States to put in place provisions and mechanisms to implement and enforce such laws and to promote and foster equal treatment.

Summarised below are the main provisions of the Racial Equality Directive and the Employment Equality Directive. This brief summary should not be regarded as a definitive statement of the law; although every effort has been made to be accurate at the date of publication (May 2012) the law on non-discrimination is constantly evolving. This summary is intended to serve as background for the main sections of this manual.

2.1   Definitions of discrimination

The Directives (Article 2) prohibit both **direct** and **indirect** discrimination on the grounds of racial or ethnic origin (Directive 2000/43/EC) and disability, religion or belief, age and sexual orientation (Directive 2000/78/EC), which together are referred to in this part of the manual as **'the protected grounds'**.

2.1.1   Direct discrimination

Direct discrimination (Article 2(2)(a) occurs when one person (B) is treated **less favourably** than another person (C) is, has been or would be treated in a **comparable situation**, on **any of the protected grounds**.

- Other than on grounds of age, there is no general justification for direct discrimination;
- The motive or intention of the discriminator (A) is irrelevant; the issue is whether B has been treated less favourably;
- 'Less favourable treatment' can include rejection, refusal, exclusion, being offered less favourable terms and conditions or a poorer service, denied a choice or an opportunity;

- To establish direct discrimination it is necessary to identify an actual or a hypothetical comparator (C) whose relevant circumstances are the same or nearly the same but who is, has been or would be treated more favourably than B;
- It is not necessary that the relevant protected ground applies to the person (B) who is treated less favourably. Rightly or wrongly, B might be perceived as a person to whom that ground applies ('discrimination by perception'), or might be associated with someone to whom that ground applies, or is believed to be a person to whom that ground applies ('discrimination by association');[13] and
- Advertising in any way an intention to treat people less favourably on any of the protected grounds amounts to direct discrimination.[14]

2.1.2 Indirect discrimination

Indirect discrimination (Article 2(2)(b) occurs when **an apparently neutral** provision, criterion or practice would put persons to whom one of the protected grounds applies at a **particular disadvantage** compared with other persons **unless** the provision, criterion or practice in question is **objectively justified. To be objectively justified the provision, criterion or practice must have a legitimate aim and must be** an appropriate and necessary means of achieving that aim.

- The provision, criterion or practice must appear to be 'neutral' in relation to all of the protected grounds (for example, to be above a certain height or to have lived in the area for more than two years); if it explicitly refers to, or is targeted at, any of the protected grounds (for example, to be white) it is likely to be direct discrimination;
- The provision, criterion or practice can be a formal requirement, such as a requirement for a job or for admission to a school or university; it can be an agreed procedure, such as criteria for selection for redundancy; it can be an informal rule or practice such as word-of-mouth recruitment;
- In some cases the disadvantage will be obvious and not in dispute, for example, that a dress code banning headgear would disadvantage Muslim women and Sikh men, or that a requirement to have five years' work experience would disadvantage young job applicants;
- In other cases some data may need to be collected to show disadvantage, for example, to show that selecting part-time workers first for redundancy will disadvantage women employees depends on evidence that disproportionately more women than men work part-time and no fewer men than women work full-time; and
- A provision, criterion or practice may be objectively justified in one situation and may not be objectively justified in another.

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[13] *Coleman v Attridge Law and Steve Law* Case C-303/06, 17 July 2008.

[14] *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV* Case C-54/07, 10 July 2008.

The proportionality test[15] required by the Directives (is the provision, criterion or practice chosen by the alleged discriminator an appropriate and necessary means to achieve a legitimate aim?) must be applied in each case. For example, a job requirement to have held a driver's licence for at least three years is likely disproportionately to disadvantage people with certain disabilities and, in some societies, women. If the job is to be a full-time driver, then the requirement would be justified.

If the job only occasionally involves driving, for example, to carry out inspections or to attend meetings in a different town, while requiring a driving licence might have a legitimate aim, for example, for the person to be present at different locations, it may not be appropriate and necessary to meet that aim; other less discriminatory measures might be available with little additional burden to the employer.

2.1.3 Harassment

The Directives make **harassment** (Article 2(3)) a form of discrimination when unwanted conduct related to any of the protected grounds takes place with the purpose or effect of violating the dignity of a person (B) and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

- In determining whether harassment has taken place, there is no need to identify a comparator;
- 'Unwanted' means essentially the same as 'unwelcome' or 'uninvited';
- Unwanted conduct can include any kind of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks or physical contact;
- One incident which is sufficiently serious may amount to harassment;
- Conduct will be related to a protected ground if that ground applies to B or if there is any *connection* with the protected ground. B might be harassed because they are perceived wrongly to be a person to whom that ground applies or because of their association with someone to whom that ground applies such as a family member or friend or because B is known to support people to whom that ground applies;
- If the person (A) engages in the unwanted conduct with **the intention** that it should violate B's dignity and create an intimidating, hostile, degrading, humiliating or offensive environment, then it amounts to harassment irrespective of its actual effect on B; and
- Even if A did not have this intention, A's unwanted conduct will amount to harassment **if it has this effect**. In determining whether the conduct has this effect a court is likely to consider the perception of B and other relevant circumstances.

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[15] *R –v Secretary of State for Employment ex p. Sexymour Smith U Anor.* C-167/97 [1999]; *Bilka-Kaufhaus GmbH v Karin Weber von Hartz* Case 170/84 [1986].

2.1.4 Instruction to discriminate

The Directives (Article 2(4)) make **an instruction to discriminate** on any of the protected grounds a form of discrimination.

- An instruction may be to discriminate directly, for example, to reject or exclude any person to whom a particular protected ground applies; an instruction may be to discriminate indirectly, for example, to apply a criterion that would disadvantage people to whom a particular ground applies;
- An instruction may be given to a person within an organisation or by one organisation to another where the latter would normally be expected to comply with instructions from the former, for example, an employer instructing a recruitment agency not to refer people of a particular ethnic origin;
- If the person complies with the discriminatory instruction, they are likely to commit an act of discrimination; and
- If the person refuses to comply and as a consequence is subjected to less favourable treatment, they may have a claim of direct discrimination on the protected ground which was the object of the discriminatory instruction.

2.1.5 Victimisation

The Directives do not make **victimisation** a form of discrimination. What the Directives (2000/43/EC Article 9; 2000/78/EC Article 11) require is that national laws must include measures "necessary to protect individuals from adverse consequences or adverse treatment" as a consequence of making or supporting a complaint or proceedings to enforce compliance with the Directives or national anti-discrimination laws. To comply with this requirement, many Member States include **victimisation** alongside other forms of prohibited conduct.

- Where victimisation is deemed to be a form of prohibited conduct, the act of making a complaint or bringing or supporting proceedings to enforce compliance with the Directives or national anti-discrimination laws is often referred to as a 'protected act';
- The protected act can be by any person, not only the person making the complaint or bringing proceedings, but also a person who is willing to give evidence or to support the victim's case in court;
- Similarly, victimisation can be committed by any person, not only the employer or service provider against whom a complaint is brought, but, for example, a prospective future employer;
- There is no need to identify a comparator to show that a person has been subjected to adverse treatment as a consequence of a protected act; and
- Victimisation can occur when the relationship to which the protected act refers has come to an end; for example, where, because a person had complained of discrimination in a previous job they are refused a reference by their former

employer or they are not recruited by a new employer.[16]

If Member States have not included victimisation as a form of prohibited conduct, then they should have adopted other ways within their national laws and procedures to ensure the required protection.

2.2   Material scope of the Directives

Directive 2000/78/EC (Article 3) prohibits discrimination in the following areas:

- Access to employment, self-employment and occupation (including promotion);
- Access to vocational guidance and training;
- Employment and working conditions, including dismissal and pay; and
- Membership of and involvement in workers', employers' or other professional organisations.

Directive 2000/43/EC (Article 3) provides much wider protection against discrimination and applies to the following:

- Access to employment, self-employment and occupation (including promotion);
- Access to vocational guidance and training;
- Employment and working conditions, including dismissal and pay;
- Membership of and involvement in workers', employers' or other professional organisations;
- Education;
- Social protection, including social security and health care;
- Social advantages; and
- Access to and supply of goods and services which are available to the public, including housing.

The Employment Equality Directive has much narrower material scope, since it applies only in the area of employment.

2.3   Personal scope of the Directives

The Directives prohibit discrimination by natural or legal persons in the public sector and the private sector. This means that an individual owner of a business has the same responsibility not to discriminate on any of the protected grounds as does a large private corporation, a municipality or a government department.

The Directives protect individuals, that is, natural persons, against discrimination. In addition, Directive 2000/43/EC (Recital 16) provides that protection against discrimination should also apply, where this accords with national traditions and

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[16]   *Coote v Granada* Case C-185/1997, 22 September 1998.

practice, to an organisation that has the status of legal person where the organisation suffers discrimination on grounds of the racial or ethnic origin of its members.

Nationality

The Directives protect any person who is present in a Member State against discrimination on any of the protected grounds **regardless of the person's nationality**. Thus, a person of Ukrainian or Chinese nationality who is discriminated against in Hungary on any of the protected grounds would be protected under the Directives in the same way as a Hungarian national in Hungary who experiences such discrimination.

The Directives (Article 3(2)) specifically exclude protection against discrimination **on grounds of nationality** in relation to aspects of immigration control. Most Member States do include nationality as a protected ground in national laws. The fact that nationality is excluded by the Directives enables Member States to apply exceptions relating to nationality which could not be applied to the grounds protected under the Directives. Distinct from the anti-discrimination Directives, the EU right of citizens of Member States to freedom of movement across the EU provides them and their families with some protection against nationality discrimination (for example, Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States). Other EU legislation (for example, Directive 2003/109/EC or 2003/86/EC) provides certain equality rights for certain third-country nationals and their families who are residing and working in Member States.

2.4 Positive action

The Directives (Racial Equality Directive Article 5; Employment Equality Directive Article 7) recognise that to achieve full equality in practice will require more than prohibiting current or future discrimination; therefore they permit measures to prevent or compensate for past and present disadvantages linked to any of the protected grounds.

- Such disadvantages may be identified by, for example, disproportionate lack of access to employment or to public or private services, low levels of participation in employment or aspects of civil life or special needs;
- Implicit is that positive action measures must be proportionate, that is they should be appropriate and necessary to achieve their aim – to prevent or compensate for a particular disadvantage of the group concerned – and should not disproportionately disadvantage others; and
- Positive action measures should therefore be time bound and regularly reviewed to assess whether they continue to be proportionate.
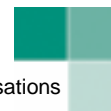
2.5   Reasonable accommodation for disabled people

To comply with the principle of equality in relation to disabled people, Directive 2000/78/EC (Article 5) requires employers to take appropriate steps where needed in a particular case, to enable a disabled person to have access to, participate in or advance in employment, or to undergo training *unless* this would impose a 'disproportionate burden' on the employer. Employers are expected to consider whether they are able to take appropriate steps where a disabled person is disadvantaged in relation to employment or training by a provision, criterion or practice, by physical features or by lack of suitable auxiliary aids.

- The Directive (Article 2(2)(b)(ii)) highlights the connection between the duty to provide reasonable accommodation where a disabled person is, or is likely to be, disadvantaged by a provision, criterion or practice and the need to avoid indirect disability discrimination. Where there is reasonable accommodation an employer could provide, it will be difficult for the employer to objectively justify that provision, criterion or practice; and
- An employer cannot claim that the burden, including financial burden, of providing reasonable accommodation for a disabled person is 'disproportionate' if funding or other assistance is available to assist employers to do so.

Examples of reasonable accommodation:

- After an accident at work a manual worker is unable to continue in his manual job; the employer could provide appropriate training and transfer him to an office job;
- A wheelchair-user replies to an advertisement for an administrative assistant. The address is on the fourth floor. If the employer rents offices on several floors, including the ground floor, the employer could arrange for the work of the administrative assistant to be done in the ground floor office and move another employee who is able to climb stairs to the fourth floor.
  If, however, the employer rents offices only on the fourth floor and there is no lift, then there may be no reasonable measures (without disproportionate burden) the employer can take to enable this person to do this job; and
- To enable a blind person who uses a guide dog to get to work more easily, in most cases it would not be an unreasonable burden for the employer to change their working hours so they do not have to travel in the rush hour.

2.6   Exceptions to the prohibition of discrimination in the Directives

As the purpose of the Directives is to provide a framework for combating discrimination, the Directives permit discrimination only in specific limited circumstances and only where certain tests are satisfied.

2.6.1 Genuine occupational requirement

For all protected grounds the Directives (Racial Equality Directive Article 4; Employment Equality Directive Article 4(1)) permit discrimination to meet a genuine occupational requirement (GOR). This exception enables an employer to discriminate on one of the protected grounds in selecting a person for a particular post where, due to the nature of the work involved or the context in which it is carried out, it is a "genuine and determining occupational requirement" that the person should have a characteristic related to that ground **provided that the objective is legitimate and the requirement is proportionate**. For example, a film director could discriminate on grounds of racial or ethnic origin if to be black is a genuine and determining requirement for an actor to portray Nelson Mandela in a film.

The Employment Equality Directive (Article 4(2)) permits churches and other organisations with an ethos based on religion or belief to discriminate on grounds of religion or belief where, because of the nature of the work or the context in which it is carried out, a person's religion or belief is a genuine, legitimate and justified occupational requirement with regard to the organisation's ethos. The Directive also permits churches and other organisations with an ethos based on religion or belief to require employees to act with loyalty to the organisation's ethos.

An employer who can demonstrate that, for a particular post, they are able to rely on a GOR exception to discriminate on one ground, for example religion, must not discriminate on any other ground, for example sexual orientation, unless a second, separate GOR applies to the post in question.

Long-established assumptions about the type of person required to do a particular job may not meet the test of genuine occupational requirement.
For example, an employer is unlikely to be able to demonstrate that to work as a receptionist a person must be "young and energetic"; such requirement is likely to be discriminatory on grounds of age and disability.

2.6.2 Differences of treatment on grounds of age

Under the Employment Equality Directive (Article 6(1)) national laws may permit discrimination on grounds of age **if the difference of treatment is objectively and reasonably justified by a legitimate aim** (including legitimate employment policy, labour market and vocational training objectives), **if the means of achieving that aim are appropriate and necessary**. The Directive indicates that differences of treatment based on age could include:

- setting special conditions on access to employment and training, on employment and occupation, including dismissal and pay, for young people, older workers and people with caring responsibilities in order to protect them or to promote their vocational integration;
- fixing a minimum age, experience or seniority for access to employment or

advantages linked to employment;
- fixing a maximum age for recruitment, based on the training requirements of the post or the need for a reasonable period of employment before retirement.

Most Member States have national laws on employment which include age-related provisions; increasingly national courts and the Court of Justice are being asked whether such provisions can be justified under Article 6(1).[17]

The Directive (Article 6(2)) further provides that it is not age discrimination to fix ages for admission or entitlement to retirement or invalidity benefits or to use age criteria in actuarial calculations, provided this does not result in sex discrimination.

2.6.3 Other exceptions or exclusions

The Employment Equality Directive (Article 3(4)) permits national laws to exclude protection against discrimination by the armed forces on grounds of disability or age.

The Employment Equality Directive (Article 3(3)) provides that the Directive does not apply to payment of social security or other state benefits.

The Employment Equality Directive (Article 2(5)) states that it is without prejudice to measures in national law which are necessary in a democratic society for public security, the maintenance of public order, the prevention of criminal offences and for the protection of health and protection of the rights and freedoms of others. It is also without prejudice to national laws on retirement ages and on marital status and benefits dependent on marital status (Recital 22).

2.7 Defence of rights: access to justice

In every Member State judicial and/or administrative enforcement procedures must be available to all persons who believe they have been discriminated against contrary to either of the Directives, even after the relationship in which the discrimination is alleged to have occurred has ended (Directive 2000/43/EC, Article 7; Directive 2000/78/EC, Article 9).

Both Directives provide that associations and organisations with a legitimate interest in ensuring compliance can support victims of discrimination or take legal action on their behalf (with their approval). Criteria defining which organisations have a "legitimate interest" are established by national law.

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[17] See for example: *Palacios de la Villa* Case C-411/05 [2007] ECR I-8531, *The Incorporated Trustees of the National Council on Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform, Case* C-388/07, 5 March 2009; *Kucukdeveci v Swedex GmbH & Co LG,* C-555/07, 19 January 2010.

2.8   Shift of the burden of proof

The Directives (Racial Equality Directive, Article 8; Employment Equality Directive, Article 10) state the conditions in which the burden of proof in civil or administrative discrimination proceedings will move from the complainant to the respondent.

- **If** the complainant (or any person on their behalf) establishes facts from which the court or other authority can presume that discrimination (direct or indirect) was one of the reasons for the way the respondent treated the complainant, then the court or other authority will turn to the respondent for an explanation. Unless the respondent is able to **prove** that **discrimination played no part whatsoever** in their treatment of the complainant, the court or other competent authority **must uphold the complainant's claim**; and
- If the complainant is unable to raise a presumption that discrimination may have occurred, then the court or other body must dismiss their claim.

The shift of the burden of proof never applies in criminal proceedings, even where the proceedings relate to an allegation of discrimination or harassment. In some Member States it will not apply to investigative procedures.

2.9   Sanctions

In transposing the Directives (Racial Equality Directive, Article 15; Employment Equality Directive, Article 17) Member States must ensure there are sanctions for infringement of their national anti-discrimination laws and that these sanctions are applied. Sanctions for discrimination must be "effective, proportionate and dissuasive"; that is they should provide appropriate personal redress for the victim and should deter both the particular respondent and others from comparable acts of discrimination in the future. Sanctions may comprise the payment of compensation, for which no upper limits can be imposed.

2.10 Raising awareness, disseminating information and involvement of civil society

The Directives recognise that enacting national laws to combat discrimination and to promote equal treatment is only a first step.

Member States therefore have a duty to raise awareness and promote wide understanding and incorporation of the principle of equal treatment across civil society and to involve NGOs and social partners for this purpose. Member States are also required to ensure that laws, rules and agreements that regulate activities within the scope of the Directives do not conflict with the principle of equal treatment.

- Member States (Racial Equality Directive, Article10; Employment Equality Directive, Article 12) must bring to the attention of civil society their existing laws on equal treatment and non-discrimination and any new measures they adopt to

bring their laws in line with the Directives. This must be done "by all appropriate means throughout the territory".

This means that information needs to be provided to all communities and needs to be in forms that can be accessed and understood by all groups within civil society, accommodating people with different disabilities and language needs.

- Member States (Racial Equality Directive, Article 12; Employment Equality Directive, Article 14) are expected to "encourage dialogue" with NGOs which have a legitimate interest in contributing to combating discrimination on any of the protected grounds (defined by national law). Such dialogue should be more than token and should take place on a regular basis. This duty on Member States offers NGOs a critical opportunity to secure improvements in the steps taken by their government to comply with the Directives.

- Member States (Racial Equality Directive, Article 11; Employment Equality Directive, Article 13) must also promote social dialogue between two sides of industry with a view to fostering equal treatment. This could include monitoring of workplace practices, collective agreements, codes of conduct and through research, exchange of experiences and good practice. Where it is consistent with national traditions and practices, Member States are expected to encourage collective agreements which lay down anti-discrimination rules that respect the minimum requirements in the Directives and national laws.

- Member States (Racial Equality Directive, Article 14; Employment Equality Directive, Article 16) must give priority to national laws implementing the Directives over other laws and regulations, abolishing any that are contrary to the principle of equal treatment. To ensure a consistent approach to non-discrimination and equality, Member States must also ensure that provisions in contracts, collective agreements, internal rules of undertakings or rules governing professions, workers' or employers' organisations which are contrary to the principle of equal treatment are amended or declared null and void.

2.11 Equality bodies

The Racial Equality Directive (Article 13) requires each Member State to designate a body or bodies to promote equal treatment on grounds of racial or ethnic origin. These bodies may form part of national human rights institutions or other bodies established to protect individual rights.

Member States have designated different types of bodies and have assigned different functions. The Directive states the minimum competences such bodies must have, namely:

- To provide independent assistance to victims of discrimination;
- To conduct independent surveys and studies; and
- To publish independent reports and make recommendations on discrimination-related issues.

There is no requirement under the Employment Equality Directive to designate a

national body. However, in many Member States the equality bodies cover wider grounds of discrimination under national law, including gender.[18]

2.12 Reporting

Member States are required (Racial Equality Directive, Article 17; Employment Equality Directive, Article 19) to report to the European Commission every five years on their application of the two Directives. The Commission, in preparing its report to the European Parliament, shall take account of the views of the Fundamental Rights Agency, relevant social partners and NGOs.

The Commission's report must also provide an assessment of the impact on women and men of the measures taken by each Member State.

Sources and references:

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

Directive **2000/78/EC** of 27 November 2000 establishing a general framework for **equal treatment in employment and occupation**;

EU Agency for Fundamental Rights and European Court of Human Rights – Council of Europe, *Handbook on European non-discrimination law*, 2011, http://fra.europa.eu/fraWebsite/attachments/FRA-CASE-LAW-HANDBOOK_EN.pdf (also available in French and German);

Publications of the European network of legal experts in the non-discrimination field, including the European Anti-discrimination Law Review, www.non-discrimination.net/publications; and

Schiek, D., Waddington, L., and Bell, M., *Cases, materials and text on national, supranational and international non-discrimination law*, Hart Publishing, 2007.

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[18] For further information, see http://www.equineteurope.org/. The Gender Directives establish a similar requirement to set up a specialised body or bodies for gender.

3   THE ROLE OF NON-GOVERNMENTAL ORGANISATIONS (NGOs) IN COMBATING DISCRIMINATION

Intended learning outcomes

For the participants to have explored the roles NGOs can and should play in influencing improvement and fostering effective implementation of policies promoting equality and combating discrimination.

3.1   What is an NGO?

An NGO is a local, national or international group, with a legally established constitution, a clear purpose and visible activities, with a governing body which has the authority to speak for its members. It is normally a non-profit organisation, not affiliated with any government or private sector entity or any political party. Its aims are usually to promote wellbeing by addressing social and legal problems and by seeking to play an equal role with other democratic institutions in the development and progress of civil society.

3.2   What is the role of an NGO in the field of combating discrimination?

When considering what role they can play in combating discrimination, NGOs should take full advantage of the special roles which they have been given under Articles 7 and 12 of Council Directive 2000/43/EC and Articles 9 and 14 of Council Directive 2000/78/EC.

In order for a country to achieve its goals of peace, democracy, good governance, health, prosperity and equality, NGOs are essential to successful development.

The role of NGOs as instruments of civil society in the fight against discrimination can include:

- providing a means of expressing and actively addressing the needs of people who are discriminated against;
- supporting victims of discrimination in their access to justice, including through strategic litigation;
- promoting diversity and equality in society through awareness-raising activities;
- establishing the mechanisms to influence decision-making;
- mainstreaming non-discrimination and equal treatment in policies;
- challenging authorities and corporations to act against discrimination;
- monitoring, documenting and denouncing discrimination;
- maintaining equality on the political agenda and encouraging mobilisation;
- advocating for the adoption of effective equality and non-discrimination policies;

- monitoring and assessing implementation of equality and non-discrimination policies.

An NGO can:

- work in partnership with other NGOs to achieve shared aims;
- empower groups to engage in campaigns, to be self-advocates and to assert and enforce their rights;
- work, where appropriate, *in partnership with governments* to achieve common aims and objectives;
- work, where appropriate, *against governments* when those governments are promoting policies which are contrary to the objectives of promoting equality and non-discrimination;
- deliver services efficiently and effectively *within the framework of government* policies, where appropriate, and to adopt, where appropriate, strategies consulted on and negotiated between NGOs and government;
- deliver services efficiently and effectively *outside the framework of government* policies when this is necessary and appropriate to promote the NGO's objectives and to adopt, where appropriate, strategies contrary to government policies;
- ensure the co-ordination of its own services and engage government in discussions on *the co-ordination of services between the government and NGOs;*
- provide properly professionally researched advice to governments on issues of concern;
- advocate and campaign for change as a response to need;
- guide and contribute significantly to legislative and policy-making processes, by providing properly researched advice and by briefing politicians both in government and in opposition and other persons of influence;
- be vigilant 'watchdogs' – pointing out where governments and corporations are actively discriminating or failing in their obligations to combat discrimination, or where they need to improve their performance, and serving to enforce the operation of checks and balances that characterise democratic society. In this role NGOs must target government and the business community by advocacy, lobbying and negotiating functions when required;
- challenge, by appropriately selected mechanisms acts, omissions, administrative practices or policies which are contrary to the objectives of promoting equality and non-discrimination;
- keep track of and ensure that advantage is taken of all new developments in combating discrimination, e.g. new legislation (national, EU and international), new policies (national, EU and international), new sources of funding and landmark judicial decisions (at both national, EU and international level);
- be open, transparent and accountable to their membership and to the general public;
- increase the strength of NGO participation in civil society by forming networks

and coalitions and promoting original initiatives and solutions. This can help to reduce prejudice within society, thus favouring equality;

- work openly and in a spirit of collaboration with other NGOs operating in related fields and to avoid conflicts and disputes occurring between NGOs;
- put pressure on a state to ratify international instruments which allow for the international spotlight to be focused on government practices; and
- supply national and international bodies with vital and reliable information which they should draw on when examining a country's record on discrimination.

In summary, the role of many NGOs can be to check, monitor and criticise the actions of governments and private bodies, to supplement and complement the role of government in combating discrimination and to assist individuals and groups to assert their rights.

3.3 What does an NGO need to fulfil its role?

- Human resources;
- Skills, knowledge and expertise;
- Openness, transparency and accountability (NGOs have been at the forefront of debates regarding accountability and transparency – key issues for voluntary action);
- Funding and appropriate material and IT resources;
- Non-discriminatory attitudes and diversity policies within the organisation itself; and
- Appropriate national legislative and policy framework for:
  o freedom of public information;
  o transparency in decision-making by public bodies;
  o participation of civil society in deliberations and decision-making processes in the development of public policies;
  o lobbying and advocacy by voluntary groups; and
  o the granting of *legal standing* for NGOs in cases of discrimination.

3.4 Why are NGOs better placed than other organisations to work towards combating discrimination?

- Voluntary organisations play a crucial role in engaging with communities at the local, regional, national and international level;
- While disaffection with politics grows, engagement in voluntary and community activities is a way for people to contribute to public life by donating their time or money and supporting issues which are of concern to them;
- Voluntary organisations have increasingly become places where people can debate and engage in issues that affect them and where they feel they can advocate for change; and
- Due to their sustained commitment to public interest, NGOs are able to develop the expertise that is needed to work on improving the impact and effectiveness

of equality and non-discrimination policies.

3.5   What are the obstacles for NGOs and how might these be overcome?

- Complex rules surrounding the requirements that NGOs must meet in order to be registered. NGOs seeking registration should make sure they have a detailed familiarity with these rules and have taken the correct steps and obtained the documents required for compliance;
- Organisations prohibited from carrying out certain activities if not registered. Organisations have to decide how important this is and whether or not to register;
- Prohibition of certain activities even after registration. NGOs need to comply with the national law or, if it is arbitrary or disproportionate, challenge it by the appropriate mechanism;
- Lack of standing with regard to participation in relevant political debates. Where this occurs, NGOs will need to be sure that they work with an individual or organisation which does have the necessary standing;
- Lack of an appropriate legal framework regarding access to public information, transparency in decision-making, public consultations, lobbying and advocacy – including for voluntary groups. As the lack of a regulatory framework allowing NGOs to carry out their activities adequately severely hinders the efficiency of NGO efforts, NGOs will have to use existing legislation creatively and advocate together with other groups for the adoption of relevant norms;
- Lack of standing with regard to bringing complaints. NGOs can support and assist those who do have standing or seek to reform the rules in strategic litigation;
- Perception of affiliation to government or a political party threatening acceptance as an impartial advocate of issues. An effective NGO needs to be careful to espouse a cause, not to be affiliated to a political party, and steps should be taken to ensure that this is the case;
- Lack of knowledge and skills, particularly in organisational and financial management or the use of IT, often as a result of reliance on volunteers and high turnover of staff. NGOs should ensure that they understand the importance of good organisational and financial management;
- Lack of funding and limited resources, lack of information and guidance on accessing available national, EU and international funds. National equality bodies, NGO co-ordination bodies, local EU representations and regional international donors should be contacted to identify suitable sources of funding;
- Lack of effective 'partnership' between government and NGOs. Governments enact and enforce rules and regulations that define the policy environments needed for NGO activities to take root;
- For-profit corporations can offer know-how, resources and technical assistance, while NGOs offer practical, on-the-ground knowledge, relationships and implementing networks needed to get the job done in a way that renders the final product sustainable;

- Under-utilisation of potential support from the business sector. NGOs should seek to achieve 'business engagement'. A growing number of NGOs are now engaging businesses in 'partnerships' aimed at collaboratively addressing key issues;
- Inability to reach some parts of the community due to insensitivity, imposition of externally chosen legal or political aims, cultural or language barriers. NGOs should ensure that their own organisations have a diverse workforce with personnel trained in discrimination awareness issues, awareness of the social and political history, including history of exclusion and discrimination, of the groups within the community and, where relevant, a range of language skills; and
- Poor lobbying and advocacy skills, limited engagement with new media. NGOs, particularly those working with vulnerable groups, should carefully draft communication strategies in order to respond to the simultaneous needs of protecting the rights of their beneficiaries and raising awareness and educating both the general population and their target groups, including the media.

Resource materials

Council of Europe, *Fundamental principles on the status of NGOs in Europe,* *http://www.coe.int/t/dghl/standardsetting/cdcj/ONG/Fundamental%20Principles%20E.* *pdf.*

This document exists in English, French, Albanian, Bulgarian, Latvian, Lithuanian, Russian and Serbian.

Public Interest Law Initiative, Pursuing the public interest, a handbook for legal professionals and activists, *Columbia Law School, 2001.*

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4   TRAINING MODULES/NGOS ACTIONS

During the needs assessment carried out in all participating countries, a series of subjects were raised by national organisations themselves as issues of national interest for training. A selection of training modules covering the issues most identified by the national experts has been designed into the framework of this project:

1)   Collecting information and planning action;
2)   Monitoring;
3)   Advocacy;
4)   Partnerships;
5)   Media;
6)   Situation testing;
7)   Codes of conduct.

The first module (4.1), on collecting information and planning action, aims to provide NGOs with adequate tools to better implement and influence policies from a strategic angle. This will be a common module for all countries.

The six following modules complement and enhance the common module by providing further effective means to develop a strategic approach towards non-discrimination and equality.

All modules have been designed taking into account the national demands identified through the needs assessment questionnaire.

In preparing these modules we have relied on a number of sources which are listed on page 119 and following.

4.1   Collecting information and planning action

'I kept six honest servants,
They taught me all I knew,
Their names were WHAT and
WHEN and WHERE
And HOW and WHY and WHO.'
Rudyard Kipling

'A thought which does not result in an action is nothing much, and an action which does not proceed from a thought is nothing at all.'
Georges Bernanos

4.1.1 Definition

In this manual 'information' means a piece of knowledge which is needed to take action. 'Strategic planning' means the formal consideration of an organisation's future activities taking into account the information, funding, human and material resources available. The ultimate goal of such analysis is to develop a strategic plan in general and/ or in order to implement specific action.

4.1.2 Objectives

This project aims to improve the impact and effectiveness of civil society organisations with regard to the implementation of equality and non-discrimination policies. An important stepping stone for any powerful NGO action is strategic planning. No strategic plan can be produced without assessing the information available and planning action accordingly. The objectives of this module are:

- NGOs will gain knowledge and skills to start planning their activities strategically: to identify which activities they have the resources to undertake and which activities they do NOT have the resources to engage in. This will enable them to save time and money and find their focus.
- NGOs will be offered the best possible tools to maximise their social impact. They will see the linkages between existing and desirable information and planned activities.

4.1.3 Scope

This module discusses how NGOs can start strategic planning by matching information to action. It considers in general what is necessary in designing, planning and carrying out different actions and monitoring and evaluating the outcomes and impact.

Strategic planning can be done at a general level, as well as in relation to different types of actions covered in other modules in this manual. This module serves as a starting point in planning such actions, but they will not be discussed in detail. Instead, the focus is on support to individual victims, including litigation –for which identifying the different types of discrimination is important. The module does not, however, discuss the different types of discrimination, because action can be (and is usually) planned by NGOs without prior detailed legal analysis.

The module will not deal with funding or with capacity building. Background material necessary to identify discrimination will be provided (e.g. see in this *training manual* and in the *How to present a discrimination claim handbook,* published by the European Network of Legal Experts in the non-discrimination field).

The exercises provided in this module should be adapted to your national context.

4.1.4 Content

EXERCISE: Brainstorm the following questions:

a) What is discrimination?
- Who are its perpetrators?
- Who are its victims?
- In which fields does it take place?
- On which grounds does it take place?

    Debrief:
- What is covered by your domestic anti-discrimination legislation?
- What is covered by European anti-discrimination legislation?

EXERCISE: Brainstorm the following questions:

b) What can NGOs do to combat discrimination?
- raise awareness;
- monitor discrimination / public policies / preventive measures (including their absence);
- report discrimination;
- advocate for policy and law;
- support individuals who were discriminated against (including litigation);
- campaign for change; and
- network

    Debrief:
- clarify which actions should correspond to which broader activity area

c) What do NGOs need to fulfil their role?
- vision/ mission;
- information;
- human resources;
- material resources;
- a strategy to act; and
- funding

    Debrief:
- clarify the different elements of these needs (for instance: expertise and experience may belong to human resources); and
- ask participants to rank NGO needs with a view to strategic planning.

d) What information must be available to NGOs to fulfil their role? What are the sources of information?

Type of information	Source of information
Census	Central Statistical office
Sociological surveys	Research institutes
Newspaper articles	Media
Academic articles	Academic institutions
TV or radio reports	TV or radio
Statement by your clients	Client
Witness statements	Witness
Documents	Potential perpetrator
Statistics	Public administration/ institutions
Expert opinions	Fact finding
Tape or video recordings	YouTube, social media
Photographs	
Policy documents	(Local) government
Laws	Internet
Results of situation tests	Testers
Reports by monitoring organisations	United Nations, Council of Europe, EU Fundamental Rights Agency, domestic or international NGOs
Answers to public information queries or questionnaires	

EXERCISE: Write down the types of information and the types of NGO actions on different coloured sticky notes. Ask participants to match information to actions.

e)   How to access and/or collect information

For information in the public domain, browse the internet, request information of public interest based on your domestic access to information/public data legislation and/or do your own fact-finding – e.g. visit the institution or the community whose members hold the relevant information and interview them.

EXERCISE: Ask participants to share their experiences in accessing or collecting information.

GOOD PRACTICE EXAMPLE: the case study was taken from: Article XIX and Asociación por los Derechos Civiles, *Access to information: An instrumental right for empowerment*, pp. 27-28, available at http://www.article19.org/pdfs/publications/ati-empowerment-right.pdf.

Thailand: right to education

In 1998, a parent whose child was not admitted to a well-regarded state-funded primary school, Kasetsart Demonstration School, invoked the right to information to make public the secret admissions process.

The admissions process for the school, whose student body was comprised largely of *dek sen*, or children from elite families, included an entrance exam. The Official Information Commission ruled that the entrance tests of the 120 admitted students were public information. Once disclosed, it was found that 38 students who had failed the test had been admitted through bribery – payments made to the school by their parents. The concerned parent then filed suit, and a governmental legal advisory body, finding in favour of the parent, held that the equality clause of Thailand's Constitution had been violated. It also required all state-funded schools to abandon corrupt and discriminatory policies.

f)   How to match information to the activity – supporting individual victims

Discrimination can be established in and outside of legal proceedings. In civil or labour cases the general rule is that each party bears the burden of proving those facts it alleges and from which it derives favourable legal consequences. In general, a complaint on discrimination in a civil or labour court must be proved to be more probable than not – so that the facts established lead a reasonable person to presume that discrimination has taken place. In administrative and criminal cases it is usually for the authorities to investigate and establish the facts to different degrees of certainty. Equality bodies either follow administrative procedures or investigate complaints in accordance with their internal rules.

Typical evidence in all sorts of procedures includes witness statements, documents or common knowledge. In all proceedings individuals bringing a claim of discrimination have the duty to provide the evidence they have. In many cases, a presumption of discrimination is established on the basis of witness statements and documents or information obtained from perpetrators.

The non-discrimination directives define the different types of discrimination. Whatever the type of discrimination, when making a claim, victims need to provide basic information.

EXERCISE: Provide participants with the story and collect basic information on a sheet of paper.

Local Roma leaders have brought to your attention the fact that Roma children in their town can only be enrolled at the school closest to the local Gypsy settlement. They also say that the few Roma children whose parents attempted enrolment in other schools have been referred to the school next to the settlement. This school follows the curriculum designed for children with intellectual disabilities. The leaders

tell you that not all children are tested regarding their intellectual abilities during their education in the school. The school follows the enrolment policy in force in your respective country.

Questions	Answers
1. Who did?	
2. What?	
3. To whom?	
4. When?	
5. Where?	
6. How?	
7. What is the result of the wrongdoing?	
8. Who is responsible for the wrongdoing?	
9. Who saw, heard or witnessed the wrongdoing?	
10. Are there documents, statistics or expert opinions to prove the claim?	
11. What is the victim's protected ground: race or ethnic origin, age, disability, sexual orientation, religion or belief? Is it real, assumed, associated, multiple?	
12. Who is the control person or group to which the treatment suffered by the victim is comparable? There is no need to identify a comparator in cases of harassment, victimisation, an instruction to discriminate or a failure to provide reasonable accommodation. In some Member States discrimination can be established in relation to an ideal minimum standard of treatment, for instance conduct required by a respect for human dignity.	
13. Does the case fall under (European) anti-discrimination law?	

EXERCISE: Ask participants whether or not they keep records of complaints in their NGO and, if so, what template they use. Would this template be useful for them to keep track of complaints, to report on their activities and to share information with other NGOs?

Ask them what rights were breached in this case and why they think this situation is wrong? Is this problem individual or systemic? What basic information is missing and what further evidence do they need to obtain and how?

Leading on to strategic planning, ask participants to identify issues in the case which relate to individual Roma children and parents, as well as issues which reveal a general practice and lead to structural discrimination. Ask them whether their respective NGOs deal with individual cases, structural problems or both. If the latter, how do they balance their activities between individual and general levels?

There are various pieces of evidence which can ease the pressure on victims of discrimination to establish their claim, including the use of statistics, situation testing, the use of requests for public data/ information, audio or video recording, forensic expert opinions and drawing inferences from circumstantial evidence.

For situation testing, please refer to the situation testing module (4.6). For further information on situation testing, read: *Proving discrimination cases, the role of situation testing*, available at: http://www.migpolgroup.com/public/docs/153.ProvingDiscriminationCases_theroleofSituationTesting_EN_03.09.pdf. For further information on evidence, refer to the Handbook on How to present a discrimination claim (published by the European Network of Legal Experts in the non-discrimination field).

4.1.5 What is strategic planning?

PRESENTATION

Strategic planning is an organisation's process of defining its direction and making decisions about the allocation of its human and financial resources to pursue this strategy.

Various techniques can be used in strategic planning, including SWOT analysis (Strengths, Weaknesses, Opportunities and Threats), PEST analysis (Political, Economic, Social and Technological), STEER analysis (Socio-cultural, Technological, Economic, Ecological and Regulatory factors) and EPISTEL (Environment, Political, Informatics, Social, Technological, Economic and Legal). All strategic planning deals with at least one of three key questions:

a)   What do we do?
b)   For whom do we do it?
c)   How do we excel?

In many organisations strategic planning is viewed as a process for determining where an organisation is going over the next year or – more typically – three to five years (long-term), although some extend their vision to 20 years. In order to determine where it is going, the organisation needs to know exactly where it stands, then determine where it wants to go and how it will get there. The resulting document is called the 'Strategic plan'. There are many approaches to strategic planning but typically a three-step process may be used:

- Situation – evaluate the current situation and how it came about;
- Target – define goals and/or objectives (sometimes called ideal state); and
- Path / Proposal – map a possible route to the goals/objectives.

An alternative is called *See-Think-Draw*

- See – what is today's situation?
- Think – define goals/objectives
- Draw – map a route to achieving the goals/objectives

The SWOT analysis is the most useful approach to strategic planning. The main objective of this tool is to analyse internal strategic factors, strengths and weaknesses attributed to the organisation and external factors beyond the control of the organisation, such as opportunities and threats. For more uses of SWOT, see the modules on partnerships (4.4) and advocacy (4.3).

One of the core goals when drafting a strategic plan is to develop it in a way that is easily transferable into action plans. Most strategic plans address high-level initiatives and over-arching goals, but don't get translated into the day-to-day projects and tasks which will be required to achieve the plan.

Specific, time-bound statements of intended future results and general and continuing statements of intended future results are referred to as either goals or objectives. People typically have several goals at the same time. It is best to ensure that goals combine well with each other. Does goal A appear compatible with goal B? Do they fit together to form a unified strategy?

One approach recommends having short-term, medium-term and long-term goals. In this model short-term goals can be expected to be attained fairly easily: they are just slightly out of reach. At the other extreme, long-term goals appear very difficult, almost impossible to attain. Using one goal as a stepping-stone to the next involves **goal sequencing**.

A person or group starts by attaining the easy, short-term goals, then steps up to the medium-term, then to the long-term goals. Goal sequencing can create a 'goal stairway'. In an organisational setting, the organisation may co-ordinate goals so that they do not conflict with each other. The goals of one part of the organisation should mesh compatibly with those of other parts of the organisation.

The elements of a basic strategic cycle can be used in broad, long-term strategies as well as in short-term strategic activity.

EXERCISE: Based on the diagram below (p.49), demonstrate the process of strategic planning using the Roma education example. Although this module focuses on legal assistance including litigation, participants may wish to choose a non-legal

strategy. Bear in mind that one NGO may run a whole spiral of strategic planning, moving on from legal services to awareness-raising, etc. or the other way round.

Remind participants of the differences between legal aid services and strategic litigation. Ask them whether or not there are other NGOs/ equality bodies which can assist them in resolving the case. Here are some questions to steer discussion:

- What does your NGO do?
- What support does your NGO have: financial, personal, other?
- What does the victim want?
- Does it fit your NGO's goals?
- How far is your NGO willing to go?
- Who has a role in resolving this case and at what level?
- What would others have to do?

Strategic litigation vs. legal services

Strategic litigation, sometimes also called impact litigation, involves selecting and bringing a case to the courtroom with the goal of creating broader changes in society. People who bring strategic litigation want to use the law to leave a lasting mark beyond just winning the matter in hand. This means that strategic litigation cases are as much concerned with the effects that they will have on larger populations and governments as they are with the end result of the cases themselves.

Strategic litigation vs. legal services. It is, however, important to note that strategic litigation is very different from many more traditional ideas of legal services. Traditional legal service organisations offer valuable services to individual clients and work diligently to represent and advice those clients in whatever matters they may bring through the door. But because traditional legal services are client-centred and limited by the resources of the providing organisation, there is often no opportunity to look at cases in relation to the bigger picture. Strategic litigation, on the other hand, is focused on changing policies and broader patterns of behaviour. Because of this, strategic litigation is not designed to provide the best services to the largest number of people possible as traditional legal services would.

Advocacy. By filing lawsuits, advocates for social justice can use the courts to bring about legal and social change.

This is often a part of an overall advocacy campaign designed to raise awareness about a particular issue or promote the rights of a disadvantaged group. Many groups or individuals who bring strategic litigation also seek to convince others to join their cause or to influence the government to change its laws.

Results. When it is successfully used, strategic litigation can bring ground-breaking results. It can spring a government into action to provide basic care for its citizens,

guarantee the equal rights of minorities or halt an environmentally damaging activity. There are no set limits as to what strategic litigation can accomplish.[19]

In the final debriefing stage, demonstrate linkages between the template of questions, the strategic wheel, the types of actions participants can take and the information they need.

4.2 Monitoring

'The scientific mind does not so much provide the right answers as ask the right questions.'
Claude Levi-Strauss

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[19] Geary P, (2009) *Children's rights: A guide to strategic litigation,* Child Rights Information Network: London.

4.2.1 Subject

This module focuses on **strategic monitoring** and **equality impact assessment of the practices and policies** of public/private sector bodies in relation to equality and non-discrimination.

This module will provide NGOs with a greater understanding of what strategic monitoring and equality impact assessment are. In addition, NGOs will be able to design and plan a monitoring project. Finally, NGOs will better understand the role of the NGO community in monitoring and assessment carried out by other actors (public and private bodies, academia etc.).

4.2.2 Definitions

Monitoring, evaluation, assessment – these terms are often used by different agencies and institutions, in science and by the NGO sector.

They have different meanings in different contexts. Despite the existence of numerous definitions, we understand these terms as follows:

Monitoring is often defined as a close observation of a situation or individual case undertaken in order to determine what further action needs to be taken.[20]

In this module we talk about **NGO strategic monitoring**, which could be defined as **planned and systematic investigation** of a selected fragment of **social reality** (in our case focused on human rights and, even more specifically, on equality and non-discrimination issues), conducted according to an **adopted framework** and with the **aim of improvement**.[21]

Impact assessment is an assessment of the impact which particular policies and procedures have (or proposed policies or procedures might have) on those who are affected by them.

In this module we focus on **equality impact assessment** (EIA) which could be defined as a thorough and systematic analysis of a current or planned policy (written or unwritten, formal or informal), procedure, project or service and its impact on different equality groups characterised by age, disability, gender, race and ethnicity, religion or belief or sexual orientation, as well as other socially disadvantaged groups.

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[20] Guzman, M., B. Verstappen, *What is monitoring*, Human Rights Monitoring and Documentation Series, Volume 1, HURIDOCS 2003, p. 5.

[21] Adopted from M. Nowicki, Z. Fialova, *Human rights monitoring*, Helsinki Foundation for Human Rights, Warsaw 2004, p. 13.

4.2.3 Scope

Considering the limits of the module, we are focusing mainly on the human rights monitoring undertaken by NGOs (with an emphasis on monitoring related to equality and discrimination) and only partially on equality impact assessment.

We do not cover the issue of the monitoring and evaluation of NGOs working to combat discrimination – systematic collection and analyses of information about progress of a given project or organisation and the comparison of results, and the impacts of the project on its goals and objectives.

4.2.4 Content

A. Monitoring

Why monitor?

There are different reasons why NGOs should want to engage in monitoring. A general answer is: in order to find out more fully about a particular reality. Equality and the prohibition of discrimination are often legal standards. However, what count in people's lives is not law on paper but social reality.

NGOs should use the knowledge they gather about social reality as a tool to influence change, to make the situation better. Specific monitoring may have different functions.

Investigative function – we simply want **to know** what the situation in a given field is, because we lack this information. A project can be conducted to gain documented knowledge about the nature and extent of discrimination.

> Examples: We don't know much about practice in the dismissal of employees who reach retirement age and we plan to study it. We have heard that there are **cases where people who reach retirement age are being forced to leave their** jobs but we do not know whether this is a real problem or just one or two cases; we do not know the scale of the problem.
>
> We know that occasionally there are job adverts which refer to age (and gender), indicating an intention by the employer to discriminate, but we do not know the extent of this practice. We decide to organise monitoring project to learn what the real situation is. Is this a serious problem? If it is, what is the nature and scale of the problem and what solutions are called for?

Supplementary function – **to participate** in some other activity with the aim of effecting change: we already have fairly accurate knowledge about the nature and extent of discrimination, we have information stemming from different possible sources (for instance, media reports, complaints, conversations etc.), but we want to

have hard data. We need to gather facts, to have proof, to have solid arguments based on the evidence.

Examples: We know from number of sources (such as media reports, individual cases, unofficial complaints, other projects) that people from the LGBT community are often harassed in a workplace.
We know this is a real and serious problem. We could advocate for solutions, for changes to policies or practices based on existing knowledge, but we want to support our call for change with hard data.
We want to show the full scale of this problem and demonstrate to our critics that we know what we are talking about.

It is common knowledge that a particular religious group is being discriminated against in our country. We know from the media and from complaints from this group that they have problems with obtaining permission to build a religious centre of worship and problems with renting public space for religious events etc. In order to advocate for changes we decide to conduct a monitoring study showing in details what difficulties the group faces, including in comparison with other groups.

Preventative function – while generally the objective of monitoring is to investigate, to collect data and to document, there are situations when NGOs primarily want **to influence** the particular situation they are monitoring. We know that the very fact that different bodies are being observed may affect their behaviour. This differentiates NGO monitoring from pure scientific research (which may also have side effects but of a different nature).

Examples: Different types of observations provide good examples of preventative monitoring. The objective of the NGO observer monitoring a trial is often to secure a fair trial and to provide moral support to one of the parties.

Thus, when following trials against representatives of a particular ethnic minority, to investigate possible bias or discrimination towards them, an observer by his/her mere presence may influence the trial and behaviour of the court actors. Overt or very conspicuous observation may prevent discrimination or bias from occurring.

Observation of elections (for instance, from the point of view of access to polling stations by people with disabilities) could have a similar impact. In fact, in addition to documenting the situation, the presence of observers often ensures that free and democratic election standards are met.

Finally, when we monitor public gatherings, such as meetings of religious groups, marches, demonstrations or gay pride parades (from the point of view of the right to peaceful assembly and the obligation of the state to ensure safety measures and protection of participants), our aim is to document the situation

objectively but also, simply through the presence of the observers (usually with badges or other visible identification, sometimes invited by police forces), we want to ensure that the authorities will guarantee that the public gathering will be held according to the required standards.

EXERCISE: Give examples of different monitoring projects which have primarily investigative, supplementary and/or preventative functions (both existing projects you are familiar with and invented projects).

What to monitor?

Basically, we may monitor anything we are interested in – from small monitoring projects at the local level and focused on one chosen issue (such as monitoring the segregation of a particular ethnic minority in one local school) to wide and sophisticated research projects (such as monitoring the situation of that minority in terms of discrimination in education in the whole country, or not just in education but in a variety of fields).

However, it is good to answer **some basic questions** before we make final decisions about conducting monitoring:

- **Why do we want to monitor?** How does it fit with our organisation mission and strategy, our overall goal and objectives? What do we want to achieve using monitoring? Is the aim to gain knowledge (investigative function), to support our already formulated strategy and advocacy objectives with hard data (supplementary function) or to prevent discrimination from happening in a particular case (preventative function)?
- **Is it necessary** to conduct a monitoring project? Are there other, better, easier, cheaper means or methods of achieving our objectives? For instance, we should check existing data and knowledge – others may already be monitoring the situation (public authorities, equality bodies, academia, international organisations, other NGOs). There would be no benefit in us duplicating these efforts, instead we should use any existing information.
- **How are we going to use the results** of the monitoring? Do we have a clear vision of how the facts, evidence and information gathered could be used by us or others?
- Finally, we have to answer questions regarding **our resources** – are we competent enough? Are we prepared from organisational point of view? Do we have enough personnel and material resources to conduct an effective, useful monitoring project? Do we need external assistance? If so, from whom? Do we have adequate contacts, or money, if needed?

The choice of a particular monitoring subject will obviously depend on the mission and strategy of our organisation, the local or national context, existing needs, gaps in information etc. Below, in addition to the topics mentioned above, are some more

examples of issues for which monitoring could be useful and possible concrete monitoring projects.

In general:

- How particular rights of minorities are respected (implemented) by public institutions (local government, public service providers, police, prison administration etc.);
- How particular rights of minorities are respected by specific private bodies (employers, service providers etc.); and
- How a specific law (or policy) affects the observance of the rights of minorities (before it came into force or after a certain period of time). For more on this, see section B. below on equality impact assessment.

In particular:

- Monitoring of age discrimination in employment by particular employer/s – terms and conditions (pay, holiday), promotion and access to training;
- Monitoring of harassment of LGBT people by the police;
- Monitoring of discrimination in education – access to education of a particular ethnic minority;
- Monitoring of accessibility of particular services for people with disabilities; and
- Monitoring of the right to exercise religion in closed or open institutions (prisons, hospitals, military facilities and other places where people reside).

EXERCISE: Identify a subject (or subjects) which in your opinion is important and should be investigated in the form of monitoring. Answer the 'basic questions' regarding its connection to the organisation's mission and strategy, necessity, possible usage of results and resources.

Who should conduct monitoring of equality and discrimination policies and practices?

Are NGOs which work on equality and combating discrimination obliged to conduct monitoring projects? We may easily argue that the answer to this question is 'No'.

There are a **number of institutions** which **should collect data, investigate and conduct surveys**. In some cases institutions are obliged to monitor while, in other cases, whether they do so will depend on their will and decision to do so. Who are they? The list of possible bodies may include:

- National statistical offices and their annual survey plans;
- Equality bodies which, according to the EU Directives, should conduct independent surveys concerning discrimination, publish independent reports and make recommendations on any issue relating to such discrimination (see, for instance, Article 13 of Directive 2000/43/EC);

- Other national or local public bodies (depending on local context) which should collect statistical data and other information and assess their policies and the outcome of their policies and practices,
- International institutions and organisations which must have comparative data for different countries, including:
  o European Commission (long-term projects as well as single studies which investigate a number of issues, special networks of experts which report on the developments in their countries);[22] and
  o Council of Europe, OSCE, UN (collect data, commission various studies);
- Scientists and academics, universities and other research institutions, think tanks, which do a lot of social research;
- Private bodies, such as companies, which collect data and do research on their clients and potential clients and on their employees; and
- Media – to a certain extent, although occasionally the media conduct quite impressive investigation and monitoring activities.

So what is the role of NGOs? NGOs have a role on at least four different levels:

- **Inspiring**. NGOs should not replace other bodies in their monitoring obligations. Instead NGOs should inspire, serve as a trigger, ask probing questions and encourage other institutions (public, private, academics) to collect data, conduct surveys and monitor policies. NGOs may provide examples and share best practice from other countries;
- **Collaborating**. NGOs may take part in monitoring projects organised by other parties. They may provide information and evidence from their work, they may act as partners or serve as local or national focal points in international comparative research. EU Member States must, for instance, encourage dialogue with NGOs which work in the field of combating discrimination with a view to promoting the principle of equal treatment (Article 12 of Directive 2000/43/EC and Article 14 of Directive 2000/78/EC). NGOs should therefore be consulted whenever their knowledge and experience are relevant.
- **Watch dog work ().** Sometimes collecting information and conducting monitoring is an obligation of relevant institutions (such as equality bodies), however, in practice public institutions appear in certain cases not to fulfil their role adequately. NGOs may and should undertake 'watch dog' type work to assess whether (and how) particular institutions carry out these obligations. In fact, an NGO may conduct a monitoring project to investigate whether other institutions are fulfilling their monitoring obligations; and
- **Conducting** independent NGO monitoring. If there is a lack of data, a gap in available information or if credibility of other research is undermined, NGOs may engage in independent monitoring. Sometimes NGOs are simply better for this job, because they are closer to the victims of discrimination, are more trusted than other institutions and have better access to sensitive data.

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[22] Please see information on different networks of experts and studies commissioned by the European Commission at: http://ec.europa.eu/justice/discrimination/experts/index_en.htm.

Conducting monitoring therefore includes gathering data but also, within the advocacy strategy, giving feedback / recommendations to monitored public institutions /bodies, as well as communicating the findings to the public (reporting).

EXERCISE

1. List all the institutions (or their types) which in your country's context should monitor, collect data, investigate, and conduct surveys.
2. Who, in your opinion, should or could monitor, collect data and conduct surveys in your organisation's particular field of interest (for instance, age discrimination in a workplace or harassment of LGBT people)? Identify and list the relevant institutions. Do they fulfil their obligations?

EXERCISE: Discuss how NGOs might influence others (relevant listed institutions) in fulfilling their monitoring role?

How to monitor – monitoring step by step

The diagram in Annex 1 (Diagram – stages of monitoring) shows the particular stages of a strategic monitoring project, which needs to be carefully planned.
Of course, monitoring is an approach which might be used by NGOs in different ways; there will be relatively simple, small, short-term projects (such as observing a single demonstration or monitoring the content of the local newspaper/s for one month) and more complex, sophisticated ones (such as monitoring access to education for one of more particular ethnic minority in the whole country).

What are the major steps in preparation and implementation of monitoring?

1. Formulating the monitoring subject
2. Defining what we want to learn (monitoring issues and questions)
3. Conducting legal analysis and desk research
4. Choosing methods and developing tools for monitoring
5. Planning (logistics)
6. Piloting and improving the tools
7. Collecting / processing / analysing data gathered
8. Reporting / giving feedback / communicating
9. Utilising monitoring results

Example: when briefly defining the above monitoring steps we will also use as an example one possible monitoring project idea. Depending on the field of interest of the NGO, specific elements of the monitoring will, of course, differ. In our example we represent a small local NGO which supports inter alia people with disabilities and which generally operates at municipality level, but also cooperates with other organisations within networks at the national level. Our organisation has some part-time employees and several volunteers as well as supporters.

Formulating the monitoring subject

This involves specifying what needs to be monitored and what information is being sought, based on the experience from our work and on our preliminary investigation and desk research.

Our organisation is often asked to support people with disabilities in their efforts to eliminate barriers which limit access to services in our municipality. Individual complaints and calls within the municipality result in only small changes, not enough money is invested and there are still many obstacles. Local government claims that it tries hard and does what is possible in the circumstances. In order to plan an advocacy strategy within the municipality, we decide to conduct monitoring. We want to monitor the access for people with disabilities to public buildings owned by the municipality, as well as the services offered in the buildings. We plan to focus on two elements: barriers which still exist and need to be eliminated and recent developments, if any (to check what has been done in the last couple of years).

Defining what we want to learn (monitoring issues and questions)

Identifying the subject of our monitoring is usually just an initial step.

It must then be broken down into particular elements/issues/problems and the concrete questions must be formulated to which answers will be sought. This is where decisions about the scope of the monitoring are really made.

We decide to monitor public buildings and buildings owned by the municipality, for example: local government buildings, police stations, courts, post offices swimming pools, schools, health centres and hospitals. We want to know whether they – buildings and services – are accessible for people with various disabilities, mobility problems (for instance, people in wheelchairs or with crutches), visual impairments or other problems.

There are several buildings and a number of services. For each we have to formulate particular questions, for instance, in terms of architectural barriers we may ask whether the post office has wheelchairs access and, if so, is it good and is it used by wheelchair users. If not, are there any other solutions for wheelchair users who wish to use post office services? Is the post office counter low enough for wheelchair users? If not, how are they served?

The second set of questions refers to recent developments. It may be decided, for instance, to check what has been done in the last three years (when the current local government came to power). Thus, in relation to each monitored institution we need to know what has changed in terms of accessibility in the last three years, who did it, who paid for it etc.

Since it was decided to monitor a number of different buildings which provide different services, the list of questions would be long one.

Conducting legal analysis and desk research

In order to monitor practices and policies against legal standards we need to know and understand the current legal position. This is usually done with the help of NGO lawyers. **Legal analysis** covers different legal sources relevant to our monitoring issues and questions (and the depth of analysis will depend on these issues), from international and constitutional law, through acts of parliament and governmental regulations (both national and local), to different kinds of internal regulations within different institutions. It may also include court rulings.

Detailed legal analysis will not be necessary in all projects, of course: in many monitoring projects awareness of basic rights relevant to the monitoring issues would be sufficient. Generally, important legal developments should be monitored throughout the project, so as not to miss significant changes in the law or court rulings which may be used in our research and advocacy efforts.

Desk research (collection and analysis of existing data, comprising all kinds of relevant information, materials, evidence, publications, reports, media coverage etc.) is something that is usually done on a regular basis by organisations interested in a particular issue. It should be undertaken in more detail and in a more focused way at the beginning of a monitoring project.

There are often documents which we may not be familiar with or may have forgotten about (if historical). It is always good to identify all the materials related to the monitoring subject, in order to ensure competence, gain inspiration and make comparisons.

In addition, desk research should be continued at least throughout the project period, because if new material appears (or has just been discovered) we should be aware of it and use it if appropriate.

In our case legal analyses may focus on two elements – general anti-discrimination standards which require action from the government in order to eliminate barriers (such as UN conventions) and local laws. Are there any obligations in this respect stemming from national acts and regulations which we can refer to?

Desk research should include a number of things. Has anyone else conducted similar monitoring in the past? In other municipalities? At the national level? In other countries? Is there any methodology we can use? Are there any reports produced by local government, any documents, plans, budgets, pledges, minutes from local council meetings which discussed the issue? Is there any comparative data collected at the national level which would enable us to show the case of our municipality as compared to others?

Choosing methods and developing tools for monitoring

NGO monitoring is not scientific research. However, it usually uses scientific research tools and may sometimes involve assistance from a sociologist or statistician.

NGO monitoring often relies on **qualitative data** based on case studies, interviews, or testimony from victims. Especially in the area of equality and non-discrimination, it is not always possible to find reliable **quantitative data** (numbers and statistics). Depending on the issue, it is likely that in some cases the best information available will be qualitative data. For example, in the field of employment it will be relatively easy to collect quantitative data on sex and age of employees, but it is highly unlikely that there will be comparable data on sexual orientation. Therefore we would need to plan carefully and in a sensitive way even to obtain qualitative data.

Of course, there is information (from complaints, media, reports produced by others etc.) which organisations collect and analyse on a regular basis. In planning strategic monitoring, however, it is important to try to develop a more systematic way of collecting, selecting, analysing and processing the information required.

What are the methods for obtaining information by NGOs? The following includes some possible methods:

- Continuing desk research
- Analysis of complaints (of people who have been discriminated against)
- Media analysis (press, internet, audio visual media)
- Analysis of existing statistical data
- Analysis of public records (such as court files, documentation from public institutions, archives)
- Hearing and recording personal experiences:
  o Unstructured interviews/ informal discussions
  o Focus group interviews (with a number of individuals together)
  o Directed interviews (partially structured)
  o Questionnaire-based interviews (with open or closed /multiple choice/ questions)
- Questionnaire-based surveys: internet, postal etc. (respondents answer the questions themselves, in writing)
- Documenting cases (case studies)
- Observation (of individuals, sites, events), external or participatory
- Physical measurements (of buildings, facilities, equipment)
- Experiment (for instance, situation testing)

If after the desk research we are still convinced that we do not have the answers to all the questions previously formulated and that important information is still missing, a decision has to be taken about how to obtain it. There are many possible and complementary ways: unstructured and questionnaire-based interviews with people

with disabilities on their personal experience, managers and employees of particular buildings and services, representatives of local government; focus groups with people with disabilities; observation of buildings, based on a template with fixed indicators; and analyses of public records regarding developments, budgeting etc. Comparative data can be collected (if accessible) on the situation in other municipalities.
Experiments may be conducted: people with a particular disability could be asked to try to access buildings and services and document their attempts. Physical measurements and photo documentation of architectural barriers can be used.

Planning (logistics)

Strategic monitoring requires good, careful planning. There are a number of things which must be decided in terms of **who** is going to do **what**, **how** and **when**, **how much time** will it take and **how much** money is needed. It is always advisable to produce a detailed plan of action (even if this is not required by the donor). The implementation of the plan should be monitored.

Depending on the previous choices, it should be decided who is to develop empirical research tools, who is to test them and improve them, who is to conduct interviews or building visits, who is to analyse data and write reports, who is to prepare policy papers, leaflets with outcomes etc. and when each of these actions should happen. Decisions must also be made about the following. How should reports be published and distributed? When should results be presented?
Is there any especially good period/date (timing is sometimes crucial)? Are there enough staff and/PR volunteers? Do they need to be trained? What equipment is needed – camera, voice recorder? How much money is needed and for what? The implementation of the project plan should be monitored. It is useful to prepare a simple table with just four columns stating who is responsible for what and the deadline and status of the task.

Piloting and improving the tools

It is very important that, no matter what kind of tools are developed or adopted for collecting information (questionnaires, instructions, templates etc.), they are tested. We need to know the following.

Do people (both data collectors and people interviewed) understand the tools? Are instructions and questions clear enough?

Does use of particular tool provides the type of information sought? Is the choice of possible answers (set of given answers in closed questions) appropriate? Complete? Too long, too short?

Tool testing is often called a 'pilot project'. After testing, the results should be analysed and the tools adjusted appropriately, so that they are changed, updated or sometimes discontinued or a decision is made to develop new ones.

By conducting a pilot study and testing the tools, mistakes which might otherwise be made can be eliminated and unnecessary work avoided.

If a decision is taken to use interviews based on a questionnaire or building visit charts, then they must be tested to see whether the right questions have been formulated, what may be missing and what questions are to be deleted or added.

Collecting / processing / analysing data gathered

Everything depends on the type of monitoring project engaged in. The situation will be different in a single study project (when something is done just once), a project which is periodically repeated (and results are compared) and permanent monitoring (sometimes lasting years, with periodic reports).

There are some important issues which should be considered by NGOs in the process of data collection.

- Documenting the sources of information, for credibility reasons, but not always disclosing them;
- Protecting the identity of people who could be at risk (professionally or in terms of their reputation) because of the monitoring, not exposing them to any risk by direct or indirect identification without their full written consent;
- Verifying data and varying methods of gathering information – different methods complement each other;
- When collecting data focusing not only on information about the status quo but trying to reach deeper – to the reasons for the status quo, to the explanations or recommendations based on the status quo;
- Looking for and noting cases which illustrate clearly the monitoring issues or interesting quotations which would serve as good examples; and
- Being objective, monitoring the situation as it is, noting not only violations (as some NGOs, especially watch dogs, tend to do) but also good practices, improvements, trying to study the problem from the standpoint of different actors/parties.

Processing quantitative data depends on the methods used and the size of the sample. Sometimes a piece of paper and a pen is enough, sometimes a calculator is needed and sometimes professional statistical software and the assistance of experts who know how to use it are required. There is one general rule, however: it is essential to know how the data is going to be processed before the research tools are used.

It is dangerous to design a lovely, long questionnaire, gather data with it and then start thinking about how to process it. Data processing tools and monitoring tools in quantitative research should go hand-in-hand and should be designed together.

In our project there would probably be a lot of qualitative information – on the experience of particular people with disabilities, real stories. However, since we decided to monitor a number of buildings, we may also decide to do some quantitative analyses to show the scale of the problem (for instance, in 70 per cent of municipal buildings there is no wheelchair access). On this scale, a pen and paper would probably be sufficient for calculations and no special software would be needed.

Reporting / giving feedback / communicating

Monitoring reports may look different depending on the project, the organisation's approach, local conventions, the methods used and the target group(s). A shadow report for a treaty mechanism would require a different structure from a report aimed at politicians or decision-makers. A report for the general public and the media would look different from a more specialised report intended to support strategic litigation activities before a national or international court.

However, there are some common elements:

- table of contents;
- a short introduction explaining why monitoring was needed, stating the objectives of the monitoring and providing some basic information on the authors of the monitoring, its scope, timeframe etc.;
- acknowledgements and thanks to the people who made the monitoring possible, collaborated during the monitoring, agreed to talk or be interviewed and who provided the evidence etc.;
- main conclusions and main recommendations (or executive summary), at the beginning or end of the report;
- analysis of the law – what are the standards (constitutional, international, local);
- main body of the report – data, evidence, case studies, findings presented in interesting way;
- conclusions;
- more detailed recommendations;
- information about methodology used during monitoring (sometimes very detailed, including examples of monitoring tools attached); and
- bibliography.

Thought should be given to the report at the planning stage for the monitoring and during its implementation. What we need for the report are, for instance, good quotes, photos, case studies etc. A decisions also has to be made as to whether report is enough on its own or whether a separate summary (which needs to be prepared) may be useful or whether it makes sense to produce additional

documents, such as a policy paper, a motion to the city council, a leaflet on the findings or a PowerPoint presentation.

Utilising monitoring results

The distribution of the monitoring report should not be the end of the project (unfortunately, in reality this is sometimes the case: written reports land on the shelves, not always making it to the internet, the project accounts are completed and the organisation turns to new challenges).

Monitoring results may be triggers for advocacy. Results should be used in all advocacy efforts and should be reiterated as necessary. How can monitoring results be used? There are many possible ways, including:

- in advocacy, lobbying (meetings, seminars, round tables, work with the media, policy papers, information leaflets, draft laws etc.);
- in reporting, including shadow reports to international bodies;
- in litigation (evidence, arguments, particular cases found during monitoring); and
- in awareness-raising, education.

A media and outreach strategy should be designed, identifying when and to whom we want to present the results of our monitoring first – local media, city council, roundtable etc.

EXERCISE: Planning a monitoring project

Choose your topic depending on your organisation's field of expertise or interest. What is your strategic objective? Working goal?
What is your research task (monitoring subject)? What are the research issues and questions (what information do you need and why)?
What methods for obtaining this information are appropriate/best (how will you get the information)?
What is the scope of the planned monitoring (geographically, sample, timeframe, etc.)?
What resources are needed (funding, people, other)?

EXERCISE: Design a monitoring tool of your choice (interview instructions or questionnaire, check list, etc.)

EXERCISE: What are the similarities and differences between NGO monitoring and social science research in relation to: objectives, methods, samples, results, recommendations, advocacy etc.?

B.   Equality impact assessment

What is equality impact assessment?

Equality impact assessment (EIA) is an effective way to look at current and new policies, projects and services in depth to see what impact they may have on different equality groups. Its purpose is to inform relevant institutions:

- whether an equality group (or groups) is or is likely to be disadvantaged by an institution's proposed or existing policy or practice; and
- how an institution's policies or practices could be improved or could more effectively advance equal opportunities.

An EIA should never be regarded as an end in itself; with the information from an EIA an institution should take whatever action is necessary to ensure that its policies or practices do not discriminate and do contribute to the advance of equality.

EIA is only well-developed in some EU countries; in many others it is a new or even unknown concept. EIA was first introduced – with a formal requirement to undertake EIAs – in Northern Ireland in 1998 and in England, Wales and Scotland in 2001.

EIA is conducted mainly by public authorities and public service institutions. If possible, an EIA should be carried out **before** a public authority decides on future action (adopting a new policy, changing an existing one) and should be built into the policy development process.

Five stages of EIA through the policy development process
(Source: Equality and Human Rights Commission, United Kingdom)

- Stage 1: Pre-policy development or policy review planning
  - o   (i) Deciding whether a policy or service requires an EIA
  - o   (ii) Scoping the EIA
- Stage 2: Policy drafting and assessing impact
- Stage 3: Putting in place monitoring, evaluation and review approaches
- Stage 4: Signing off and publishing the policy
- Stage 5: Monitoring and reviewing the action plan

If the policy or practice was already in place, an EIA provides similar information and indicates to the organisation whether a change is necessary in order to be lawful.

How does the EIA procedure work?

There is no single way of assessing equality impact which could be used by all institutions in all cases. It depends on the particular policy or practice under consideration and on the functions of the given authority or institution, its size and resources. Relevant institutions should develop their own EIA methodology to reflect

fully the character and aims of their business and ensure consistency. Different institutions use different approaches. There are, however, some basic questions and problems which should be addressed by EIA and are more or less universal:

- Could the decision, policy or practice have an adverse impact:
  - on equality of opportunities for any group (according to age, gender, sexual orientation, disability, ethnicity, etc.)?
  - on relations between members of different equality groups or between members of one equality group and other people?
- Could the adverse impact amount to direct or indirect discrimination or otherwise breach the provisions of the discrimination law?
- Could the decision, policy or practice be more effective in advancing equality of opportunities for all or for certain groups?
- Could the decision, policy or practice be more effective in fostering good relations between members of different equality groups or between members of one equality group and other people?
- Is further research, involvement or consultation necessary? Would undertaking research, involvement or consultation be proportionate to the importance of the policy or practice? Is it likely to lead to a different outcome?

Various examples of practical tools developed to conduct EIA may be found in the materials listed at the end of the module (p.125). Some of the examples show that particular organisations use EIAs as the basis for action, which is the very idea of EIA.

The EIA questions to be asked will depend on what aspect of a service or public function is to be assessed. Equality impact assessment might be carried out in relation to any national or local government policy or any policy for the provision of services or public functions such as policing. The policies and practices of educational institutions or heath service institutions could also be assessed.

In order to answer the EIA questions, a number of methods mentioned above in the section on monitoring may be used.

Role of NGOs in equality impact assessment

To date most writing on EIA focuses on the obligation of public institutions to know the equality impact of what they are doing or proposing to do. While NGOs are rarely mentioned, there is a role for NGOs whose own, often specialised, experience should be fed into a public body's EIA process.

As concluded by the UK Equality and Human Rights Commission: "The information and insights that can be gained from involvement and consultation are crucial to EIAs, allowing those affected by the way a public authority carries out its functions to have a real input, improving outcomes and empowering both service users and employees. […] Such wider involvement and consultation approaches should include

communities and groups covered by the public sector duties, and wider equality groups. Many of these groups face particular barriers to involvement, which mean that specific, targeted outreach activities and support may be needed."[23]

The situation described refers to the particular country context where EIA has become a formal obligation. The possible role of NGOs in relation to EIA should be discussed, especially in countries where there is no tradition of EIA. There is no reason why this type of inquiry cannot be carried out by NGOs, especially if public or private sector institutions are not conducting EIAs. In practice it is a form of structured equality monitoring leading to action for change which, like the various forms of monitoring discussed above, can be used by NGOs to inform and support their advocacy work.

EXERCISE

1. What is the possible role of NGOs in relation to EIA (for instance, the NGO as an actor inspiring others to conduct EIAs and spread the idea of EIA; the NGO as an actor taking part in EIA done by others, for instance, participating in focus groups, providing authorities with information and feedback, proposing changes to policies and practices; an NGO conducting EIA as an external evaluator)?
2. What is the possible role of a particular NGO in the particular country context? Decide on possible activities in relation to the EIA and design a plan of action.

4.3 Advocacy

'Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed it is the only thing that ever has.'
Margaret Mead

The objective of this module is that NGOs will gain knowledge and skills to undertake strategic advocacy to secure improved, more effective implementation of laws and policies to combat discrimination.

4.3.1 Definition

In this manual 'advocacy' means an organised attempt to secure change by presenting evidence and arguments for how and why change should happen. The change could be in policies and laws, in the implementation of these policies or laws or in people's awareness of the policies and their own rights. 'Strategic advocacy' means a series of actions which are carefully developed, planned and carried out by actors seeking to achieve a particular goal. Lobbying is one form of advocacy**.**

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[23] Equality and Human Rights Commission, *Equality impact assessment guidance. A step-by-step guide to integrating equality impact assessment into policymaking and review*, November 2009, p.15.
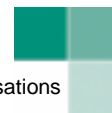
4.3.2 Scope

This module discusses how NGOs can undertake effective strategic advocacy. It considers what is necessary in designing, planning and carrying out different advocacy actions and monitoring and evaluating the outcomes and impact.

Advocacy involves collecting information, monitoring, building partnerships, networking and use of the media, all of which are topics covered in other modules in this manual. This module indicates the context in which such processes or activities are necessary for effective advocacy.

This module is concerned with advocacy by NGOs and it does not discuss lobbying carried out as a commercial activity or any form of advocacy by private sector organisations. It also does not discuss community-based capacity-building, which can be part of NGO strategic advocacy.

4.3.3 Content

Advocacy is a systematic process to achieve change with distinct steps and activities.

a)   Initial analysis to identify an advocacy issue

What is going wrong? Or what is not going right? Is there evidence of discrimination, disadvantage or inequality in an area in which your organisation has an interest? Is there evidence of failure to implement fully national or EU anti-discrimination legislation? Are there policies or practices which prevent or inhibit all groups from enjoying full rights to equality? For example:

> Disabled people are disproportionately excluded from most types of employment at most levels, with the exception of 'sheltered' employment restricted to disabled people only.

> Despite national, European and international laws requiring equality in access to education, certain ethnic minority families encounter discrimination (direct and/or indirect) when they try to enrol their children in a local mainstream school.

- What evidence do you have? Is it objective? Is it unambiguous?
- What are the underlying causes? Who is responsible?
- How could the causes be addressed?
- From your experience where do you believe change is possible and where are you likely to meet strong resistance to change?

The **'problem tree'** is a useful analysis tool which should help in visualising the legal, political and societal aspects of the problem. The 'problem tree' helps to identify the

causes or consequences which are directly or indirectly related to the problem and where advocacy action might most effectively be targeted.

In the simplified example of a 'problem tree' below, the problem is the trunk of the tree, factors that contribute to the problem are the roots and the deeper roots are the causes of these roots. The symptoms or the effects of the problem are the branches and the wider effects are the higher branches.
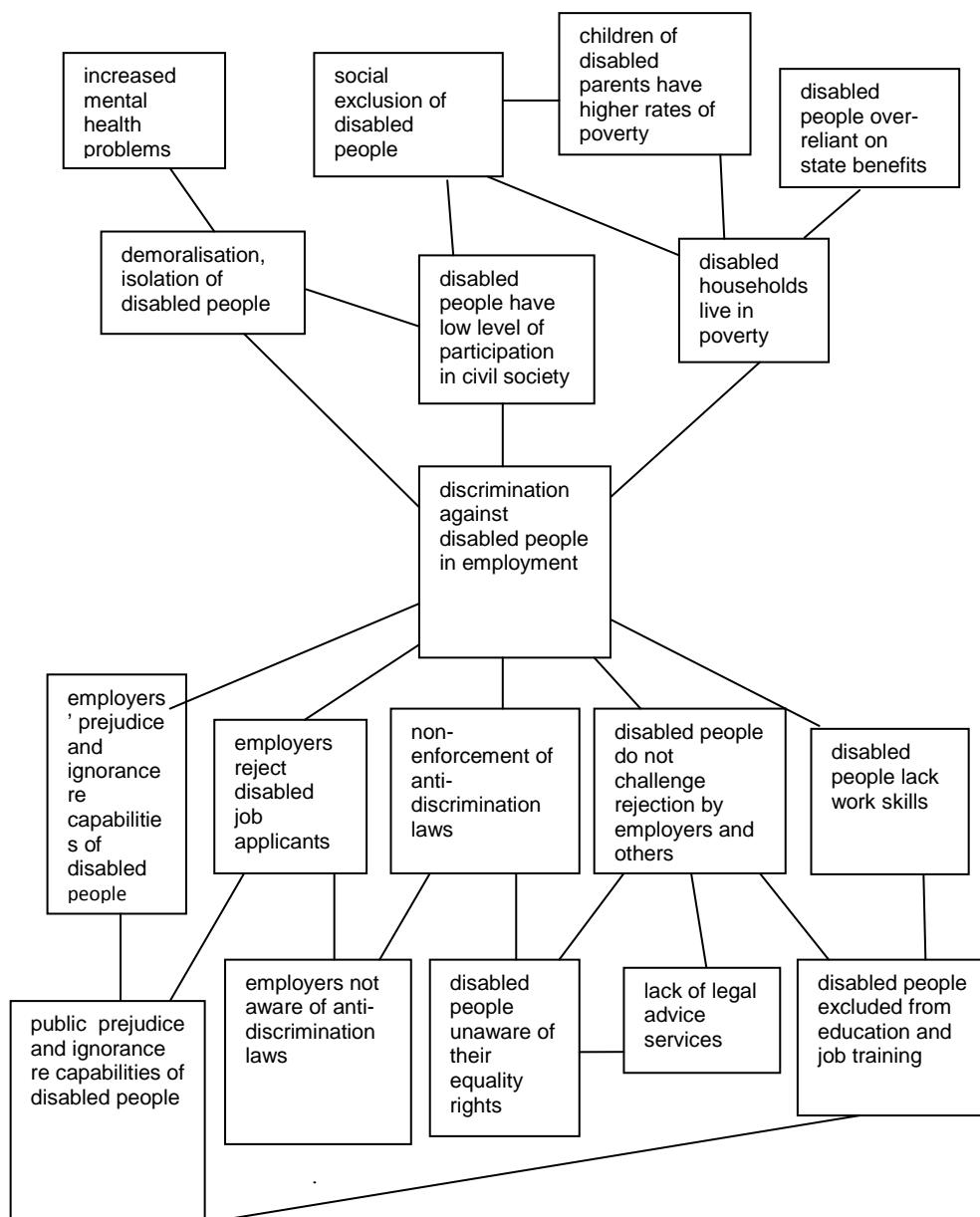
Note: This is an example only. In reality there would be other causes and effects and more links between causes.

b)   Finding out more: understanding the problem and its causes

Before starting to plan your advocacy action, it is essential to have the fullest possible understanding of the problem and its causes. (For fuller discussion of collecting information, monitoring and assessing impact to gather evidence of discrimination please see modules above under 4.1 and 4.2).

It may be useful to break the issue down into component parts and then, for each part, identify the causes and the consequences and possible solutions. Repeatedly asking 'why' may help to identify the root causes.

For example, the barriers to equality in employment for disabled people could be seen as:

- employers' lack of awareness of anti-discrimination laws;
- employers' prejudice and ignorance regarding employability of disabled people;
- little interest on the part of trade unions in non-recruitment of disabled people;
- exclusion of disabled people from education and training to equip them for employment;
- anti-discrimination legislation not implemented and/or not enforced;
- disabled people unaware of their rights under anti-discrimination laws; and
- lack of agencies able to provide disabled people with advice and assistance on their rights in relation to discrimination.

Each of these factors will have its own causes; in each case it should also be possible to identify responsible individuals or institutions. This should help in planning what needs to be done to achieve change.

c)   What is your long-term goal? What are your objectives?

Your **advocacy goal** should describe the change you want to see; it is the desired long-term result of your advocacy actions. Your advocacy goal could be general, for example:

Disabled people have equal access to employment.

All schools in the district provide equal access to mainstream education for pupils of all ethnicities without discrimination.

Your **advocacy objectives** are specific, short- or medium-term changes which it should be possible to achieve and which contribute to reaching your goal. When a problem is complex or has a number of different causes, you are likely to identify more than one objective leading towards your goal. Generally, advocacy objectives should have a timeframe of one to three years. This provides an opportunity to monitor progress (see below) and to take account in further objectives of any

political, legal or other developments which could affect the achievement of your long-term goal.

Objectives should be **SMART** – **S**pecific, **M**easurable, **A**chievable, **R**ealistic and **T**ime-bound. They should describe the change you aim to achieve, not what you intend to do to achieve that change. For example:

> Within 18 months the [relevant government department or the specialised equality body] will publish and circulate through all national employers' organisations and all registered trade unions clear guidance on the prohibition of discrimination in employment.

> By the beginning of the next school year district education officials and head teachers of all schools in the district will have attended training on the national anti-discrimination law which applies to education.

Specific – avoid vague terms, such as 'empower', 'enable'; say what you mean.

Measurable – be as exact as possible. Include numbers (of people, organisations, frequencies, test cases). If there are geographical boundaries or sectoral boundaries, these should be stated (for example, the whole of the country or within three major population centres, all providers of services or public sector service providers).

Achievable – state your objectives in such a way that you and others will know when you have reached them. For example, effective legal protection against discrimination in education could be a goal, but your objective should state what, when, who where and how (such as, in the next 12 months the government will review how the anti-discrimination law is being applied in the field of education).

Realistic – your objectives should be achievable in your planned timeframe within the limits of the capacity of your organisation (see below).

Time-bound – your objective should include a clear, realistic timeframe within which the proposed change should be achieved.

d)   Assessing your advocacy capacity

In deciding your objectives and planning your advocacy strategy a critical factor is the capacity of your organisation. You need to have an accurate picture of what your organisation on its own, or in partnership with other organisations, is able to do. Will the organisation be able to plan, manage and sustain advocacy work, responding to a changing policy environment and involving stakeholders? Are there sufficient staff and funding resources? Do individuals have the necessary knowledge and skills?

A SWOT advocacy analysis (see Collecting information and planning action module (4.1)) can help you assess your organisation's capacity, by looking at internal strengths and weaknesses and external opportunities and threats.

It is important to build on your organisation's *strengths*, such as knowledge of the issues, relevant contacts and advocacy experience, while finding ways to overcome internal *weaknesses*, such as lack of funding or competing demands on the time of staff and volunteers.

External *opportunities* could include recent media reports, successful court decisions and support from other organisations. A central part of your advocacy action plan should also be to take steps to overcome possible external *threats*, such as lack of public concern or lack of support from main decision-makers, and to prepare for *unknowns*, such as a change of national or local government should form a central part of your advocacy action plan.

e)   Power and influence: How, when and by whom are decisions made? Who influences the decision-makers? Who has real power to agree to change?

You may already have a good understanding of the political realities relevant to your advocacy issue.

"Issues of power and politics are… inextricably linked to advocacy work, in spite of some actors' reluctance to 'get involved in politics'."[24]

The questions you will need to answer include:

- Who is responsible for the policy about which you are concerned? In this context policy can include the absence of policy, inadequate policy or improper implementation or enforcement of policy.
- Who are the decision-makers? Who can influence the decision-makers?
- Is there public interest in the policy or is it an issue that is never discussed?
- How will you influence policy? How does the policy-making process, and the power dynamics within it, function in practice? What are the possible entry points?

Power can operate in different ways simultaneously. It is important for your analysis to consider these different ways in the context of your planned advocacy so that you can design appropriate advocacy strategies:

- visible power – formal rules, structures, institutions and procedures;
- hidden power – the powerful people who control the agenda, excluding less powerful groups; and

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[24]   WaterAid *Advocacy. What's it all about. A guide to advocacy work in the water and sanitation sector*, November 2001.

- invisible power – the factors which shape values, norms, beliefs and attitudes, perpetuating patterns of domination and inferiority.

> Disability discrimination in employment: forms of power
> visible power: employers
> hidden power: owners/investors, insurance companies
> invisible power: societal prejudice and ignorance

How, when and by whom are decisions are made? There are formal and informal decision-making processes:

- formal decision-making is what is required by law or by the constitution or rules of an organisation; and
- informal decision-making often precedes formal decision-making, for example, when a group of decision-makers who are engaged in the formal process agree to take a particular position.

f)   Who are the primary and secondary targets?

Advocacy is about achieving change. To do so requires individuals or institutions with power to agree to the changes being advocated. Therefore it is important to identify primary targets – the person, group of people or institutions with the power to respond to your demand and steer the policy-making process in relation to your issue.

In addition, people should also be identified who have some influence over your targets who could use their influence for or against your case. These are the secondary targets.

Stakeholders include the wider group of individuals and organisations who can have an effect – positive or negative – on your advocacy issue or who will be affected by the change you are demanding.

Which of the primary targets, secondary targets and main stakeholders are likely to be allies or opponents in relation to your advocacy issue? To visualise the power dynamic related to your issue, the primary and secondary targets and main stakeholders can be mapped against axes of power and support or opposition.

maximum power

support ←——————→ oppose
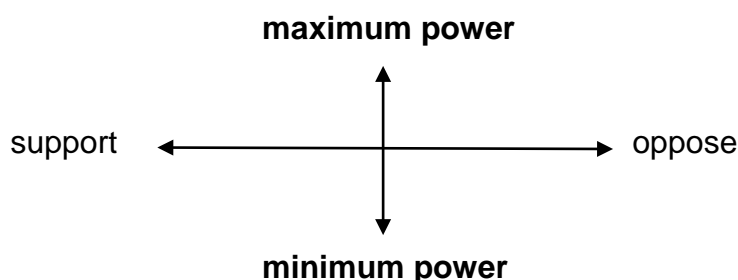
minimum power

Your focus should be on the primary targets with the greatest power (those who could be placed above the horizontal line in this diagram). You should look for ways to involve prominently those with maximum power who are supporters. Your biggest challenge will be to try to affect a shift towards being supportive in those targets with maximum power that have been assessed as being strongly opposed to your issue.

The more you know about your targets in relation to your objectives, the better able you will be to influence them. You will have different sources of information which could help you build a picture of the interests, attitudes and any changing power relationships of your targets. Such sources could include:

- previous direct contact with your organisation;
- information from employees, associates, opponents;
- observation in different situations: formal or informal meetings, speeches, press conferences, media appearances, court appearances;
- reports in the media; and
- relevant websites.

g)   What is your core message?

Once you know your core message you can tailor it to convey your issue to different audiences. You can adapt it for slogans, sound bites, stories or briefings. The aim of your message should be to inform, persuade and influence people to take action in support of your advocacy issue. It should tell your audience what you want them to do (see media module (4.5)).

Your core message should summarise where you are in the planning of your advocacy strategy:

- your analysis of the problem;
- the evidence on which your analysis is based – giving clear facts;
- the causes of the problem;
- who you believe is responsible;
- why change is needed;
- your proposed solution; and
- actions you are asking others to take to achieve this change.

h)   Choosing the right approach and suitable advocacy methods and tools

There are many advocacy methods and tools; your choice will normally be based on:

- your analysis of the issue and your primary and secondary targets;
- your aims;
- your resources; and
- your organisation's ways of working.

As the project continues, your monitoring and periodic evaluation (see below) will help you choose methods which are the most effective for particular targets.

Most advocacy action involves the use of more than one method or tool, including the following:

- lobbying;
- meetings, conferences or workshops;
- briefings and reports;
- writing letters/emails;
- using the media;
- using IT;
- strategic litigation (see module collecting information and planning action (4.1)); and
- campaigning, mobilising members of the general public (protests, demonstrations)

What is lobbying? When is lobbying an appropriate tool?

"Lobbying can be an extremely effective way of getting your message across, but needs to be well thought out in advance to make the best possible use of the opportunity."[25]

Lobbying is concerned with educating decision-makers and convincing them to promote your issue. Lobbying can occur formally through briefings and meetings or informally through conversations at other events and in the course of day-to-day situations, such as walking down the street or eating in a café.

Lobbying can be a useful advocacy method when you can identify decision-makers and can describe specific action by decision-makers which will make a real difference. For example, lobbying a local councillor when one of your objectives is to stop the closure of a local school.

To make best use of lobbying opportunities you should:

- learn how the 'corridors of power' operate – the system, procedures and especially timelines, as well as who the leaders and important players are. Formal decision-making often follows very strict procedural rules which limit how and when any interventions or any policy changes are possible;
- classify where the players stand on your issue and their degree of influence;
- develop and build relationships – help your target and others understand your issue, gain their trust; and

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[25] Save the Children International (2007), *Advocacy matters, Helping children change the world, Participants' manual*, p.103.

- show your power – coordinate the timing of media and other activities so decision-makers become aware of the support for your issue.

Lobbying can involve meetings, briefings, reports and letter writing.

➢ Meetings – lobbying meetings, closed meetings, open meetings, conferences

Meetings can be an effective way to inform people of the problem and your proposed solution, hear counter-arguments, win support, establish networks and build partnerships.

Any advocacy meeting should be well prepared, carefully carried out and followed up:

- **In advance**: determine your aims for the meeting, plan how you will present your case, know what is likely to interest and influence your target and other participants and rehearse your arguments.
- **During the meeting**: explain the issue in a way that makes it relevant to participants, use evidence and personal stories and listen. Try to get a commitment of support. If it is a lobbying meeting, then, in addition, you could offer to help with information, ask the decision-maker or their staff to take specific actions and try to agree a timetable. Leave your contact details and relevant information.
- **After the meeting**: evaluate the meeting, where appropriate write to confirm agreed action points and send additional materials. If it was a lobbying meeting, then you may want to follow up with a phone call, email or letter to ask if more information would be helpful, gently to chase progress or to suggest a further meeting. Even if there is no sign of change, maintain contact and try different approaches.

➢ Writing reports and briefings

A report of the results of your research on the problem can be a useful advocacy tool, but your report needs to be tailored for its intended audience. The more important the intended reader, the less time they will find to read your report and hence the greater need to summarise or to provide an executive summary.

A briefing is a way to bring an issue to the attention of decision-makers. Briefings are particularly useful as a way to gain support for your position when you are aware that critical decisions are to be taken. A briefing should state clearly the action you are asking the target to take. You should set out the background, illustrate with case examples, discuss alternatives and provide evidence to support your proposed solution. You can combine preparing a briefing with media work, sending a covering press release just before the target is due to make a major decision.

➢ Writing letters and emails

Letters and emails are tools you can use in combination with lobbying. You can also mobilise the general public to use letters or emails as part of a public campaign. Like all the other tools, letter writing needs to be planned so it will attract the attention of decision-makers who are likely to receive a large number of letters and emails. The content needs to be brief: it should state its purpose, refer to a shared concern and state clearly what you are asking the recipient to do. Always keep a copy. You may want to send copies to secondary targets.

➢ Using IT tools: website, petitions, blogs

The internet provides opportunities to bring your message to millions of people. You can develop and use a website to raise issues, stimulate debate and respond to events. You can present the evidence in support of your issue with photographs, sound and written text. To maintain its validity, your website needs to be kept up to date.

Online petitions can be a way to demonstrate public support for your issue. The message of a petition should be unambiguous so that signatories know what they are agreeing with and the ultimate recipient receives a clear message.

To protect your message and the personal details of signatories it is recommended that you use a petition website, for example, http://www.xmarks.com/topic/petitions?sid=gncxkq6c&product=xmarks&featured=122 84842&xplat=SearchBoost001:C&cid=serp.shmear.rating&mid=g0blacw7.

Blogs have become very popular tools for outreach and opinion forming. Your NGO can use a group blog to test opinions on aspects of your advocacy project.

A blog for this purpose should be planned and well-drafted to highlight the issues on which you would welcome comments. You can also use your blog to draw attention to events or campaigns more fully described on your website.

➢ Using the media

If you have identified the general public as a main influencer of decision-makers, then it is essential that you engage with the media (please refer to the media module (4.5)).

Your work with the media can be proactive or reactive – initiated by you or the media asking for your views. You should prepare well and know your subject thoroughly.

Effective advocacy often depends on timing, so you should try as far as possible to coordinate media coverage with decision-makers' timetables or a planned public event.

i) Preparing your action plan

All of the above stages and forms of advocacy should feed into your advocacy action plan – your roadmap towards your long-term goal (see information on devising a plan of action in the collecting information and planning action module (4.1)). If you are working with other organisations, then they should be involved in drafting the action plan. The plan should refer to your objectives and the advocacy actions you plan to take. It should state indicators for success, when, by whom, with what resources and with what expected outcome action is to be taken and it should include regular evaluation review points.

EXAMPLE OF AN ADVOCACY ACTION PLAN FRAMEWORK

Year	Month	Date	Activity	Target	Who is leading?	Other people	Resources needed

j) Monitoring and evaluation: what is the impact of your advocacy actions? How effective have you been in bringing about your intended changes? What can you learn to make your future advocacy more effective?

Monitoring and evaluation of advocacy actions are essential. They provide you with information on:

- whether the advocacy work is on track and whether changes need to be made to the overall action plan;
- whether objectives have been achieved as planned;
- learning for future initiatives;
- accountability to groups whose rights the advocacy is supporting; and
- accountability to partner organisations and funding bodies.

The aim of monitoring is to keep track of progress. It enables action plans and methods to be adjusted in response to unexpected changes, incidents or information. Evaluation looks at whether advocacy objectives have been achieved, how they were achieved and what learning you can take from the experience.

Monitoring and evaluating advocacy:

- monitoring of *inputs* and *outputs* should be carried out on a regular basis when you should also note any external changes;
- at the evaluation points in your action plan you should stop and assess progress, where necessary shift focus, re-plan and redirect resources, rather than waiting for a full evaluation at the end of the project. Try to record *outcomes* and *impact.* Where there are no quantitative data, record whatever evidence is available as systematically as possible.
  You should recognise the difficulty in attributing credit for bringing about change, since there are so many players and different forces. Often it will be best to share credit;
- your review should cover all of the aspects of your advocacy work, including communicating your core message, using your research, impact on decision-making, networking and building partnerships and general organisational issues; and
- you should involve your partners, your clients, if any, and your targets in the evaluation of your work.

EXAMPLE OF A MONITORING AND EVALUATION FRAMEWORK

Advocacy activity (inputs)	Outputs	Indicators of short-term objectives and intermediate outcomes	Indicators of long-term objectives and impact
Meetings with decision-makers	*Number of meetings*	*Increased number of decision-makers who support your issue*	*Change of policy. Full implementation of changed policy. Information and training provided on changed policy.*
Issuing press releases	*Number of media enquiries*	*Increased public debate, media reports supporting your issue*	

4.4 Partnerships

'Coming together is a beginning; keeping together is progress; working together is success.'
Henry Ford

NGOs should adopt a strategic approach to building and maintaining sustainable relationships with relevant key actors, in order to gain greater influence and power and to achieve better outcomes than they would be able to do on their own.

This module will help NGOs to gain a better understanding of the process of building partnerships, which includes analysis of the situation and the desired goal, identification of potential partners and their needs/expectations and effective implementation of the partnership.

4.4.1 Definition

A partnership is an arrangement for collaboration based on shared and compatible goals agreed between two or more organisations. A **partnership** can be established to address a particular issue or a broader shared concern or goal. A **partnership** can be established for a defined period of time or can operate indefinitely. A **partnership** can exist at any point along a continuum from informal networking/information sharing to full joint collaboration.

4.4.2 Scope

This module aims to provide some methodological tools for NGOs to engage in strategic partnerships. How to secure funding will not be examined.

This module covers:

- why build a partnership/network and levels of cooperation;
- what is the added-value of a partnership? Benefits, risks and challenges;
- identifying key players and cooperation (private sector, government, trade unions);
- how to network/build partnerships effectively with common goals and objectives to achieve;
- evaluation of the impact of networking and partnerships. How to maintain cooperation; and
- examples of national and international cooperation and good practice.

4.4.3 Content

Networking and partnership require a step-by-step approach:

STEP 1   Prepare (identify issues at stake, causes and roots, possible solutions)
STEP 2   Map the actors (identify your potential partners, their capacities, possible obstacles)
STEP 3   Choose a partnership model (formal, informal, cooperative, integrated, plus duration, etc.)
STEP 4   Establish the partnership (agreement)
STEP 5   Evaluate and ensure sustainability

4.4.3.1 Why build a partnership/network and determining appropriate levels of cooperation

Exercise: Brainstorm benefits and potential disadvantages.

➢   Benefits

Partnerships allow organisations to **gain influence** they cannot gain on their own and **achieve tangible results** they could not accomplish on their own.

Partnerships allow NGOs to pursue sustainable common goals and objectives and enhance effectiveness of actions. Common actions will also contribute to bridging gaps which one single organisation cannot fill.

Partnership allows organisations to identify opportunities, meet the organisation's needs efficiently and promote dialogue and cooperation with other key actors.

A good starting point is to talk with relevant groups and forums identified as key actors, in order to get their views. Networking in this way will help the organisation to map potential partners and **build a database of up-to-date, useful contacts.**

It also broadens its base of support to strengthen the impact of any activities/campaign by showing collective action on one message/issue.

Networking with other groups and organisations with a shared objective in combating discrimination or other related shared aims (for example, improving standards in rural schools) is an ideal way of:

- **sharing expertise**, knowledge, know-how and practices **(and gaining access to new ideas)**;
- building on the expertise of the different partners by creating a joint pool of resources specialised in a diversity of fields; and
- endorsing cross-cooperation on multiple grounds.

Building alliances with other sectors enables a better exchange of information and better coordination of strategies and makes it possible to mobilise greater support for an equality agenda (with which to influence policy and decision-makers). Partnerships with other civil society organisations differ from partnerships with private companies or public entities. The last two categories may be more focused within a particular framework or for a particular objective, while a partnership between NGOs can be simply a joint platform of action on a common goal.

Hungarian Disability Caucus is a coalition of non-profit organisations involving experts from national and international disability organisations. The Caucus compiled a 254-page report which analysed the national implementation of the UN Convention on the Rights of Persons with Disabilities and generated huge interest among professionals in Hungary and abroad. Beyond the legal analysis, the Caucus ensured that the report reflected realities faced by people with disabilities.

Building alliances with other groups in civil society who can reach further and deeper into politics and economics, such as trade unions, universities and think tanks, consumer organisations and the media, are also very important. It can contribute to

the preparation, implementation, monitoring and evaluation of public support programmes and actions and also enhance understanding between different types of stakeholders.

> RASMUS is a national network against racism and xenophobia in Finland which consists of actors who oppose racism and xenophobia and promote multiculturalism and human rights. The group comprises people who are active in NGOs, members of immigrant societies and different religious communities, representatives of trade unions, government officials and researchers.

Ultimately, partnerships increase capacity and strengthen organisations, enhance community participation and facilitate the survival/sustainability of an organisation or initiative.

NGOs can, for example, invite other organisations working in similar or related fields to 'round table' discussions where they can share information on projects in which they are involved. This can enable the organisations to agree aims for lobbying and campaigning or to develop mutually enforcing strategies for interconnected objectives which are specific to each group but fall under a common goal.

This united 'team-playing' will also help to **avoid any duplication of work or efforts** (and hence costs) in the same field. This is important, especially if organisations might be competing for the same funding. The economic benefits of working together and sharing knowledge also releases funds which can then be utilised in other ways, again, perhaps on a joint or united basis.

By holding its own seminars, and getting invited to speak at other relevant conferences/events, the organisation will **raise its own profile and radiate awareness of discrimination issues**.

➢ Potential disadvantages:

- partnerships require an extra layer of organisation and complexity compared to independent and individual activities. There may be more resources, principles, agendas, etc. to coordinate with more risks of conflict;
- coalitions may require compromises on priorities or principles. The benefits of compromise must outweigh the disadvantages. In order to identify common goals and objectives, organisations will have to compromise and adopt a flexible attitude to reach consensus. Some control over the message and decisions may be given away. Partnerships may also create imbalances of power or entrench the interests of the larger, more influential partner. This will also depend on the type of partnerships set up (formal, informal, collaborative, integrated, etc.) and the type of activities being carried out (lobbying, campaigns, research, etc.);
- risks of compromising the organisation, its name and reputation or of being associated with some negative aspects of partners. Also the organisation's own

constituency may be reluctant to establish a multiple ground partnership (due to distorted views on vulnerable groups).
It is important to develop internal rules/codes of conduct applicable to beneficiaries, volunteers and staff members, calling for a zero tolerance policy towards discrimination;

- partnership may require too much time;
- effective partnerships, even when informal, require that at least one of the partner NGOs undertakes logistical tasks and acts as a secretariat/engine; and
- partnered organisations could run some financial risk.

However, most risks can be pre-empted, either by establishing informal partnerships or by clearly defining the roles and share of responsibilities in advance.

EXERCISE: Once you have thought about the opportunities of entering into a partnership, you must prepare your organisation to engage in one. LGBT people may face discrimination in the workplace. Please identify the possible problems encountered, causes and potential solutions by drawing a problem tree (see also the module on advocacy (4.3)).

Key message: keep in mind you organisation's objectives and needs when considering a partnership.

4.4.3.2 Identify key actors

First, the organisation needs to identify the key partners to network with and eventually to form partnerships with. To this end it needs to keep focusing on the overall goal. The size of the partnership depends on the scale and nature of the activities to be carried out.

Ideal partners may include decision-makers, public authorities, local stakeholders, other organisations with shared aims or specific beneficiary groups. It is important to think about the added-value of each partner. **The organisation needs to develop an inventory of possible partners and to develop a partner profile. However, a profile of the non-partner is also important, as it is good to clearly establish the limits from the very beginning.**

Again, organisations, depending on their nature, needs and aims, may wish to enter informal partnerships rather than formal ones.

EXERCISE: On the basis of the LGBT scenario, map your partners and identify their capacity and the opportunities/obstacles of partnering with them.

Key message: take time to network from the bottom up and build up trust.

4.4.3.3 Partnership models

Exercise: Brainstorm and discuss different options for partnership. Bring up examples of formal/informal partnerships, cooperative/collaborative/integrated models, networks, etc.

In the Former Yugoslav Republic of Macedonia (FYROM), members of the Human Rights House are also members of the Alliance Macedonia without Discrimination. The Alliance has members which work on different grounds and acts as a network on equality and non-discrimination. This partnership started at the end of 2006. Until June 2009 it was an informal network.

The decision to formalise this alliance came as a result of the need for more structured action in the field of promotion of equal opportunities and protection against discrimination in the Republic of Macedonia.
The goal of Macedonia without Discrimination is to contribute towards creating a fair society, without discrimination, where all people enjoy equal opportunities and benefit from diversity.

Examples of Three Partnership Models		
Cooperative Model	**Collaborative Model**	**Integrated Model**
Each partner: • maintains its own decision-making responsibility • remains autonomous • retains own identity • has own staff & budget • has full responsibility for its actions	Each partner: • shares decision-making responsibility & authority • has particular roles and responsibilities • is accountable to the other • contributes resources • surrenders some measure of its autonomy	Each partner: • transfers decision-making authority to a new structure/new entity • integrates its resources with other partners • administers according to common policies and procedures • surrenders a considerable amount of its autonomy
Decision Making • by consensus • agreement not necessary in all cases	**Decision Making** • by consensus • agreement necessary	**Decision Making** • by vote if necessary • agreement necessary

Source: Collaboration Roundtable (2001) *The partnership toolkit: Tools for building and sustaining partnerships.*

Key message: be flexible and ready to compromise.

4.4.3.4 How to network/build partnerships effectively with common goals and objectives to achieve

Committing partners: partnerships must be established step by step (networking, partnership and sustainable alliance building). Engage identified partners at an early stage and bring them on board smoothly. Partnerships are a dynamic process.
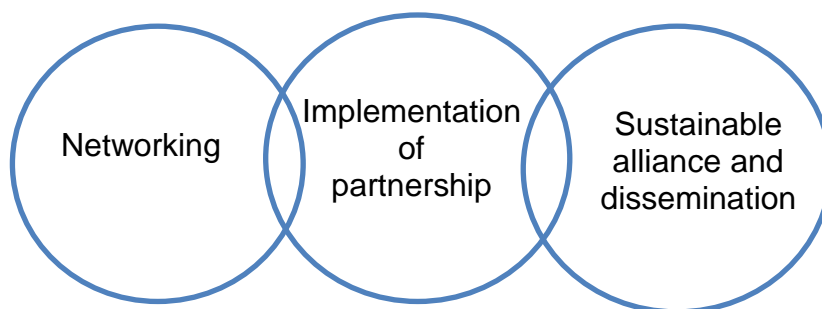
Common goals and objectives: partners often fail to agree on common objectives and vision (because they never discuss these things or they fail to communicate adequately). A common base, with shared values, interests and basic definitions, must be established and defined at the beginning of the partnership. Partnerships can be complex and dynamic structures, calling for a strategic vision defined and agreed by all partners (see module on media (4.5)).

You may want to use the SMART approach to identify common goals and objectives (see module on advocacy (4.3)).

There have been several attempts in Latvia to establish a broader NGO coalition of united organisations working on different grounds of discrimination, but they have not led to the establishment of formal co-operation networks. Nevertheless, there is still informal co-operation. In December 2007 several NGOs established a coalition, which however has not in practice started to work. In 2009 another initiative was undertaken by the NGO, Dialogi, which established an NGO coalition For Tolerance and Human Rights, uniting eight organisations. However, it is not currently active.

According to the information provided by Latvian NGOs, the main reasons which have prevented NGOs from co-operation in combating anti-discrimination are as follows:

- poor administrative capacity of a significant number of NGOs;
- time constraints and general problems of financial survival;
- different priorities and inability to agree on common aims and modes of operation;
- unhealthy competition for ideas and financing; and
- insufficient information sharing among NGOs about their work and activities.

Once the vision is in place, it is easier to develop the common goals and objectives. Organisations should bear in mind that partners may work on different goals or differently on common goals, depending on respective motivation or interests, while engaged in a partnership. Partners may also have different goals, depending on their organisational nature.

For example, a trade union might be an excellent partner with a common goal of ending age discrimination in the workplace, but the trade union's overarching goal is to secure wider protection of workers' rights.

Ensure motivation and active commitment, but partners must recognise that beyond the common goals different groups may have different interests/priorities when joining a partnership. It is not crucial that partners agree on all issues, but rather that one or two issues constitute the common base for action.

Key message: respect the interests of partners.

Agreement on the partnership: issues to be tackled at the beginning of a partnership include the following:

- agree on the parameters of the partnership;
- ensure accountability: define the roles and responsibilities of each partner;
- design a mechanism to ensure secretarial support, either by establishing one responsible partner willing and able to devote resources to this or by creating a rotating system for the secretariat;
- establish clear planning and concentration of resources (including financial);
- manage leadership and share of responsibilities. The most experienced organisation should not necessarily take the lead – all organisations should contribute to the common goal. Make clear to what extent partners will contribute (input, financial resources, human resources).
  Devise democratic processes to ensure real commitment and participation by all partners. They should play their agreed role in the partnership fully and actively. Clarification of the share of work to achieve the partnership's goals also helps to avoid a partner who does not deliver, lack of motivation or ownership and lack of coordination;
- clarify decision-making processes (How? Who? Are the decisions of the partnership being made jointly, with all partners actively involved in the process?);
- clarify the roles and whether the partnership is an ad hoc joint initiative or an initiative of a number of partners. Think of partnership as a brand. Also, who are the representatives of the various partners in the partnerships? Do they have decision-making powers? Establish roles and responsibilities in relation to reporting mechanisms (progress reports, monthly, quarterly, annual, evaluation, assessment, final report, etc.);
- establish dispute resolution mechanisms to prevent and resolve potential conflicts;
- set up open and transparent procedures to maintain trust and motivation, defuse possibilities of hidden agendas;
- identify all weaknesses within the partnerships to better overcome them (credibility, politicisation, funding difficulties, challenges from the organisation's own constituency, high turnover of staff, bias of donors which might affect NGOs and spill over);

- establish lines of communication between partners (face-to-face meetings, electronic communication, exchange resources). Frequent, focused and positive communication contributes to commitment, active involvement and good understanding. In addition, it helps to establish clear communication rules: Who can prepare the press release or the conference? What is the timing for input from partners? What are the conditions for disseminating joint information (embargo)? When can a document be presented as a joint document?
- clarify and plan acknowledgement of contribution for each partner.

Provide examples (you can use material from the toolkits in the material references p. 119).

The main working arrangements of the partnership (including values, priorities and principles) should preferably be included in written agreements. However, the degree of formality may depend on the expected duration of the partnership. A formal partnership sounds complicated and demanding but this will help to confirm the commitment of all partners and also to mitigate against potential difficulties and conflicts.

Show models of partnerships agreements (e.g. http://enrd.ec.europa.eu/tnc_guide/tnc-implementation/launching-your-tnc-project-activities/en/formalising-the-partnership_en.cfm.

EXERCISE: Establish a partnership agreement on the basis of the following scenario (or use the LGBT exercise).

Local Roma leaders have brought to your attention the fact that Roma children in their town can only be enrolled at the school closest to the local Gypsy settlement. They also say that the few Roma children whose parents attempted enrolment in other schools have been referred to the school next to the settlement. This school follows the curriculum designed for children with intellectual disabilities. The leaders tell you that not all children are tested regarding their intellectual abilities during their education in the school. The school follows the enrolment policy in force in your respective country.

Suggestion to use SWOT Analysis during the national training seminar, using it on participants' own experience and national practices:

- What are the advantages of the partnership?
- What do you do well? (What do you boast about?)
- What could be improved in your partnership?
- What is done badly (or has been embarrassing to the partnership)?
- What should be avoided?
- What things should your partnership be doing that it can't?

4.4.3.5 Evaluation of the impact of networking and partnerships. How to maintain cooperation?

Monitoring and evaluation provide accountability for how money is spent but also help to review the partnership's performance. Both internal and external impact assessments are important.

SWOT Analysis (see module on collecting information and planning action (4.1)) of new opportunities.

- Where are the good choices for your partnership?
- What are the next steps?
- What are the trends in your community which your partnership could be in a position to make the most of?
- Are there new opportunities which could help the partnership?

SWOT Analysis of potential threats:

- What obstacles does your partnership face?
- What is your competition doing, or planning to do?
- What are your funding sources doing? Are there any trends?
- Are the required specifications for your activities changing?
- What is the demand like for your services? Are your clients less satisfied or more satisfied? Do you need to re-target your partnership or its activities?
- Do you have finance or cash-flow problems? Could you do a better job of approaching grants or fundraising opportunities?
- Is partnership knowledge spread broadly or would a gap be left if individuals moved on? Have you ensured you have 'deputies' ready to step into the breach?

You will find a checklist of questions to be used by organisations when entering a partnership below:

Checklist to be used by organisations when entering a partnership

- What are the issues to be addressed?
- Which are the local problems (including their causes and effects, if possible) and needs?
- Why partner? What will a partnership bring? What kind of partnership do you want? (what tasks, how large, simple/single or multiple/complex task, period of time, how many partners, formal/informal, degree of partnership – cooperative, collaborative, integrated)?
- Are there already existing initiatives? Are there existing transnational (e.g. ILGA, ENAR, AGE, Disabilities Forum, etc.)/national (provide national examples, e.g. Romanian example)/local partnerships? With whom?

- What can the organisation save by joining together?
- Will the partnership gain influence and achieve power?
- What skills will be exchanged? What are the potential mutual benefits?
- Will the partnership contribute to exchange of information and expertise? How?
- What will be the duration of the partnership?
- What compromises need to be considered/made? Are they worth it?
- What control will be given up?
- What are the financial risks?
- What could be other negative aspects/ risks of damaging the organizational business card through partnership with NGOs or other organisations lacking credibility, not sharing completely the same values, politicized or affiliated to?
- Who are the key players?
- Who are the potential partners? What would be their added-value in the partnership?
- Do some local actors already have ideas concerning possible cooperation projects? What is their motivation? What are their existing experiences in terms of cooperation and what have they led to?
- Which actors already have European/national/local contacts?
- Which actors have already been involved in actions with external partners?
- What will be the respective roles of each partner in the partnership?
- Why key actors who should take part into the partnership decide not to join? Are there alternatives to ensure their participation?
- What are the values, principles, interests of potential partners?
- What are the expectations of partners? What are the general/local expectations and which added-value should partnership bring?
- What is the common base? A common vision, common objectives or common results to achieve?
- What is the strategic vision of the partnership?
- Will the partnership bring the feeling of co-ownership and equal benefits?

4.5   Media

'Communication works for those who work at it.'
John Powell

The aim of this module is to understand the role of the media as a tool for social change in raising awareness in the areas of non-discrimination and equality and to assess and acknowledge the challenges of external communication for NGOs when combating discrimination and promoting social change.

4.5.1   Definition

For the purposes of this training, **media communication** is considered to be a process by which an anti-discrimination NGO presents information to affect public

opinion and to address policy-makers on topics related to combating discrimination. In this context the NGOs act as senders, the general public and various target groups as recipients and the media are crucial partners in raising awareness of the importance of non-discrimination and equality.

4.5.2 Scope

This module deals with framing a public interest message and working with the media in the case of an NGO representing vulnerable groups or engaged in raising awareness in the areas of non-discrimination and equality.

The module is built as an *à la carte* model presenting different instruments which can be selected for further development in the national training, depending on the local context and the specific local needs they identified. The module will touch only in a limited way on using social media for the purposes of raising awareness in the areas of non-discrimination and equality.

4.5.3 Content

1. Why do NGOs communicate? Who is communicating for NGOs? What does it mean to communicate when representing a vulnerable group?

NGO communication, particularly communication by NGOs active in the field of anti-discrimination and equality, is a very sensitive and complex topic. Many NGOs working with vulnerable groups shy away from publicity because of concerns about protecting their beneficiaries. They may also fear a possible backlash and aggressive counter-reactions, if a particular topic is presented in the public realm before the general public has been educated and the best way found to convey a message which deconstructs entrenched biases and stereotypes.

There is also the common mistake made by even very good NGOs of hiding behind the statement, "As long as we do our work as well as possible, what is the point in wasting time in communication?" In fact, good, effective communication is essential in all aspects of NGO work – it is essential in strategic planning and instrumental in monitoring, engaging with the organisation's own constituency and partners and in raising awareness and conducting advocacy activities.

Each entity shows a 'media credit' that is part of the institutional portfolio. Increasing such credit and visibility towards the general public and carefully managing it should be an ongoing concern for NGOs.

Effective media communication can be one of the most important tools in tackling discrimination – by educating the general public and raising awareness of the value of diversity and equality. However, even in countries where the media is already sensitised and willing to provide support, working with the media requires a carefully designed strategy which matches the strategic planning of the NGO, effective

messaging and an ongoing understanding of the local media environment and the competing messages, as well as adequate resources on a permanent basis.

While good communication skills are a must and having a communication strategy is highly advisable, it is worth thinking about how anti-discrimination NGO communication is different. This specificity is triggered by the communicator, the message communicated and the recipient of the message.

a. Who communicates?

It is advisable for anti-discrimination NGOs to have one or two people permanently assigned as communicators for the NGO.

However, it is important that the spokespeople are fully aware of the differentiation between communication on their own behalf and communication on behalf of the NGO.

Over-personalisation of media communication and the monopoly of one leader can lead to the person who is over-exposed burning out, as well as to disenchantment on the part of the media and the general public with that particular speaker. This situation can be prevented by preparing multiple speakers in advance and gradually introducing them to the media, in order to ease the burden on the individual spokesperson and to diversify the image of the NGO. This is also important in breaking the rather common negative stereotype of NGOs as one-man or one-woman shows.

It is a strategy which also proves useful on the occasion of major events, when multiple media outlets require the presence of the NGO representatives simultaneously and more ground can be covered by being well represented. However, there is also a note of concern to be added here: even if there are multiple spokespeople, it is essential for the message to be presented consistently and clearly, using a common list with key talking points which have been agreed internally.

In the case of specific issues which attract a lot of media attention for the anti-discrimination NGO (press conferences for the release of major reports, festivals, marches, gay pride parades etc.) it is advisable to have a list of potential speakers available and provide it to the media. In this way, the general public is given the chance to hear various experts supporting your point of view, to share victims' stories and put a human face on what might be perceived as a legalistic topic. However, before suggesting any speakers to the media, it is essential to have preliminary discussions with them and make sure that they agree to speak on your behalf or to share their professional opinion (and make sure that you fully understand their position).

Another concern in carefully defining the communicator is distinguishing between the NGO and the vulnerable group, the community it represents. While in a democracy every single opinion should matter and NGOs working with vulnerable groups are in the best position to express aggregated interests, it is important to avoid misleading the general public by presenting the NGO as "the voice of the entire community". It is quite easy to find voices who disagree with your message from within the group you are allegedly representing and, besides taking up a lot of time and resources in order to rebut and show this as a minority dissenting voice, such a message could seriously damage the credibility of the NGO. State your opinions as being truly those of your NGO based on your expertise and your experience and based on your work with vulnerable groups.

b.   What is the message communicated?

An NGO should prepare a message explaining its goals and objectives in simple language.

The message should be adapted to the target audience and should not attempt to be one-size-fits-all. This exercise should be replicated not only in order to define the institutional goal to different target audiences (the NGO's own constituency, policy-makers, allies, the general public), but can also be adjusted for every major activity/programme carried out.

> **KISS rule** for framing the message: Keep It Short and Simple (but beware of the common trap: 'simple' does not mean 'simplistic'!
>
> A good technique usually recommended for framing a message is using the Message Triangle exercise, answering some basic questions such as: What do you want people to know about your work? What do you identify as problems / causes / possible solutions? What are you advocating for? Why should other people care and what should they do about it?
>
> In assessing a message, the 4Cs test might be used: in order to be effective a message must show Comprehension, Connection, Credibility and Contagiousness.

c.   Who is the recipient of the communication by the anti-discrimination NGOs?

Communication carried out for the purposes of raising awareness in the areas of non-discrimination and equality is not geared towards the media as an end in itself. The media is a tool which can be used in order to educate the general public, to engage the NGO's own constituency, to inform potential victims and authorities, to marshal strategic allies and to raise awareness among advocacy targets. Where the local context allows, it is worth exploring the potential allies in the media who might support your efforts: media outlets supportive of human rights or diversity, professional associations of journalists, ethnic minority media and independent journalists.

For each activity carried out, as part of your communication strategy identify who is the target group for your communication and how you adapt the message according to the target group. Depending on your objectives and the targeted audiences, it is worth familiarising yourself with relevant media outlets and being aware of their approaches, agendas and specific audiences.

Consider compiling a database with the contact information of media outlets, producers, editors and reporters, organised by categories (political, social, cultural, news, urban etc.). If constantly updated, this database will be extremely useful in allowing you to map out the relevant media for each message you want to convey.

2.   When are NGOs (not) communicating?

There is a difficult balance to be reached in carefully making use of the 'media credit' of an NGO. While not communicating might indicate that you do not exist (your activity is not newsworthy), there is also a risk of too much exposure which could damage your media credit or lead to the tabloidization of one of the sensitive issues your NGO or a partner NGO is working on.

Particularly in the case of NGOs working with vulnerable groups, there is always the concern of the tabloid media hijacking your agenda for its own purposes.

In this regard it is valuable to define in your media strategy or, in the absence of such a document, internally what constitutes for you public interest information and what kind of information you are not going to engage in disseminating. Internal guidelines need to be established by brainstorming with colleagues and partners, including friendly media experts, on topics such as: maintaining confidentiality; ensuring visibility while protecting the privacy of beneficiaries; reacting to crises (including cases where media presence will be declined or avoided); and distinguishing between information which is in the public interest and information which is interesting to the general public but which does not contribute to the cause you are supporting or might even back fire. As NGOs, transparency is an important principle of our work. However, particularly when working with the media on sensitive issues regarding vulnerable groups, controlled transparency may be required.

In deciding whether it is appropriate to give information to the journalists, it is first necessary to respond positively to the following questions:

- Is this new?
- Is this relevant? Is it significant to the audience?
- Why would the audience be interested in this information?

3.   Instruments of communication: Above the Line (ATL) and Below the Line (BTL)

There are a variety of communication instruments you can use in order to promote your work. In communication theories, such instruments are usually categorised as ATL (above the line) and BTL (below the line).

Above the line instruments are promotional strategies to disseminate messages through conventional forms of mass media, including TV, audio, print, internet including campaign websites, social media, outdoor adverts, e-banners, blogs, viral campaigns etc. In choosing a particular instrument there are several concerns to be taken into consideration: What is the message? What is the audience targeted? What is the specific profile of the audience? Is the message adequate for the audience? What are the external factors which might facilitate or impede the dissemination of the message if using this particular instrument?

Below the line communication instruments are promotional strategies which can also be used for social change – they are direct and targeted and, while more often used to promote corporate brands, they can also be used for public purposes: door-to-door campaigns, information points, events, concerts, exhibitions etc. Increasingly, NGOs make use of alternative communication instruments for promoting their messages, such as happenings, flash mobs, installations and concerts.
These generate a lot of media attention and can also be appealing from the perspective of lower costs, possibility of involving volunteers and supporters and media impact.

A happening is a performance, event or situation intended to be considered as art, usually performance art. Happenings take place anywhere (from basements to studio lofts and even street alleys or public squares). They are often multi-disciplinary, with a nonlinear narrative, and entail the active participation of the audience. Key elements of happenings are planned, but artists sometimes retain room for improvisation. The interactions between the audience and the artwork make the audience part of the artistic process. Happenings can have a social message and engage the audience in exploring and challenging their own stereotypes.

A flash mob consists of a group of people who assemble suddenly in a public place, perform together an unusual and sometimes seemingly pointless action for a brief time, then disperse, without indicating that they know each other. Flash mobs are organised via telecommunications, social media or viral emails. They are filmed and edited by the organisers and involve media engagement only in terms of disseminating the film after the event is concluded. It is important to think carefully about the message and draft the scenario of the flash mob, to make sure that no aggressive reactions are triggered through the activity and that no traces are left when the event ends.

Installation art describes an artistic genre of site-specific, three-dimensional works designed to transform a viewer's perception of a space. They can be temporary or permanent and can have a civic message. Installation art can bring different materials, video, audio and photo messages to the same space.

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4.   What does a press kit contain?

Every NGO is strongly advised to develop its own communication strategy, intended to respond to the specificities of the work of the NGO and defining its core messages, responsibilities, procedures in cases of communication crises, checklists for different media instruments and templates for some and the mandatory identification elements (logo, templates, preferred font and font size or colour etc.). Even for a small NGO, investing the time and human resources to put together such a package and updating it periodically saves a lot of time and confusion at points when the focus should be on the substantive message and not on finding the right template for a press release.

As a minimum a press kit should be developed and be ready in case of visits or unexpected interviews.

A press kit can include a presentation of the NGO, a who's who of the NGO and a list of contacts, the press release (if it is linked to a particular event) and materials produced by the NGO (background material, fact sheets, reports, leaflets, fliers, handbooks and brochures), as well as visuals (charts, photos, graphics, maps, banners and props).

Checklist for effective press relations – adapted from Michael Bland, Alison Theaker and David W Wragg, *Effective media relations: How to get results* (*PR in practice*) , Routledge, 2005, Second edition.

1.   Awareness of impending news possibilities is vital, including any developments linked to the issues you are working on which have been generated by third parties, including authorities or opposing actors, so that the spokesperson is prepared and can handle the news in the most effective way.
2.   Media contact lists must be up-to-date and organised by categories, flagging up both friendly and unfriendly media.
3.   Stories must be angled for different audiences, whether these are identified by their location, interests, age or sex.
4.   Deadlines must be kept in mind, including production deadlines for media outlets and their calendar during holidays. It is worth keeping track of the production cycle of major outlets (news, printing house deadlines, live shows).
5.   A press conference or briefing should only be called when the story is sufficiently important. Spokespeople at the conference must be briefed and, if possible, should rehearse.
6.   Draft legislation, court cases, official reports and official statistics, even seasonal events might provide opportunities for the NGO to give sound, reasoned comment.
7.   Research or other insights can be offered to the media to maintain the relationship.
8.   Good photographs are important to illustrate appropriate stories. Keep your own photographic library of essential items and of people for whom a photograph

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might be required on demand. Have your own photographer or camera person for major events.

9. Maintain and keep up-to-date a good organisation website, including background material, press releases and features material, thinking always of what will interest visitors rather than pandering to institutional vanity.

10. Have ready a press kit including a presentation, brochures and other explanatory material which could be provided if it will help journalists. A contact name must be provided on any material sent to the press, including a telephone number and an email address.

11. Embargoes can be used if the media need time to research a story or if the news needs to break on a particular day. If this is the case, use only trusted media, but otherwise embargoes should be avoided. Advance warnings can be used instead.

12. Quotes should be attributed to someone of sufficient authority and interest to the press and these people should be available for interview whenever possible.

13. Clashing with major events or announcements by other relevant actors should be avoided, explore in advance to see what other possible events might focus media attention on the days you are planning a press conference, a launch or a major event.

5.   Press release – the basics

Communication theorists state that only one press release in ten is published by any newspaper. While this is the cheapest and easiest tool available for NGOs and also allows for the greatest quality control, it is important to use it carefully. A golden communication rule suggests that the press release should be sent a maximum of eight hours after the event. If this is not possible make sure that the press release is still timely.

A *press statement* is a carefully worded comment spelling out your official position on a given issue of interest. It is similar to a press release but its function is not to focus on particular events, it is to share views and positions on specific issues. It also needs to be short, simple and straight to the point.

Press advisories/ invitations are short and concise. They indicate venue, time and participants of a particular event without providing too much information. These are teasers intended to make journalists come. A catchy title is essential, as well as an indication of some well-known personalities who have confirmed their attendance.

Checklist for effective press releases – adapted from Michael Bland, Alison Theaker and David W Wragg, *Effective media relations: How to get results* (*PR in practice*) , Routledge, 2005, Second edition.

1.   A single A4 page is the ideal length. Theorists recommend thinking about the press release as a pyramid with a short, catchy headline at the top (maximum five words). The main facts must be included in a short first

paragraph. Each paragraph should be no more than three sentences, with just one or two for the first paragraph (maximum 40 words). Make sure you use the headlines and the logo of the NGO.

2. Always date the release at the top, so that the news editor can see that the story is current.
3. It should include answers to the six key questions a journalist would need:
4. WHO? Who was involved? Who is involved?
5. WHAT? What has happened? What is going to happen?
6. WHY? Why did the event take place? Why was the decision made to do it?
7. WHEN? When did the event happen? When will the event happen?
8. HOW? How did it happen? How will it happen?
9. WHERE? Where did it happen? Where is it going to happen?
10. Quotes should be included, attributed to a named senior individual for impact.
11. Accuracy is paramount. Be concise is the golden rule. The test should be that somebody not familiar with the topic can read it and understand it in less than five minutes.
12. Good journalistic style is better than legalistic terms. Avoid jargon.
13. A brief concluding statement about the organisation's activities should be included. A contact name and both daytime and out-of-hours telephone numbers should be included at the foot of the release. If multiple languages are spoken, indicate contacts for each language.
14. EDIT!
15. If a good photograph adds to the story, make sure one is provided, suitably captioned, for those publications which use photographs.
16. If a journalist is likely to need time to research and write an important story, allow extra time for this, using an embargo to reduce the chance of the story breaking too early.
17. Use email for distribution, so that the story can easily be copied and pasted and edited.
18. Make sure you observe the production cycle and that your information is still newsworthy.

6.   The press conference – how, where and when?

The press conference is a means of getting the information out to the media by providing face-to-face exchanges and the possibility of more information. Press conferences also have the advantage of being good opportunities to develop relationships with journalists. You should call a press conference only if your organisation has something important to announce and you consider that a press release would not be sufficient.

One of the specificities of organising a press conference in the case of an anti-discrimination NGO is having to make decisions about seating audience members

strategically. Decide whether it serves your purposes if the vulnerable group or the victim is in view of the camera.

Checklist for press conferences – adapted from Michael Bland, Alison Theaker and David W Wragg, *Effective media relations: How to get results* (*PR in practice*) , Routledge, 2005, Second edition.

1. Decide on the goals of the press conference. Make sure they are newsworthy and deserve a press conference.
2. Determine the message, prepare the choreography of the press conference, identify responsibilities – host, speakers (not more than three), press kits and volunteers needed. Select venue, date and time, considering different angles (timing, production flow, symbolism, competing events, accessibility etc.).
3. By using your database, only select and invite those journalists likely to be interested. Let them know the purpose of the event in a teaser/ invitation/ press advisory. Also invite carefully selected partners, allies, sympathetic officials. Invitations should be sent between two and seven days before the conference and, except in a crisis, those invited should be telephoned 24 hours before the event to remind them.
4. Prepare the scenario of the press conference: speakers should ideally rehearse the day before in the location of the press conference. Make sure speeches are not more than 10-15 minutes and are succinct and non-repetitive. Prepare a press kit. Prepare the agenda/ programme, stating starting and finishing time, as well as a statement or press release. Have ready a master list of speakers contact information, ideally with pictures and their title so that they can be identified correctly.
5. Allow sufficient time to set up the venue and be ready to start with a small delay.
    All guests should be greeted and signed in to provide a record of those attending.
6. Journalists unable to attend should have material distributed at the function sent to them as a courtesy, and for information.
7. Place any statements and photographic material from the press conference on the organisation's website.
8. Think about accessibility in choosing the venue, making the seating arrangements and arranging the room.

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7. The interview – rules

There are many cases when journalists approach the NGO or your representative receives an invitation from the media. These are valuable opportunities to increase the visibility of the NGO and should be used in order to explain your work and positions. In accepting a media invitation you must be well prepared and be ready for both friendly and unfriendly conduct on the part of the journalist. Be aware of the

specific interests of the particular media outlet and the personal agenda of the journalist and of other guests.

Within the NGO it is also worth discussing at some point and deciding which are the media outlets where your presence is requested merely for the purposes of subjecting you to 'facing a firing squad', which media outlets should be avoided and which ones should be given priority. As an organisation you should also discuss when it is OK for your representative to stand up and leave a TV show if the basic rules of communication and ethical journalism are not maintained.

Checklist for interviews – adapted from Michael Bland, Alison Theaker and David W Wragg, *Effective media relations: How to get results* (*PR in practice*) , Routledge, 2005, Second edition.

PREPARATION

1. Be clear what the interview is about. Do your homework and look for basic information about the policy of the media outlet, the editor and the position of the particular journalist. Know if there are other guests as well and who are they. Draft your basic message – what are the primary two or three important points you want to get across?
2. Set the boundaries – if there are questions you cannot or do not want to answer, explain this to the journalist and redirect him or her.
3. If on TV – get there early, let them do all the preparations – show you to your seat, fix microphone, etc.; ask the journalists questions in order to ease up and get a feeling of the studio. Last check on clothing: stray hair, straighten tie, shirt, etc., pull down coat/jacket at back.

APPEARANCE AND MANNER

If on TV:

1. Choose clothes which convey the image you want to put across for your NGO – plain fabrics in neutral colours should do.
2. Sit up. Look at the interviewer throughout. Be aware of body language.
3. Speak clearly and distinctly.
4. Use hands if you wish and do not be afraid of mannerisms, but avoid fussy or nervous movements.
5. Have notes if you prefer, but do not read from them.

If on radio:

1. Smile! It makes your voice warmer.
2. Answer the questions briefly.
3. Make eye contact with the interviewer.
4. Imagine that your favourite teenage niece is listening in order to help you

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choose your language and convey the message in a relaxed, simple manner.
5. If you have notes make sure you do not make any noise with them.
6. Be sincere and enthusiastic throughout.

HANDLING THE INTERVIEW

Platinum rule: Get the key points across to the viewer, regardless of the questions and other distractions.

Golden rules:

1. Listen carefully to the questions.
2. Refute any incorrect statements. Don't let journalists put words in your mouth. Do not get side-tracked.
3. Be positive. Do not get angry. Be patient – use the opportunity to make sure that the journalists understand the complexities so that they can educate the audience.
4. Be honest.

Silver rules:

1. Try to anticipate surprises.
2. Do not address the interviewer by name.
3. Do not use jargon or technical terms. Do not disclose confidential information about your beneficiaries.
4. Imagine there is only one viewer.
5. Do not fill embarrassing silences. That is the interviewer's job.
6. Know the facts. Do not volunteer irrelevant information.
7. Make your own recording when discussing very sensitive subjects.

4.6   Situation testing

'The test is to recognise the mistake, admit it and correct it. To have tried to do something and failed is vastly better than to have tried to do nothing and succeeded.'
Dale E. Turner

The objectives of this module are:

- NGOs will gain knowledge and skills to organise and conduct situation testing; and
- NGOs will be offered the opportunity to try out situation testing and to discuss its strengths and weaknesses.

This module is partly based on 'Testing for Discrimination: Identifying and Prosecuting Human Rights Abuses, Bea Bodrogi, 2007, published by the New

Tactics Project of the Centre for Victims of Torture, available at
http://www.newtactics.org.

4.6.1 Definition

In this manual **situation test** means a type of evidence which can be used to establish or verify discrimination in litigation, awareness-raising, advocacy and campaigns.

4.6.2 Content

EXERCISE: Brainstorm about what situation testing is, in what fields it can be used and on what grounds, and what to observe when testing

a)   What is situation testing?

Situation testing is evidence which can be used to prove (direct) discrimination. It is used when it is presumed that the complainant possessing a specific protected characteristic (ethnicity, skin colour, disability, sex or age) has been treated less favourably than another person with similar characteristics and features is or has been treated BUT the motive or reason behind that different treatment is not clear.

The essence of situation testing is that a tester possessing a specific protected characteristic (ethnicity, skin colour, disability, sex or age) identical to that of the complainant and another tester similar to the complainant in all her or his characteristics except the protected characteristic (control tester) applies to the same institution with the same objective and the same questions.

In response to a complaint relating to ethnic discrimination in employment, first a minority ethnic tester is sent to apply, soon (possibly that day) followed by a majority (control) tester. If the minority tester is rejected and the control tester is hired, the situation testing substantiates the discrimination claim.

Given that this method is quite expensive, it is not worth conducting situation testing if discrimination can be proven via other means and evidence, such as witness statements, documentary evidence, etc.

b)   How to conduct situation testing?

The testing coordinator

Situation testing is always preceded by a thorough interview of the complainant and thorough fact-finding. Situation testing is managed by the testing coordinator. His/her role is to interview the complainant, thoroughly clarify the facts and select the testers. He/she develops the testing choreography and analyses the results of the situation test. The testing coordinator has the duty to adequately prepare the testers for their

job and provide them with all the necessary information. He/she conducts fact-finding prior to the test to identify all the relevant information about the establishment or company to be tested.

When testing a pub, for instance, it may prove necessary to visit the location and locate the entrance, to see how security staff work and ascertain the opening hours.

In the event of testers getting into trouble during the testing, the organisation coordinating the situation test has the duty to provide legal assistance to them.

Situation tests may be conducted away from the testers' place of residence. In this case the coordinator is responsible for organising travel and accommodation. She must always try to accompany the testers, to provide assistance when needed.

Preparing the testers

Prior to the situation test the case must be clearly explained to the testers, with the exact script of the situation test being provided and their role in carrying it out being clarified. Testers must be made aware of the following guidelines:

- dress adequately and properly;
- always cooperate with the employers, bar owners, etc.;
- do not show your emotions and avoid provocation;
- your only task is to report your experiences;
- never comment on or complain to the employer, staff, etc. being tested;
- it is your duty to report fully your experiences on the questionnaire;
- it is your duty, if necessary, to give your witness testimony before a court or authority;
- it is your duty to abide by your oath of secrecy. No tester is permitted to talk to a third party about the case, the situation test or any information or impression obtained during the situation test; and
- testers can make statements on situation tests strictly with the knowledge and permission of the Situation Test coordinator.

Questionnaire

Following the situation test, the testers immediately complete the questionnaire. It contains questions pertaining to the information given by the employer about the job advertised or the company itself. There are further questions about the conduct and behaviour of the employer (Was the tester asked to wait? Were they greeted when they entered? Did the employer introduce him or herself and shake hands with the tester?). The tester's responses may clearly show discrepancies between the treatment of minority and majority candidates. Completing the questionnaire is always compulsory, as it contains the information which testers will have to recall in court or administrative proceedings, potentially years after the situation test takes place.

The questionnaire can ensure that, going beyond the tester's subjective impressions, concrete events are also reported and that testers themselves may see differences between subjective and objective elements. Questionnaires are always completed by the original complainant. During the analysis, the results of the minority and majority testers, as well as the results of the testers and the original complainant are compared.

Sending out the testers

When developing the choreography the most important decision to make is about the order of sending out the testers and whether or not they need to be close enough to witness – hear and see – what happens to the other.

During situation tests in employment the golden rule is to send out the minority tester first, so that the most common reason for rejection, i.e. that the job has already been taken, can be accounted for. If the minority tester is rejected for this reason and 30 minutes later the majority tester is hired, the discrimination is substantiated.

In cases relating to access to services the situation test must be planned so that the control majority tester is within reach, hearing and witnessing what happens: do security staff let minority testers in? Are they then served in the pub or restaurant? Even if the minority testers are refused entry, the majority control testers go in and check the place out.

The choreography is always dependent on the situation and the original complaint.

Factors to observe during the situation test:

- parameters of the company, establishment or institution tested: address, appearance, how many rooms, layout, opening hours, number of security staff and other staff, etc.;
- persons(s) acting on behalf of the institution or encountered during the test, their name, rank/position or status, appearance, age;
- their behaviour and conduct towards the tester: pleasant or unfriendly, rude or polite, whether or not they greet the tester, whether or not they provide a seat, coffee or not, whether they use formal or informal 'you' (in languages where this applies), whether or not they smile;
- who said what in relation to the object of the situation test and what information was provided: Are there job vacancies? Is entry permitted?

Legal relations with testers

Testers must always be asked to give their permission for the organisation conducting the testing to handle and pass on to the competent court or authority their sensitive data, such as ethnicity, skin colour, sexual orientation or disability. Prior to any situation test, a contract should be drawn up between the organisation and the

testers, including the personal data of the testers, their duties, the scene of the testing, the testers' duty to act as witnesses and the fee they receive for their work. The organisation conducting the testing must undertake to provide legal protection for the testers against harm suffered during the situation test. Testers must also sign a confidentiality agreement regarding information relating to the situation test and the case.

Warning

Situation tests are costly and require thorough planning and organisation.

Organisations must never plan to conduct tests in establishments where physical force is known to have been used before. They must never send testers out to clubs where security staff have beaten or insulted minority patrons before.

- never test in establishments where you know physical force has been used before;
- only work with testers who can ensure unbiased, unemotional conduct and observance of instructions;
- when taking on new testers, make sure their personality makes them fit for the job;
- do not send testers who have previously been in conflict with the disco, pub or company; and
- if necessary, involve public authorities competent in dealing with discrimination in a given field and request them to produce an official report about the findings.

Testers' mental well-being

All testers may find themselves deeply affected emotionally during the process. Coordinators must pay special attention to testers with protected characteristics as, if the situation test is 'successful', they will have experienced discrimination and a violation of their human dignity.

The coordinator's duty is to make sure that, following the situation test and the completion of the questionnaires, testers have time to talk things through and reflect on their emotions.

Following the testers' return to the coordinator to complete the questionnaires in his/her presence and discuss the events, it is the coordinator's duty to call their attention to the possible emotional impact the situation test may have on them.

When a new tester is added to the testers' register, coordinators must make sure that he or she is mentally fit to fulfil his or her obligations. Obviously, testers must also be able to judge themselves whether they will be able to deal with the emotional stress.

In ideal situations organisations conducting situation tests will have a large enough pool from which to choose testers, so that testers can be rotated. If this is not the case, testers must be offered social or psychological help to deal with their emotions after conducting the tests.

BRAINSTORM the characteristics of a good tester

Characteristics of a good tester

During testing the organisation is solely reliant on the testers. The outcome of a case where the situation test is the main evidence will be determined by the testimonies of the testers. Given that so much depends on the testers, it is essential that the most adequate people are chosen for the job. Testers must know themselves well and must be able to deal with their emotions appropriately, as they may be insulted and may be subjected to degrading treatment. In extreme circumstances, security staff may physically insult them.

They may need to be creative, think independently and resolve conflicts quickly. Although there is a choreography designed for the testing, unexpected events may also occur in which testers are left to fend for themselves. Thus, a good tester must have the following characteristics:

- ability to make objective observations;
- no preconceptions, or awareness of preconceptions and ability to suppress them;
- reliable;
- trustworthy;
- can be trusted to engage for a longer period of time;
- unbiased;
- ability to suppress own feelings during situation test;
- calm, not prone to react to provocation;
- good self-awareness;
- ability to think independently and make decisions on her or his own;
- creative;
- never had any dealings with the establishment or institution tested; and
- possibly testers showing no criminal record.

Subjectivity and situation testing

Testing experiences show that, beyond possible stereotypes, many subjective elements may also impact on testers' decisions. More testers or testing pairs or more tests yield more objective results. Testers may also be subjective in their observations. Coordinators must make sure that as many objective data as possible are asked for in the questionnaires!

Before starting to design the choreography, it is worth thinking through the subjective factors of a certain case or scenario. Although discrimination and stereotypes against minorities are known to exist in our everyday lives, we cannot ignore personal sympathy that may develop between a certain candidate and the employer. Certainly, our innermost stereotypes impact on whom we like – be they from a minority group or not. At the same time, our view of others is also influenced by the way they dress and wear their hair. We may find their manner of speaking, their complexion or even their handshake off-putting. Testing results show that a certain employer may reject one minority applicant and employ another. It is certainly difficult to make the distinction between genuine discrimination and an unfortunate choice of testers.

It must also be borne in mind that testers may have subjective impressions and emotions. One minority tester may feel that, in a given situation the employer made the tester's minority background felt, while another minority tester may not perceive such an attitude.

Although subjective factors cannot be ruled out entirely, clear and conclusive results must always be strived for.

An ideal means to this end is to use the questionnaire. In a questionnaire questions must be asked which can be answered with yes or no. For example, were you greeted upon entering? Were you offered a seat? How long did you have to wait? Sending out more testers or testing pairs or conducting more tests yields more objective results. Experience shows that one test usually does not produce clear results.

EXERCISE: African Tam-tam to demonstrate how much we do or do not remember. Provide groups of 6-8 with a short story of a few lines. Ask the first participant to read it and whisper it quickly into to the next participant's ear (you may ask groups to compete for time). Ask the last participant what he or she heard. Tell the group the original story. Discuss how individual perception may distort information.

Conducting tests by telephone

Complainants may themselves have tested a particular employer or company before seeking assistance from an organisation. They may have told the employer that they belonged to a minority and they may have been told not to come for the interview. For the complainant this was obvious discrimination. However, practice shows that telephone testing may sometimes be misleading, as during personal meetings employers may eventually hire the applicant. Personal contact and a good impression may overrule stereotypes in these instances. Thus, it is important to be careful when using telephone testing or telephone testing alone.

It is also important to bear in mind that, if a complainant did not only speak to the employer over the phone but also met him or her, then it is not adequate to test the situation by means of telephone testing.

Complainants should be discouraged from revealing their minority background over the telephone. It does not help in clarifying the facts or in instituting proceedings if the need for that arises. Reactions during a personal visit or interview are always more decisive.

c)   *Situation tests as evidence*

In most European countries jurisprudence is not uniform in admitting situation tests as evidence in criminal or civil courts. However, if procedural law does not limit the types of evidence which courts can take into account, then testing results should not be ruled out per se. The testimony of testers and the questionnaires can also be submitted as evidence.

The major problem is that a situation test conducted after the discrimination took place cannot conclusively prove that prior event. However, if the original complainant and the testers give testimonies to the same effect and with the same details, this may weaken the defendant's position, who usually claims that non-discrimination is their standard practice. Situation tests may serve to prove that unequal treatment is not occasional but systematic.

Testers may also appear in court as plaintiffs and request damages for themselves. There are, however, some countries in Europe where courts provide diminished compensation or no compensation at all to testers – claiming that they must have expected a violation of their human dignity as part of their job.

Situation tests can also provide evidence which can be used for the purposes of awareness-raising, campaigns and advocacy.

A critique of situation testing

The most common critique against testing is that it is paid provocation.
The organisations "paid spies enter the company or the pub to gather information under cover". "They jot something down on a piece of paper, which may be fiction for all they care, and then it's on to court, where the paid witnesses serve the organisation's purposes."

It is difficult to guess how testing will be judged in countries where this method is new. It is the job of lawyers to convince the courts that testers and organisations act in good faith. Involving state authorities in administering situation tests may help the cause, at least at the early stage. It is also up to plaintiffs to invoke case law from European countries which allow testing.

BRAINSTORM situation tests in employment and/or access to public services

d)   *Examples*

Situation testing can be used to uncover discrimination in school enrolment, but it cannot be used to uncover harassment based on sexual orientation – or only if that is an everyday occurrence in a firm and an employee is ready and willing to test the situation.

Concrete steps when testing employment discrimination

- thoroughly interview the original complainant: when and whom did they talk to; what is the job description; what qualifications and level of experience is required; the reason given for their refusal;
- obtain job advertisement: in order to plan the logistics of the test the exact text must be known;
- call the number given in the job advertisement without giving name to find out whether or not the job is still vacant. Situation tests cannot be carried out if a complainant comes too late and the job is already taken;
- select adequate testers and plan logistics;
- brief testers about all necessary information;
- analyse questionnaires; and
- follow-up: a company may have asked each candidate to wait a couple of days for their response. In this case, a couple of days later the testers will have to call the company and enquire about the results.

When testing discrimination in employment, after the interview with the complainant it is important to select the testers immediately and prepare them for the test. It is essential that the testers be identical in all significant and visible characteristics, as well as in relation to the characteristics necessary for performing the job, e.g. sex, age, language proficiency and professional qualifications. If testing goes ahead, testers are asked first to call the employer and then visit the company, behaving as normal job seekers would.

Concrete steps when testing discrimination in access to services

- thoroughly interview the original complainant: address and name of establishment; when exactly did s/he visit it; is there an entrance fee payable; are there security staff; if so, how many; what is the admission policy; what reason was given for the refusal; did the complainant ask for the book of complaints, was s/he given it; what services are offered (disco, private party, casino); had s/he been there before and had s/he been admitted on that occasion; does s/he know the staff, owner, manager in person; had s/he ever had any conflict there before; did s/he drink alcohol on the given date; how was s/he dressed; was s/he alone or with a partner/company; did s/he suffer verbal or physical abuse; if so, from whom; did the security staff wear uniform; if so, was there any inscription on their uniform; did s/he make a formal complaint to any authority; if so, with what result?
- know the establishment: opening hours, admission fee, security staff, location of situated, admission policy;

- investigate previous physical or verbal abuse inflicted by security staff. Is there any potential danger for the testers?
- select appropriate testers and prepare them for the job;
- plan logistics, taking into account all the circumstances (admission fee, security staff, etc.).
- make sure questionnaires are completed immediately after the situation test; and
- analyse the questionnaires.

EXERCISE: plan a situation test responding to the complaint in the Roma education case. If you have time during the training, ask participants to act out the situation test. Provide them with the following model questionnaire.

Questionnaire for testing a school

Tester's ID
1. Tester's name:…………………………………………………………………..
2. Tester's nationality, ethnicity:………………………………….
3. Age:…………………….
4. Sex:……………………….
5. Skin colour:………………….
6. Other visible features:…………………………………………………
7. Religion:………………………………………………………….

Child's ID
1. Name:………………………………………………………………………….
2. Age:…………
3. Ethnicity:……………………………………………………………
4. Religion:………………………………………………………………
5. School results so far (average score, competitions):
6. Behaviour (scolding, praise):
7. Which school is she or he attending? ………………………

School
1. Name:…………………………………………………………………………
2. Address:………………………………………………………………………
3. Date of testing……………………………

Agreement over telephone
1. Date:…………………………………………………………………………….
2. Whom did you talk to? …………………………………………
3. How did the conversation go? Was it easy to arrange to see the head teacher?
4. How much time passed between the telephone call and the face-to-face meeting?
5. What was the telephone call like (informative, friendly, cooperative, snub etc.)?

Personal meeting

1. Which school employee did you talk to about the admission (name and position)?
2. Where was the meeting held (address, room, office, classroom, corridor, etc.)?
3. How long did it last?
4. Were you offered a seat during the meeting?
   Yes – No
5. Were you offered coffee or beverages during the meeting?
   Yes – No
6. Did you walk through the school? Did the school employee show you the school?
   Yes – No
7. What did you say about yourself, your family and your child?
8. What questions did they ask you?
9. What information did they give you without you asking?
10. What questions did you ask about the school? What were the answers?
11. What did you learn about the admissions policy, admissions criteria, school life, practices, organisation and the number of students rejected?
12. What did you learn about the social background of the students (number of children from poorer backgrounds, Roma children, gifted children, etc.)?
13. What did you learn about the grades, marks and scores, the number of students continuing their studies, the schools where most students go on to study and about their opportunities?
14. What did you learn about school scholarships, meal vouchers, book vouchers? Were you given forms to complete for these?
15. What did you learn about other schools in the town?
16. What was the mood like (rude, friendly, indifferent, cooperative, open, degrading, etc.)?
17. Did anybody during the conversation allude to your ethnicity, to Roma as a minority group or to Roma students?
18. Did the person talking to you ask for a recommendation (from an institution, teacher or priest)?
    Yes – No
19. Anything else you wish to report:

Date
Signature

4.7   Codes of conduct

'Ethics is not a subject, it's a life put to the test in a thousand daily moments.'
Paul Tillich: an appraisal, by J. Heywood Thomas

The objectives of this module are to:

- define codes of conduct and their typology;

- provide examples of best practice on codes of conduct in employment relations as well as in access to goods and services, both in the public and in the private sector;
- discuss different models and methods of making sure that codes of conduct are adopted and enforced;
- discuss the role of NGOs in promoting codes of conduct and making sure they are implemented adequately; and
- identify the mandatory elements of effective codes of conduct.

4.7.1 Definition

Though the term **code of conduct** is used to mean different things, in different contexts and in different countries, for the purposes of this training, irrespective of the different forms, it can be defined as a voluntary instrument reflecting the minimum standards of acceptable conduct and core values of an entity in response to a variety of challenges, including the diversity of its constituency (workforce, beneficiaries, clients, partners). The code of conduct applies to all aspects of business conduct and is relevant to the conduct of both individuals and the entire organisation. **Codes of conduct** are understood by this module as an embodiment giving substance to the aspirations set up in the codes of ethics. They are particularly relevant in the context of non-discrimination and equality as they are essential in shaping the work environment and making it inclusive for all.

In this context, a **code of ethics / ethical code** is adopted by an organisation in an attempt to assist those called upon to make decisions in understanding the difference between 'right' and 'wrong' and in applying this understanding to their decisions. Codes of ethics may focus on social issues and set out general principles about an organisation's beliefs on matters such as mission, quality, privacy, diversity or the environment.

4.7.2 Scope

The different models of codes of conduct, codes of ethics, value statements and their substantive provisions are dealt with here, as well as the work leading to their adoption, their promotion and the monitoring of their implementation. Developing competencies for managing diversity in general is not covered. In addition, the module will not deal with corporate social responsibility, understood as an umbrella term indicating that an ethical business must act as a responsible citizen of the communities in which it operates, even at the cost of profits or other goals. While codes of conduct usually include policy statements defining ethical standards on a variety of issues, such as environment, child labour, forced labour, human rights, freedom of association, labour standards, occupational health and safety, corruption and bribery, this module focuses on clauses ensuring non-discrimination and equality.

4.7.3 Content

1.   What are codes of ethics / codes of conduct/statements of values/diversity policies? What kinds of codes exist?

While discussions on morality and on the nature of good and evil go back to Aristotle and the Greek philosophers, business ethics, as an applied form of ethics assessing the ethical principles and moral or ethical problems that arise in a business environment, is a more recent development, the expansion of which accelerated dramatically during the 1980s and 1990s.

At that time many international companies began to develop their internal codes in an attempt to balance profit-maximising behaviour with non-economic concerns in a public response to heightened scrutiny of companies' business and financial practices.

Codes of ethics describe broad ethical aspirations and can be defined as the 'Ten Commandments' of an entity. They generally imply documents at three levels: a. *corporate or business ethics* – codes of corporate ethics or corporate codes; b. *codes of conduct for employees* – a document designed to influence the behaviour of employees; and, c. *codes of professional responsibility or codes of practice* adopted by a profession or by a governmental or non-governmental organisation to regulate that profession. A **code of conduct** gives substance to the aspirations listed in the code of ethics by applying them to relevant situations.

Brief typology:

a.   **Corporate codes of ethics** express core values and are meant to identify the company's expectations of workers and to offer guidance on handling some of the more common ethical problems which might arise in the course of doing business.
      They can be adopted by companies voluntarily or to respond to mandatory guidelines in order to secure compliance with domestic legislation (e.g. in the US the Federal Sentencing Guidelines).
b.   **Codes of conduct** describe the rules outlining the responsibilities of or proper practices for an individual or organisation, the acceptable behaviours for specific situations likely to arise such as: political contributions and public service involvement; misrepresentation and false statements; employee discrimination and harassment; competition; safety and the environment; and employee relationships and conflicts of interest.

Codes of conduct have also been defined as:

"*Principles, values, standards, or rules of behaviour that guide the decisions, procedures and systems of an organisation in a way that (a) contributes to the welfare of its key stakeholders, and (b) respects the rights of all constituents affected by its operations.*"

The International Federation of Accountants (2007) International Good Practice Guidance, *Defining and developing an effective code of conduct for organisations.*

c. **Professional codes of ethics** set forth the ideals of the profession, minimum standards of acceptable conduct and also include provisions to help members of the profession to recognise conflicts of interests, issues of collegiality and confidentiality and other professional responsibilities. While the most famous example is the Hippocratic oath for doctors, engineers, accountants, aviators, lawyers and teachers have also developed their own professional codes. The International Red Cross and Red Crescent Movement adopted a distinct Code of Conduct for NGOs in Disaster Relief in 1994.

For instance, the Code of Ethics of the National Association of Social Workers (NASW) in the United States lists six ethical principles to guide behaviour: service; social justice; dignity and worth of the person; importance of human relationships; integrity; and competence. The more detailed NASW Code of Conduct explains that social workers will obtain informed consent from clients regarding the purpose of services provided, relevant costs and treatment alternatives. The NASW Code of Conduct also addresses situations involving conflicts of interest, confidentiality, access to records, sexual relationships, sexual harassment, derogatory language and termination of services.

From Denis Collins (2009), *Essentials of business ethics: Creating an organisation of high integrity and superior performance*, Essentials Series, Wiley.

Variations of these categories can be **institutional or corporate credos** which are brief versions of codes or **statements of values** reflecting core value commitments of companies or outlining aspirations.

Excerpts from the *Johnson & Johnson Credo*

We believe our first responsibility is to the doctors, nurses and patients, to mothers and fathers and all others who use our products and services.

In meeting their needs everything we do must be of high quality.

We are responsible to our employees, men and women who work with us throughout the world.

Everyone must be considered as an individual.

We must respect their dignity and recognise their merit.

They must have a sense of security in their jobs.
Compensation must be fair and adequate, and working conditions clean, orderly and safe.

We must be mindful of ways to help our employees fulfil their family responsibilities.

Employees must feel free to make suggestions and complaints.

There must be equal opportunity for employment, development and advancement for those qualified.

We must provide competent management, and managers' actions must be just and ethical.

We are responsible to the communities in which we live and work and to the world community as well.

We must be good citizens - support good works and charities and bear our fair share of taxes.

We must encourage civic improvements and better health and education.

We must maintain in good order the property we are privileged to use, protecting the environment and natural resources.

When we operate according to these principles, the stockholders should realise a fair return.

Another way of understanding codes of conduct which apply to duty bearers can be differentiating between codes for internal purposes and codes imposed on suppliers and contractors when an external party is the duty bearer.

When the entity itself is the duty bearer, it issues special documents (referred to as 'codes of conduct') outlining company values, principles and guidelines in a variety of areas. These are a means for companies to clearly and publicly state the way in which they intend to do business to their employees, customers, service users, consumers and shareholders and suppliers.

If the duty bearers are third parties who agree with particular standards as a part of a contractual relation, the United States Labour Department identifies the following further categories:

- circulated letters stating company policies on a certain issue to all suppliers, contractors and/or buying agents;
- compliance certificates, which require suppliers, buying agents or contractors to certify in writing that they abide by the company's standards; and
- purchase orders or letters of credit, making compliance with the company policy a contractual obligation for suppliers.

2. Why do we need codes of conduct? Why are codes of conduct important in the context of awareness-raising and combating discrimination?

An entity might adopt a code of conduct to express the identity of the brand, its credo and philosophy; to empower and protect its constituency; to inspire and foster dialogue with partners and various targets; to educate its own constituency and the general public; to discipline its own constituency, for PR purposes in response to a crisis damaging the reputation of the entity; to comply with accreditation requirements (in the case of universities); to avoid or limit liability in case of potential complaints by showing that all steps had been taken in order to indicate appropriate conduct for its employees; and to observe a normative regulation making mandatory adoption of codes or training of personnel for certain types of business (if seeking public procurement) or in certain areas.

A 2001 OECD survey found that anti-discrimination and equality concerns were addressed in 60 per cent of the codes surveyed, while a 2005 Danish study of codes found that the majority of Danish codes included a clause on non-discrimination and equality. Such clauses may be framed in more general language or be quite comprehensive in defining grounds and scope of application.

Examples of non-discrimination clauses:

"The company expects its suppliers to avoid engaging in any kind of discrimination on the grounds of gender, religion, race etc.
There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement."

From Danish Institute for Human Rights (2005), *Corporate codes of conduct in Denmark – an examination of their CSR content*.

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3. Who needs codes of conduct?

Codes are prevalent in the public sector, regulating the different aspects of various public functions or of different activities of public interest, such as education, health services, social assistance, housing and policing. Professional codes are adopted for judges, lawyers, accountants, social workers and teachers and, in most European states, non-compliance with the ethical and legal provisions of these codes leads to disciplinary sanctions up to exclusion from the profession.

A distinct category is, for example, that of codes of practice published by equality bodies in the United Kingdom under relevant equality legislation to help employers and service providers and employees or service users to understand the law and to offer guidance on what employers or service providers should do in order to comply with the law. Courts must consider the content of a statutory code where it is relevant to a matter before the court. The codes of practice may recommend that employers/service providers develop their own codes of conduct as one way to try to ensure compliance with the law.

Alongside statutory codes of practice, the equality bodies publish non-statutory guidance, which in some cases could serve as a model for a code of conduct.

The private sector, including NGOs, adopts codes as best practice, in response to a crisis or to expectations but also in response to normative requirements.

Codes of practice were developed by the Equality and Human Rights Commission in Great Britain and the Equality Commission for Northern Ireland.

Equality and Human Rights Commission materials include:

- Code of Practice on Equal Pay;
- Code of Practice on Employment;
- Code of Practice on Services, Public Functions and Associations;
- Code of Practice for Further Education;
- Code of Practice for Schools; and
- Performance Guidelines for Health Organisations.

Equality Commission for Northern Ireland materials include:

- Disability Discrimination Code of Practice for Schools;
- Code of Practice on Racial Equality in Housing (draft);
- Code of Practice on Removing Sex Bias in Recruitment;
- Code of Practice for the Elimination of Discrimination; and
- Good Practice Guide to Employing Migrant Workers.

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4.   How can a code of conduct come into being?

Codes of conduct can result either from normative prescriptions or, following legal recommendations as is the case in the United States or in the United Kingdom, be adopted as a remedy secured by a court order following a civil case. They may be developed as voluntary initiatives, either by the public or private entities themselves or following the work of NGOs, which can develop codes to be used by potential perpetrators, such as employers, teachers, the police, government officials or border officers.

For example, in 1991 US Federal Sentencing Guidelines were issued with the intention of encouraging, though not requiring, managers to implement ethical best practices. The Federal Sentencing Guidelines are applicable to non-profit entities, unions, partnerships, trusts and universities as well as businesses in the United States.

In most cases when codes are adopted, it is essential to establish executive support in developing effective codes, twinning them with ethics programmes, including diversity management training, and following through for their implementation.

Anti-discrimination NGOs can contribute in the adoption of codes of conduct, including clear provisions on non-discrimination and equality, by: a) lobbying decision-makers to make such codes mandatory in particular areas; b) advocating that human resources managers and the executives of private entities adopt such codes; c) arguing in court in cases of discrimination perpetrated by representatives of public or private entities that the adoption of codes and diversity and non-discrimination training would be an appropriate remedy; d) raising awareness among the general public by establishing prizes for codes of conduct; and e) preparing codes of conduct for different entities regarding sensitive issues in their area of expertise.

a) NGOs can lobby government actors (legislators, ministries of labour and social protection, national equality bodies etc.) to impose codes as mandatory requirements for particular types of private or public actors (companies providing public services or engaged in public procurement). In this effort, the NGOs can form partnerships with trade unions, chambers of commerce and industry, academic institutions and professional networks.
b) NGOs can also undertake advocacy work with human resources managers and the leadership of transnational or domestic companies for the adoption of voluntary codes. They can provide assistance in drafting the framework of the codes, facilitate the drafting process, provide examples of good practice and conduct diversity trainings. They can also contribute to the dissemination of information regarding the codes by conducting awareness raising campaigns.
c) Another option for NGOs is to use strategic litigation in order, where possible, to seek adoption of codes as a remedy in cases of discrimination.
d) Anti-discrimination NGOs representing various vulnerable groups working in partnership can encourage the corporate community to engage in adopting effective codes by organising common events to increase the visibility of compliance with codes and by developing competitions or offering prizes.
e) NGOs can use their expertise and prepare codes of conduct on their own, present them to different entities and advocate for their adoption.

5. What are the basic elements of a code of conduct?

A review of the literature on codes of conduct and ethics programmes reveals that there is no one-size-fits-all approach. On the contrary, while there are some elements

which should be incorporated, some basic prerequisites are to make sure that the code is tailored to the specific local culture (national and corporate), addressing the particular sensitive issues or concerns of the most vulnerable, and to consult people likely to be affected by a code of conduct on the contents of a draft code in order to secure an inclusive code drafting process.

Some of the common elements of codes of conduct intended to combat discrimination and promote equal opportunities include:

- defining basic values for the particular entity (e.g. trustworthiness, respect, responsibility, fairness, diversity and integrity);
- mentioning vulnerable groups;
- defining 'offences' and adequately communicating them (e.g. defining and sanctioning direct and indirect discrimination, harassment, including sexual harassment, bullying, victimisation) reflecting, as a minimum, the definitions of prohibited conduct in national anti-discrimination law;
- establishing a secure, confidential and effective internal complaints mechanism;
- creating an implementation mechanism: responsibilities, ethics or compliance officers, designing diversity training for all employees, having all employees sign a compliance statement;
- providing clear sanctions. The effectiveness of such codes depends on the extent to which management supports them with sanctions and rewards. Violations of a private organisation's code would usually subject the violator to the organisation's remedies. For example, if the code applies to employment, then it should cross-refer to the employer's disciplinary code.
  In the UK many employers' codes make discrimination or harassment contrary to the code a form of gross misconduct which could justify summary dismissal; and
- establishing elements allowing assessment and evaluation. For example, the US Federal Sentencing Guidelines suggests as an effectiveness criterion that high-level personnel must be involved in oversight.

Excerpts from the Code of Ethics and Business Conduct of Lockheed Martin Corporation

Promote a positive work environment

All employees want and deserve a workplace where they feel respected, satisfied and appreciated. Harassment or discrimination of any kind and especially involving race, colour, religion, gender, age, national origin, disability and veteran or marital status is unacceptable in our workplace environment.

Providing an environment that supports the honesty, integrity, respect, trust, responsibility and citizenship of every employee permits us the opportunity to achieve excellence in our workplace. While everyone who works for the company must contribute to the creation and maintenance of such an environment, our executives

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and management personnel assume special responsibility for fostering a context for work that will bring out the best in all of us.

The formatting of the codes may also vary: while some favour the prescriptive model, there are also models using real life situations or a Q & A model defining what does or does not comply with a code. Other common elements are that the language should be simple and avoid legalese or professional jargon and that the message be affirmative, stating how people should act, creating positive expectations. What is essential is that anyone who should be bound by the code is in no doubt what conduct is acceptable and what is not.

The accessibility of the code also includes its distribution. In order to promote codes, the entities should display them in newsletters, on websites and in highly frequented areas. Forms of publication and formats should be appropriate to meet any special needs of people with disabilities. Employees should sign the codes after they have been introduced during orientation, ethics training or a diversity management workshop.

Suggested exercise for identifying baseline values when developing a code of conduct.

Assume you are an NGO concerned with making sure that it creates an inclusive space for its employees, volunteers and beneficiaries. Break up into smaller groups of up to five people and follow the steps below:

1. Brainstorm: list the values important for your group. Keep in mind that values are multi-dimensional. For example, in the academic context, the values will break down into dimensions corresponding to stakeholders: faculty, students, administration and other academic stakeholders.
2. Refine: reduce your list of values to a manageable size (five to seven). Do this by rewording, synthesising, combining and eliminating. Translate these values into affirmative steps.
3. Post: share your list with the entire group.
4. Revise: make any last minute changes.
5. Combine: a moderator will organise the lists into a ballot.
6. Vote: each person ranks the top five values.

5 SOURCES

Collecting information and taking action

- Allison, M. and Kaye, J. (2005). *Strategic planning for non-profit organisations*. Second Edition. John Wiley and Sons.
- European Network of Legal Experts in the Non-Discrimination Field (2011) *How to Present a Discrimination Claim: Handbook on seeking remedies under the EU Non-discrimination Directives,* available at: http://www.non-discrimination.net/content/media/How%20to%20Present%20a%20Discrimination%20Claim%20EN.pdf.
- European Roma Rights Centre (ERRC) (2004), *Knowing your rights and fighting for them: A guide for Romani activists*, http://www.errc.org/cms/upload/media/00/D6/m000000D6.pdf.
- ERRC, Interights and MPG (2004) *Strategic litigation of race discrimination in Europe: from principles to practice*, http://www.migpolgroup.org/publications_detail.php?id=198.

Monitoring

Materials on monitoring

- Guzman, M. and Verstappen, B. (2003) *What is monitoring?* Human Rights Monitoring and Documentation Series, Volume 1, HURIDOCS.
- Nowicki, M. and Fialova, Z. (2004) *Human rights monitoring*, Helsinki Foundation for Human Rights, Warsaw (also available electronically: http://www.hfhrpol.waw.pl/publikacja-3-20-en.html).
- The Advocates for Human Rights (2011) *A practitioner's guide to human rights monitoring, documentation and advocacy* (advrights.org).
- The World Bank (2004) *Monitoring and evaluation. Some tools, methods and approaches* (worldbank.org).
- Faye Jacobsen, A. (ed.) (2008) *Human rights monitoring. A field mission manual,* Martinus Nijhoff Publishers, Leiden-Boston.

Materials on monitoring and evaluation of a project or organisation

- Shapiro, J. *Monitoring and evaluation*, toolkit, Civicus (civicus.org), also available in French and Spanish.

Materials on impact assessment

- Equality and Human Rights Commission (2009) *Equality impact assessment guidance. A step-by-step guide to integrating equality impact assessment into policymaking and review*.

- EIA Guidelines NHS 2007 (National Health Institute), including: *Equality impact assessment – useful questions for screening*, EIA templates (2008).
- *Equality impact assessment. Policies, projects, services, functions and strategies. An easy guide for staff who need to complete EIA,* Portsmouth City Council (portsmouth.gov.uk; 15.04.2011).
- *Dorset County Council equality assessment toolkit* (dorsetcc.gov.uk; dorsetforyou.com; 15.04.2011).
- *The Open University equality impact assessment toolkit. A practical guide for managers to assess the impact their functions, policies and procedures have on different groups of people*, The Open University Equality and Diversity Office in partnership with MSM Consultants Ltd, April 2007 (open.ac.uk; 15.04.2011).
- *An introduction to human rights impact assessment*, humanrightsimpact.org – an interesting website on human rights impact assessment including the eight-step approach to HRIA (15.04.2011).
- Office of the High Commissioner for Human Rights (OHCHR) (2004) *Methodology and tools for human-rights-based assessment and analyses*.
- Harrison, J. and Stephenson, M-A. *Human rights impact assessment: review of practise and guidance for future assessment*, Scottish Human Rights Commission, 2010.

YouTube clips:

There are a number of interesting clips on monitoring, evaluation and impact assessment – readers are advised to identify them, if interested, using key words.

Advocacy

- International Lesbian, Gay, Bisexual, Trans and Intersex Association Europe (ILGA Europe) (2010) *Make it work: six steps to effective LGBT human rights advocacy*, ILGA Europe.
- Open Society Foundations (2010) *Evidence, messages, change! An introductory guide to successful advocacy*.
- Landmine Survivors Network (2007) *Disability rights advocacy workbook*
- Save the Children (2007) *Advocacy matters: Helping children change their world. An International Save the Children Alliance guide to advocacy, Participants Manual*.
- WaterAid (2001) *Advocacy: What's it all about? A guide to advocacy work in the water and sanitation sector*.

Partnerships

- National Democratic Institute for International Affairs (2009) *Joining forces: A guide for forming, joining and building political coalitions*.
- Andersson, M., Svensson, L., Wistus, S. and Åberg, C. (eds.) (2006) *On the art of developing partnerships*, National Institute of Working Life, Sweden http://partnership.esflive.eu/files/On_the_Art_of_Developing_Partnership.pdf.

- *GB Equal Support Unit* Partnership working – a guide for development partnerships, sharing practice from the Equal programme*.*
- *European Network for Rural Development* Integrated European cooperation guide*, http://enrd.ec.europa.eu/app_templates/filedownload.cfm?id=2A9A7348-B2CD-A9FB-620D-67CE880700D6.*
- Collaboration Roundtable (2001) *The partnership toolkit: Tools for building and sustaining partnerships*.

Media

- European Union Agency for Fundamental Rights (2008) *A diversity toolkit for factual programmes in public television*, FRA.
- The Advocates for Human Rights (2011), *A practitioner's guide to human rights monitoring, documentation and advocacy.*
- Phillips, D. and Young, P. (2009) *Online public relations – A practical guide to developing an online strategy in the world of social media*, Second edition, PR in Practice Series, Kogan Page.
- Bland, M. Theaker, A. and Wragg, D. W. (2005) *Effective media relations: How to get results* PR in Practice Series, Kogan Page, Routledge, Second edition
- Gregory, S. (2005) *Video for change: a guide for advocacy and activism*, Pluto Press.

Valuable resources are also available online:

- Media4Diversity study, reports, best practice, including country-specific information and additional materials, available at: http://www.media-diversity.org/mdi/index.php?option=com_content&view=article&id=1115.
- On the internet you can find numerous examples of clips from various anti-discrimination campaigns in your country and other countries, with anti-discrimination messages being adapted for different types of audiences (children, young people, vulnerable groups and the general public).

Situation testing

- MPG handbook and survey on Situation Testing.
- MPG training pack on Situation Testing.
  www.migpolgroup.com.

YouTube clips:
- http://www.youtube.com/watch?v=FmEjzxKrFGE.
- http://www.youtube.com/watch?v=YyL5EcAwB9c&NR=1.
- http://www.youtube.com/watch?v=3RhXU-2EJDE&feature=related.

Codes of conduct

- UN Sub-Commission on the Promotion and Protection of Human Rights, *UN norms on the responsibilities of trans-national corporations and other business enterprises with regards to human rights*, August 2003.
- OECD, *Codes of corporate conduct: Expanded review of their contents,* May 2001.
- The World Bank Group, *Company codes of conduct and international standards: An analytical comparison, Part I and II,* October 2003.
- Danish Institute for Human Rights, *Corporate codes of conduct in Denmark – an examination of their CSR content,* June 2005.
- European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, Unit G.4, *Continuing the diversity journey – business practices, perspectives and benefits,* October 2008.
- European Commission, *Trade union practices on anti-discrimination and diversity,* European Trade Union Anti-Discrimination and Diversity study: innovative and significant practices in fighting discrimination and promoting diversity, 2010.
- Mele D. (2009) *Business ethics in action: Seeking human excellence in organisations.* Palgrave Macmillan.
- Collins, D. (2009) *Essentials of business ethics: Creating an organisation of high integrity and superior performance* (Essentials Series), Wiley.
- Jenkins, R. (2001) *Corporate codes of conduct - self-regulation in a global economy*, UNRISD.
- Lagan, L. and Moran, B. (2006) *Three dimensional ethics: Implementing workplace values*, Econtent Management.
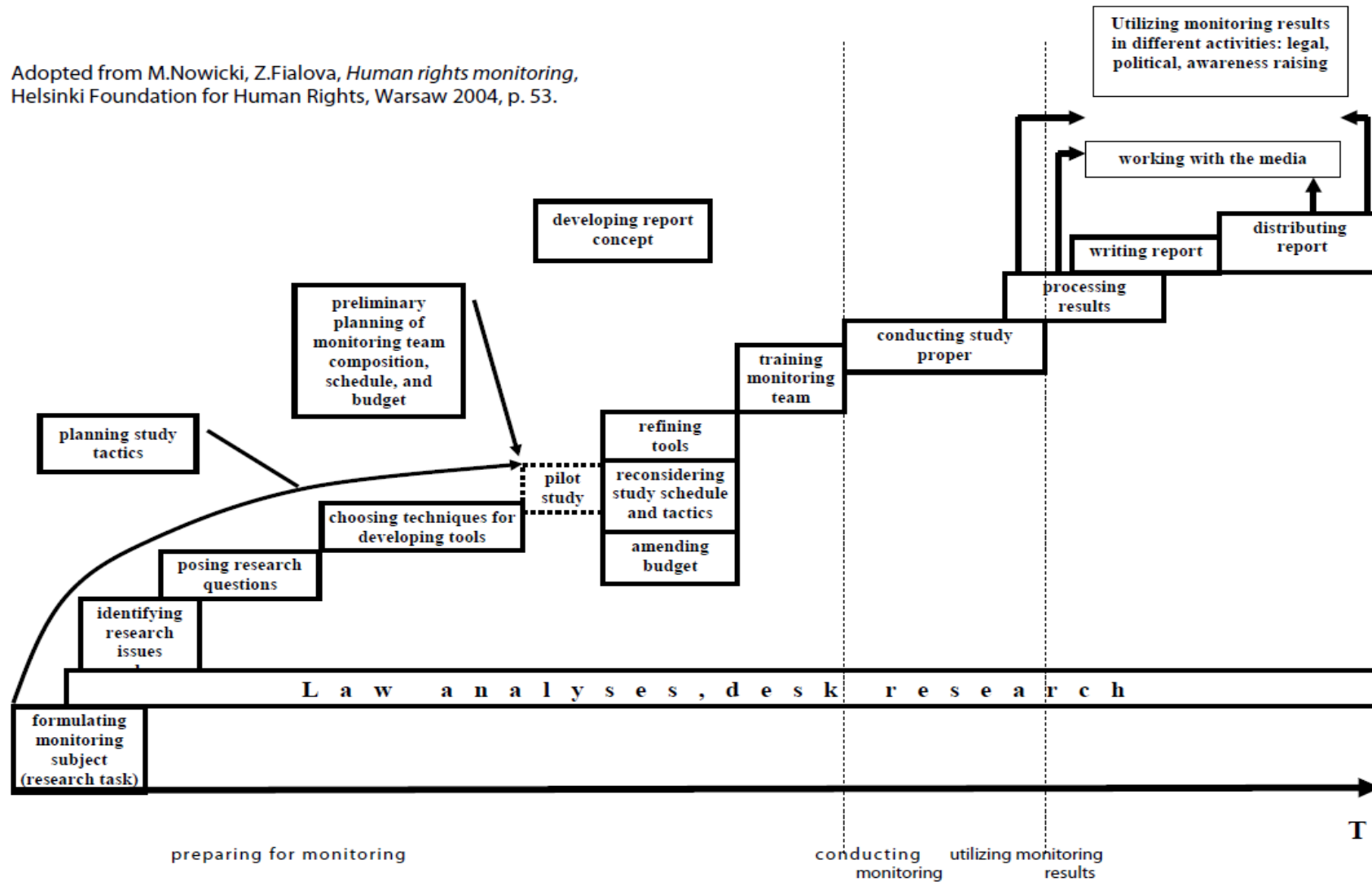
Valuable information is also available on the following websites:

- University of Minnesota human rights library collection of more than 100 codes of conduct of public and private organisations available at: http://www1.umn.edu/humanrts/links/conduct.html.
- The Business Case for Diversity documents produced by the European Commission are available at: http://ec.europa.eu/justice/discrimination/document/index_en.htm#h2-4.
- Statutory Codes of Practice under national equality legislation in the United Kingdom available at: www.equalityhumanrights.com and www.equalityni.org.
- ILO, 'Corporate Codes of Conduct', Actrav available at: http://www.itcilo.it/english/actrav/telearn/global/ilo/code/main.htm.
- General information on diversity in the workplace (mainly in the US) available at: http://humanresources.about.com/od/workplacediscrimination/Workplace_Discrimination.htm, www.diversityworking.com and www.diversityatwork.net/.

- United Nations Research Institute for Social Development, Business Responsibility for Sustainable Development, publications available at: http://www.unrisd.org/80256B3C005BB128/%28httpProjectsForResearchHome-en%29/E7F3F4A25DFB0AE980256B6100514A19?OpenDocument&panel=publications.
- Frey, W. and Cruz-Cruz, J. A. *Developing ethics codes and statements of values*, Connexions. April 19, 2010 available at: http://cnx.org/content/m14319/latest/.

Annex 1: Diagram: Stages of monitoring

Adopted from M.Nowicki, Z.Fialova, *Human rights monitoring*,
Helsinki Foundation for Human Rights, Warsaw 2004, p. 53.

Utilizing monitoring results in different activities: legal, political, awareness raising

working with the media

developing report concept

distributing report

writing report

processing results

conducting study proper

training monitoring team

preliminary planning of monitoring team composition, schedule, and budget

refining tools

planning study tactics

pilot study

reconsidering study schedule and tactics

choosing techniques for developing tools

amending budget

posing research questions

identifying research issues

L a w   a n a l y s e s ,   d e s k   r e s e a r c h

formulating monitoring subject (research task)

T

preparing for monitoring

conducting monitoring

utilizing monitoring results

human european consultancy

MPG Strategic thinking equality and mobility
MIGRATION POLICY GROUP

Annex 2: Dorset County Council Equality Impact Assessment Toolkit. Assessment Form, 08.2010

Dorset County Council Equality Impact Assessment Toolkit
Assessment Form

Title of Policy/Strategy/service, being assessed:	
Name of Directorate and service:	
Name and role of officers completing this assessment:	
Contact Telephone Number of lead officer :	
Date assessment completed:	

1. Is this a new policy/strategy/service or a review of an existing one?

2. What are the aims and objectives of the policy/strategy/service that is being assessed? (For guidance see appendix B)

3. What needs or priorities is the policy/strategy/service designed to meet?

4. Who and/or what has been involved with implementing the policy, strategy, or service? (For guidance see appendix B)

5. In relation to the policy/strategy/service what do you think are the main issues, positive and/or negative relating to the different equality strands?

Information in Section 5 will help with analysis, particularly about what impact the new policy/strategy/service will have on citizens under each of the diversity strands. Give a few examples of positive impacts (A) that have happened or will take place under each strand. Also identify under each strand where further development is/may be needed (B)

An example under the disability strand:
(a) The National Retail Model for Integrated Community Equipment Service has impacted positively on people with a disability by offering citizens more choice and control over choosing equipment to help them live safely at home.
(b) Further development is required in order to help with collection of unwanted equipment
(NB: further developments should end up in the Implementation Plan at the back of the EqIA)

NB Only fill the sections that are relevant to you. 1
Last updated August 2010

Dorset County Council Equality Impact Assessment Toolkit
Assessment Form

You need to demonstrate that you have used data from existing sources to tell you about the current policy/strategy/service in terms of meeting the needs of the different equality strands.

What does consultation with stakeholders/beneficiaries tell you about the current or proposed policy/strategy/service? Your sources could include, for example, census data, DCC employee survey, the bi annual residents' survey and other research findings.

(For an overview of the main issues to consider refer to guidance notes in appendix B and E.)

Disability
(a)

(b)

Race/Ethnicity
(a)

(b)

Gender (including Transgender)
(a)

(b)

Sexual Orientation
(a)

(b)

Faith/Religion/belief
(a)

(b)

Age
(a)

(b)

Other factors of disadvantage to consider eg: socio-economic, rurality.

(a)

(b)

6. Are there any aspects of the policy/strategy/service (not already identified under Section 5) that result in quantifiable or different quality outcomes for different groups (higher or lower uptake/failure to access/receive a poorer or inferior service/evidence that different groups have different needs)?   (see guidance notes in appendix B)

NB Only fill the sections that are relevant to you.
Last updated August 2010

**Dorset County Council Equality Impact Assessment Toolkit
Assessment Form**

7. What further data/consultation do you need carry out if any? Please include the actions in the attached improvement plan.
8. In what way(s) might this service/strategy/policy have an adverse impact on the grounds of race/ethnicity, gender, disability, age, religion/Faith/belief, sexual orientation, or rurality? Please give your reasons/evidence for this, use your answers from box 5 - 7 [Note: "Adverse impact" means that the policy/strategy/service is disadvantageous to one or more groups of people.]
9. If you have identified that the service or policy is having, or might be having, an adverse impact, is it justifiable or legitimate? Please give your reasons for this. (see appendix B for examples)
10. If you have concluded that the adverse impact or the discrimination is justifiable or legitimate, you will need to explain your actions and reasons. This is because the county council has a statutory duty to promote good relations between people of different groups. You will need to think what action could be taken to mitigate the adverse impact on people. Please include the actions in the attached improvement plan.
11. If you have concluded that the adverse impact or the discrimination is illegal, you must take action to remedy this immediately. Please outline the action you will be taking and include it in your improvement plan   (see appendix B for examples)

NB Only fill the sections that are relevant to you.   3
Last updated August 2010

Strategic thinking equality and mobility
MIGRATION POLICY GROUP

Improvement Plan - Please list actions that you plan to take as a result of this assessment

Date on which the improvement plan will be reviewed:					
Officer responsible for review of the improvement plan:					

A) Issue identified and B) resulting equality target	Action Required	Please state: what plan the target will be incorporated into, e.g. directorate plan, service plan or team plan Timescale	Officer responsible	How will this target be monitored?	Budget Implications Please notify the relevant service accountant

These actions/targets will need to be SMART and built into the service planning framework.

Your EqIA will need to be signed off by your Diversity Directorate Group. Contact your Diversity lead for dates:
- Adult Services and Community Services - Glen Gocoul
- Children's Services - Richard Marchant
- Environment Services - Mike Evans
- Corporate Resources - Steve Cheeseman
- Chief Executive's Office - Ali Henderson

Support and advice – EqIA surgeries are held on the first week of each month check dates on http://staffnet/index.jsp?articleid=248711
Diversity Officer – Kelly Haggett – 1305 252204 or contact the Diversity and Inclusion Manager – 01305 221523

Consultation - any consultation exercise should follow guidance provided by the Consultation and Engagement Team, research officers within each directorate, www.dorsetforyou.com/consultationtracker and the 'How to Guide on Participating with equality groups in Dorset'.

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Last updated August 2010

Annex 3: EIA – process flow chart. The Open University Equality Impact Assessment Toolkit

Open University Equality Impact Assessment – Process Flow Chart (www.open.ac.uk/equality-diversity/pics/d101206.doc)

Stage 1:
Identifying policies

Produce a list of all functions, policies and procedures and decide on the approach for your Unit/Office

Stage 2:
Undertaking screening for each policy

Identify main aims of each policy

Decide if policy is equality relevant → No – end process, review in future

Yes

Collect and analyse data

Stage 3:
Prioritising and planning

Decide whether H, M or L relevance to help you prioritise

Record findings and produce action plan

Is there evidence of adverse impact? → No – ensure monitoring in place, review in future

Yes

Stage 4:
Undertaking full impact assessment

Analyse data and evidence in greater depth
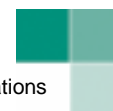
Assess likely impact

Consider alternatives and/or mitigate adverse impact

Consult formally

Decide whether to amend and other actions

Make monitoring/involvement arrangements

Publish report

human european consultancy

MPG Strategic thinking equality and mobility
MIGRATION POLICY GROUP

Annex 4: EIA – Full Assessment Template. The Open University Equality Impact Assessment Toolkit
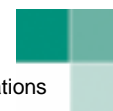
Equality Impact Assessment – Full Assessment Template

Source: *The Open University Equality Impact Assessment Toolkit. A practical guide for managers to assess the impact their functions, policies and procedures have on different groups of people*, The Open University Equality and Diversity Office in partnership with MSM Consultants Ltd, April 2007 (open.ac.uk; 15.04.2011).

This template can be used to record your progress in completing a full equality impact assessment of a policy, procedure or project for one equality group and will be useful when you come to write your report.

What is the policy (name and brief description)?	
What equality group(s) is this full equality impact assessment for? (tick one box only) ☐ Age ☐ Disability ☐ Gender ☐ Race ☐ Religion ☐ Sexual Orientation	

Step	Activity	Examples of relevant issues	Comments
1	Identify aims of the policy (You should have some of this information from your screening, stage 2)	➢ What are the University's specific responsibilities in relation to the policy? ➢ Who implements the policy? ➢ Who is responsible for the policy? ➢ What are the specific outcomes you hope to see from the policy? ➢ What criteria will you use to measure progress towards these outcomes?	
2	Consider the evidence (See Q&A on monitoring in Appendix C)	➢ What information do you have to assess that the policy benefits all groups? ➢ Is the available information sufficiently detailed to permit analysis of disparities between individual categories? ➢ Is the information up to date, relevant and reliable? ➢ Do you need to hold an informal consultation exercise internally or externally at this stage? ➢ Are there other units or organisations that might want to join you in commissioning new data or research or consultation exercises?	

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3	Assess likely impact	➢ Does your analysis of the policy indicate possible adverse impact on some groups? ➢ Are any disparities in the data statistically significant and not due to chance? ➢ Are there other factors that might help to explain the adverse impact? ➢ Could the policy be amended to better promote equality of opportunity or meet the positive duties?	
4	Consider alternatives	➢ Would changes to the policy, or the way it is put into practice, remove or substantially reduce the impact? ➢ What changes could be introduced to reduce the adverse impact identified above? ➢ What changes could you introduce to promote equality of opportunity? ➢ Are there aspects to your proposals that could be changed or could you take additional measures to reduce or remove adverse impact on a particular group, without affecting the policy's overall aims? ➢ Could this unintentionally result in disadvantaging another group? ➢ Would you be able to justify this, on balance?	

5	Consult formally (See Q&A on consultation in Appendix C)	➢ Have you identified all the groups affected by the policy, directly and indirectly? ➢ Which organisations and individuals are likely to have a legitimate interest in the policy? ➢ What methods of consultation are most likely to succeed in attracting the people you want to reach? ➢ Have previous attempts to consult particular communities been unsuccessful? If so, why, and what can you do to overcome any obstacles? ➢ Have you made resources available to encourage full participation by groups that have proved hard to reach? ➢ How will information, pre and post consultation, be made available?	
6	Decide whether the policy needs to be revised or amended in the light of the consultation	➢ Does the consultation show that the policy will have an adverse impact on a particular group (or groups)? ➢ Is it likely to make it difficult to promote equal opportunities or good relations between different groups? ➢ Can the policy be revised or additional measures taken, so that it achieves its aims, but without risking any adverse impact? ➢ What are the main findings of your consultations and what weight should they carry?	
7	Make monitoring arrangements (You are required to monitor the impact of all equality relevant policies.)	➢ How will the policy be monitored? ➢ What sort of data will be collected and how often will it be analysed? (Annually is recommended) ➢ Will the monitoring include qualitative methods, such as surveys, or follow-up consultations? ➢ How will the effects of the policy on equality of opportunity and good relations be monitored? ➢ What criteria will be used to assess these? ➢ How will any concerns be taken into account in any review of the policy?	

| 8 | Publish assessment report (See Q&A on publishing in Appendix C) | ➢ A good equality impact assessment report will:
  o include the best information available at the time
  o be clear, concise, balanced and in proportion to the policy's equality relevance
  o be a self-contained document
  o use plain and clear language

➢ See the suggested format in this toolkit. | |

Any other information or comments:
Relevant dates:
Name and contact details for responsible person:

Please retain a copy of this form and any data you used to undertake the exercise as it may be required for quality control and compliance monitoring purposes. The information will help you to write up your impact assessment report for publishing.

Completed impact assessment reports should be published internally in your intranet site in the same place as the published policy or procedure and you should forward a copy to the Equality and Diversity Office for external publishing.

Annex 5: Equality impact assessment – useful questions for screening, EIA Guidelines NHS 2007

Source: EIA Guidelines NHS 2007 (National Health Institute, United Kingdom).

Below are a number of questions to help team leaders and managers consider as wide a range of issues as possible when screening policies or services for their possible impacts on different communities.

RACE

How will you make sure that people from a wide range of ethnic groups use your service? (N.B. You may find it helpful to look at this section alongside the section on Religion and Belief as the actions are closely related). You might find the following prompts useful:

- How do people from minority ethnic backgrounds find out about your service? Does your printed information take account of different languages and cultures and is it easy to understand?
- Have you publicised your service among minority ethnic communities by making it available at different appropriate venues as well as visiting them and talking about your service?
- Have you decided what core information you need available in other languages?
- Do your staff members know how to access an interpreter for booking appointments or how to access telephone interpreting (in situations where it may not be possible to arrange an appropriate interpreter)? Do they also know where to get advice on material in other languages and formats?
- Do you routinely record the language that a person speaks so that you can send them letters in the right language or ring them instead if they can't read?
- Have you put in place a procedure to record the uptake of interpreting and translated material?
- Have you thought about your assessment materials and methods and made sure that they are relevant to people from different cultures?
- Do you currently record the ethnicity of patients so that you know how well your service is being used by people from minority ethnic backgrounds?
- What actions would you undertake to ensure that your staff members are treating people from a minority ethnic background with respect and dignity?
- Have you identified any specific dietary or any religious needs of patients or any other specific requirements that you need to be sensitive to?
- Have your staff members received EIA training as well as equality and diversity training and how they are planning to implement this in their work setting?
- Have you considered incorporating race equality objectives in staff appraisal?
- How will you mainstream these actions into the core business of your service?

RELIGION OR BELIEF

How will you welcome people from all religious backgrounds? You might find the following prompts useful:

- How do people from different religious backgrounds find out about your service? Is your printed information religiously appropriate/sensitive?
- Have you publicised your service among various religious communities and groups by making it available at different appropriate venues as well as visiting them and talking about your service?
- Do you currently record patients' religion in order to assist you in identifying users and non-users of your service from various religious backgrounds?
- What actions would you undertake to ensure that your staff members are treating people from different religions/beliefs/no beliefs with respect and dignity?
- Is your service religiously and culturally sensitive to meet the needs of people from various religious backgrounds? If not what approaches would you develop to address this?
- Have you identified any specific dietary or other needs related to a person's religion that you need to be sensitive to?
- Are there any other religious sensitivities you need to bear in mind e.g. when visiting patients at home?
- If you are running an inpatient or residential service, have you thought about the prayer needs or the need for a quiet space for your patients / residents?
- Have you considered obtaining a list of various festivals to be made available to your staff members to avoid arranging appointments / visits etc on any particular religious festivals / days / times?
- Have your staff members received training on religion and belief and how they are planning to implement this in their work setting?
- Have you considered incorporating religion and belief equality objectives in staff appraisal?
- How will you mainstream these actions into the core objectives of your service?

DISABILITY

What will you do to make sure that people with a disability are using and benefiting from your service/policy? This includes people with a learning disability, people with long-term conditions and mental health problems, and people with physical and sensory impairments. You might find the following prompts useful:

- How do people with disabilities find out about your service?
- Does your printed information take account of communication needs of people with various disabilities and is it easy to understand?

- Have you decided what core information you need available in large print, audio tape or Braille?
- Is your service physically accessible to people with mobility problems or who use a wheelchair?
- Do your staff members know how to access a sign language interpreter, or an interpreting service for deaf and hearing impaired people, how to use an induction loop and where to get advice on material in different formats?
- Do you routinely record the communication needs of patients with a disability for referring to when sending out appointments etc?
- Have you put in place a procedure to record the uptake for sign language interpreters, appointment letters/leaflets in Braille etc?
- Do you currently monitor whether or not patients have a disability so that you know how well your service is being used by people with a disability?
- What actions will you undertake to ensure that your staff members are treating people with disabilities with respect and dignity?
- Is your service religiously and culturally sensitive to meet the needs of disabled people from minority ethnic groups? If not what approaches would you develop to approach this?
- Have your staff members received disability awareness training in general and more specifically in meeting the needs of patients with a learning disability, people with mental health difficulties or people with hearing or sight impairment? How are they planning to implement this in their work setting?
- Have you thought about your assessment materials and methods and made sure that they are relevant to people with disabilities?
- Have you considered incorporating disability equality objectives into staff appraisal?
- How will you mainstream these actions into the core objectives of your service?

AGE

If your service is open to people of all ages, how will you make sure that it is used by people of all ages? You might find the following prompts useful:

- Is it easy for someone of any age to find out about your service and to use your service?
- Does your service make assumptions about people simply because of their age?
- Does your service give out positive messages about all ages in the leaflets and posters that it uses?
- When you are recruiting staff, have you thought about age and how you can recruit from a wide range of age backgrounds?
- Do younger and older people in your staff team feel equally valued?
- Do you monitor age to make sure that you are serving a representative sample of the population (or representative within your relevant age group)?

- Do any eligibility criteria for your service discriminate against older or younger people without just cause?
- What actions will you take to make sure that your staff treat people of all ages with dignity and respect?
- Have you considered including age equality in staff objectives and appraisal?
- How will you mainstream these actions into the core objectives of your service?

GENDER

If your service is for men and women, what will you do to make sure that both benefit? You might find the following prompts useful:

- Is it easier for either men or women to find out about and use your service, for example because of where you display leaflets or your opening times?
- If your service is for men and women, do you routinely monitor the uptake of your service with gender breakdown and take appropriate action? For example:

  o If you find that men are not accessing your services then you may consider improving the way these services are provided to men, possibly by targeting men and providing drop-in clinics at sporting events or workplaces.
  o Similarly you may consider adopting sensitive approaches to target women from different backgrounds as the services may not be appropriate for some women from particularly minority communities

- Have you considered the possible needs of transgender staff and service users in the development of your policy or service?
- Have your staff members received gender equality training and how are they planning to implement this in their work setting?
- Have you considered incorporating gender equality objectives in staff appraisal?
- How would you mainstream these actions into the core business of your service?

SEXUALITY[26]

How will you give positive messages and a positive reception to people who are gay, lesbian or bisexual? You might find the following prompts useful:

- Does information about your service use visual images that could be people from any background or are the images mainly heterosexual couples?
- Does the language you use in your literature include reference to gay, lesbian and bisexual people?

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[26] The EIA Guidelines NHS 2007 of National Health Institute refers to "sexuality". However, the authors of this manual prefer the term "sexual orientation" as it is referred to in article 19 of the TFEU.

- When carrying out assessments, do you make it easy for someone to talk about their sexuality, if it is relevant, or do you assume that they are heterosexual?
- Would staff in your workplace feel comfortable about being 'out' or would the office culture make them feel that this might not be a good idea?
- Have your staff had training in sexual orientation and equality and how will they put what they have learnt into practice?
- How will you make sure that staff treat lesbian, gay, bisexual and transgender people with dignity and respect?
- Have you included this area of equality in staff objectives and appraisal?
- How will you mainstream these actions into the core business of your service?

INEQUALITIES AND DEPRIVATION

How will you make sure that people from a wide range of socio-economic backgrounds can access your service? There are some groups that experience persistent inequalities, such as minority ethnic communities or disabled people, so this section may overlap with others. However, you may find the following prompts useful:

- Do you know where the key pockets of deprivation are within your area? Is it easy for people in these areas to find out about your service and to use your service?
- Is your service easily accessible via existing public transport links?
- Does your service make assumptions about people simply because of their background or where they live?
- Do any eligibility criteria for your service restrict access for people from more deprived communities?
- When you are advertising jobs, have you thought about how you can encourage people from more deprived communities to apply?
- Are staff aware of existing health inequalities priorities and targets for their area or work?
- How will you mainstream action on reducing inequalities into the core business of your service?

DIGNITY AND HUMAN RIGHTS

Could your policy or service potentially involve:

- Affecting someone's right to life?
- Caring for other people or protecting them from danger?
- Investigating deaths?
- The detention of an individual?
- Inadvertently place someone in a humiliating situation or position?
- Make people work in an emergency?
- Dealing with decisions on access to services or appeals?

- Disciplinary action that leads to criminal offence?
- Accessing, handling or disclosing personal information?
- Dealing with children and families?
- Provision of medical treatment or social care?
- Surveillance or investigation?
- Being in conflict with the religious beliefs of others?
- Commissioning services from a religious organisation?
- Working with the media, writing speeches or speaking in public?
- Policy making?
- Making decisions on fertility treatment?

If so, you will need to ensure that your policy or service respects the dignity and human rights of staff and service users.