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Subject: EU Human Rights Guidelines on Non-discrimination in External Action

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Delegations will find attached EU Human Rights Guidelines on Non-discrimination in External Action adopted by the Council at its 3681<sup>st</sup> meeting held on 18 March 2019.

**EU Human Rights Guidelines on Non-discrimination in External Action**

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## Introduction

The prohibition of discrimination is one of the most important principles of international human rights law. Since the adoption of the Universal Declaration of Human Rights in 1948 in Paris, this principle has been further emphasised in the human rights instruments that have been developed and incorporated into the national laws of the majority of countries around the world. In the European Union's founding treaties<sup>1</sup>, in the Charter of Fundamental Rights of the European Union<sup>2</sup> and in the European Convention on Human Rights, the prohibition of discrimination is a core principle.

Despite the clarity of international human rights law on the prohibition of discrimination, millions of people continue to face discrimination preventing them from enjoying their human rights in full and from reaching their full potential as equal and active members of society. Discrimination can lead to social unrest, violence, conflict and forced displacement. Apart from the dramatic human costs, discrimination has enormous economic costs in the form of poverty and the loss of opportunities, not only for the individuals and their families, but for entire societies. As the prohibition of discrimination is a core principle on which the European Union (EU) is built, the EU is deeply committed to fighting all forms of discrimination within its own borders as well as in the world at large.

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<sup>1</sup> Quotations from the Treaty of the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU): a) *Article 2 TEU*: The Union is founded on the **values of respect for human dignity**, freedom, democracy, **equality**, the rule of law and respect for human rights, **including the rights of persons belonging to minorities**. These values are common to the Member States in a society in which pluralism, **non-discrimination**, tolerance, justice, solidarity and equality between women and men prevail. b) *Article 3(3) TEU*. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. **It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men**, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States. It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced. c) *Article 10 TFEU* 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.

<sup>2</sup> The Charter applies to all EU Member States when applying EU law and to all EU institutions and bodies in all their actions.

Combatting all forms of discrimination is also defined as an EU priority in the 2012 EU Strategic Framework on Human Rights and Democracy<sup>3</sup>. The EU Action Plan 2015-2019 provided for the development of EU tools on Non-discrimination.

These EU Human Rights Guidelines on Non-Discrimination deliver on the EU Action Plan on Human Rights and Democracy while complementing the operational tools of the European Commission for development cooperation in the context of the “EU Rights-based approach to Development Cooperation – encompassing all human rights” (RBA).

Fighting discrimination is also a cross-cutting objective. In this regard, the EU's Generalised System of Preferences (GSP) is an example. It provides unilateral trade benefits to vulnerable developing countries, including Least Developed Countries, which enjoy almost full access to the EU market under the 'Everything but Arms' arrangement. Under the EU's GSP Regulation core principles laid down in fundamental international human rights and labour rights conventions need to be respected. These include the Convention on the Elimination of All Forms of Racial Discrimination (1965); the Convention on the Elimination of All Forms of Discrimination against Women (1979); and the Convention concerning Discrimination in Respect of Employment and Occupation, No 111 (1958). For countries that benefit from the special incentive arrangement for Sustainable development and Good governance ("GSP+") this goes even further: they have to ratify and implement 27 international conventions including on human and labour rights, environment and good governance. Implementation of these obligations is monitored by the EU.<sup>4</sup>

The EU guidelines on Non-discrimination are intended to complement and reinforce other EU Guidelines on human rights<sup>5</sup> with the objectives of:

- Enhancing the EU's effectiveness in combatting discrimination on any grounds
- Enhancing the visibility and awareness of EU values and actions in combatting discrimination

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<sup>3</sup> <https://data.consilium.europa.eu/doc/document/ST-11855-2012-INIT/en/pdf>

<sup>4</sup> EU Regulation 978/2012 of the European Parliament and the Council on a generalised system of preferences, including its annex VIII on UN/ILO core human and labour rights conventions.

<sup>5</sup> For all EU Human Rights Guidelines see [https://eeas.europa.eu/topics/human-rights-democracy/6987/eu-human-rights-guidelines\\_en](https://eeas.europa.eu/topics/human-rights-democracy/6987/eu-human-rights-guidelines_en)

The Human Rights Guidelines on Non-discrimination provide conceptual and operational guidance for the EU Human Rights Policy in external action. They draw on and explain the EU's and the international human rights standards and norms on the prohibition of discrimination and on the promotion of non-discrimination. They also give clear political lines to EU institutions and officials and EU Member States to be used in cooperation and contacts with third countries, international organisations and civil society organisations.

## 1. What is discrimination?

**Discrimination is defined as any differential treatment of a person or group of persons based on a prohibited ground, which has no objective and reasonable justification<sup>6</sup>.** The prohibited grounds are defined in international human rights law. The grounds enumerated in the list below are drawn from the Universal Declaration of Human Rights (UDHR- article 2), the Convention on the Elimination of all forms of Racial Discrimination, the European Convention on Human Rights and its Protocol 12., the Charter of Fundamental Rights of the European Union, the International Labour Organisation's (ILO) Convention no. 98 on the Right to Organise and Collective Bargaining<sup>7</sup> as well as the four Geneva Conventions and their two Additional Protocols<sup>8</sup>.

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<sup>6</sup> See ECRI (European Commission against racism and intolerance) General Policy Recommendation no.7 §1 b.

<sup>7</sup> Article 1 of the ILO no. 98 “workers shall enjoy adequate protection against acts of anti-union discrimination”

<sup>8</sup> Geneva Convention (I) on Wounded and Sick in Armed Forces in the Field, 1949, Geneva Convention (II) on Wounded, Sick and Shipwrecked of Armed Forces at Sea, 1949, Geneva Convention (III) on Prisoners of War, 1949, Geneva Convention (IV) on Civilians, 1949. Additional Protocol I relating to the Protection of victims of International Armed Conflict and Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflict. These form the core of International Humanitarian Law (IHL)

**Prohibited grounds for discrimination mentioned in binding International Human Rights instruments, International Labour instruments, International Humanitarian Law instruments and the Charter of the Fundamental Rights of the European Union**

Age

Birth or other status

Colour

Descent

Disability

Genetic feature

Language

Membership of national minority/ Association with a national minority

Membership of trade union

National, ethnic or social origin

Political or other opinion

Property (economic status)

Race

Religion or belief

Sex

Sexual orientation

Other status/ any other similar criteria

## Considerations related to grounds

“Other Status/Any other similar criteria”

Ending the list of prohibited grounds with “ other status” in international human rights instruments (or “or Any other similar criteria” in international humanitarian law) means that the list of prohibited grounds of discrimination is non-exhaustive and thereby underlines that human rights apply to all human beings/ everyone without distinction of any kind<sup>9</sup>.

“**Race**” It should be noted that these guidelines use and interpret the term “race” in accordance with international and EU human rights law and does not therefore imply the acceptance of theories which attempt to determine the existence of separate human races<sup>10</sup>.

“Descent” It is often used interchangeably with “race”. However, “descent” *does not solely refer to 'race' and has a meaning and application which complements the other prohibited grounds of discrimination. The Committee<sup>11</sup> also affirms that discrimination based on 'descent' includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status.*

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<sup>9</sup> As examples of what grounds can qualify under the term “other status” reference is made to the rulings of the European Court of Human Rights that has established that discrimination on the grounds of, inter alia, being HIV-positive (Kiyutin v. Russia -application no. 2700/10), Illegitimacy (being born out of wedlock) (Mazurek v. France - application no. 34406/97), sexual orientation and gender identity (Identoba and Others v. Georgia - application no. 73235/12), health-status (Novruk and Others v. Russia- application no.31039/11) and medical condition (G.N and others v. Italy- application no. 43134/05) is prohibited under Article 14 (Prohibition of discrimination) of the European Convention on Human Rights.

<sup>10</sup> Recital 6 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin: “The European Union rejects theories which attempt to determine the existence of separate human races. The use of the term “racial origin” in this directive does not imply an acceptance of such theories”.

<sup>11</sup> The UN Committee for the Elimination of Racial Discrimination (CERD) in its General Recommendation no. 29

**“Disability”** According to the UN Convention on the Rights of Persons with Disabilities<sup>12</sup>, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers<sup>13</sup> may hinder their full and effective participation in society on an equal basis with others.

## 1.1 Concepts in Non-discrimination

### De jure and de facto discrimination

In legal and policy texts a distinction is made between de jure and de facto discrimination. De jure discrimination occurs when existing laws and policies are discriminatory by themselves or make possible discrimination, whereas de facto discrimination occurs when the law or policy is not discriminatory in itself, but where their implementation and enforcement have a discriminatory impact<sup>14</sup>.

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<sup>12</sup> Note that the European Union is party to the UN Convention on the Rights of Persons with Disabilities.

<sup>13</sup> As regard “various barriers” accessibility is to be considered as a precondition for the enjoyment of all human rights and fundamental freedoms by persons with disabilities. See also General comment No. 6 (2018) on equality and non-discrimination of the CRPD Committee (doc. CRPD/c/GC/6)

<sup>14</sup> The Human Rights Council’s Working Group on the Issue of Discrimination against Women in Law and in Practice describes the two types of discrimination (here in regard to women) in the following way: *Discrimination can be de jure when the text of a law or policy contains discriminatory provisions or de facto when the law or policy is not discriminatory in itself but its implementation and enforcement have a negative impact on women. De facto discrimination can also result from broader practices, as for example, culture, traditions, and stereotyping which deny women full equality and enjoyment of rights. Longstanding historical and structural inequalities, in many cases faced by for example minority groups, can also contribute to de facto discrimination.*



## Direct and indirect discrimination

According to the EU non-discrimination directives<sup>15</sup> “Direct discrimination” shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial and ethnic origin. “Indirect discrimination” shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.<sup>16</sup> Although the examples above refer to grounds related to racial and ethnic origin, it should be underlined that direct and indirect discrimination can occur on the basis of any ground.

## Structural discrimination<sup>17</sup>

Direct and indirect discrimination is sometimes complemented with the terms “structural discrimination”, “institutional discrimination” or “systemic discrimination”. These terms are used to describe the exclusion and discrimination suffered by entire groups of persons sharing the same characteristics or grounds for discrimination. “Structural discrimination” refers to rules, norms, routines, patterns of attitudes and behaviour in institutions and other societal structures that, consciously or unconsciously, present obstacles to groups or individuals in accessing the same rights and opportunities as others and that contribute to less favourable outcomes for them than for the majority of the population<sup>18</sup>.

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<sup>15</sup> The example used is from the Council directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>16</sup> See also the General Comment No. 20 of the Committee on Economic, Social and Cultural Rights (of the International Covenant on Economic, Social and Cultural Rights): Direct discrimination occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground. Indirect discrimination refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of rights as distinguished by prohibited grounds of discrimination

<sup>17</sup> Note that there is no agreed definition of “structural discrimination” or for “discrimination by association and assumption” under international or EU law.

<sup>18</sup> European Commission against Racism and Intolerance’s (ECRI’s) revised General Policy Recommendation (GPR) No. 2 (§ 20) <http://ombudsman.hr/attachments/article/1283/REC-02rev-2018-006-ENG.pdf>

## Discrimination by association and assumption<sup>19</sup>

This type of discrimination is often called associative discrimination because the victim is being discriminated against because he or she is associated with another person or other persons who are the main targets of the perpetrator's prejudice. Associative discrimination can take place in relation to many different grounds, including disability, and is conceptually linked to the "grounds by association". Closely related to the concept of discrimination by association is the discrimination due to assumption. Here the victim is being discriminated against because the person is assumed to be, or be part of a group which is, the target of the perpetrators prejudice.

### **Discriminatory Profiling**

Although there is no agreed definition of discriminatory profiling under international or EU law, "discriminatory profiling" is described as the act of suspecting or targeting a person, in the context of security and law enforcement for example, on the basis of stereotypes associated with the prohibited grounds of discrimination, rather than on individual suspicion<sup>20</sup>

In recent years there has been an increasing attention to preventing discriminatory racial or ethnic profiling in the security and law enforcement sector as well as in the border and immigration sector. Security and law enforcement agents are as agents of the State under strict obligation to carry out their work in full compliance with human rights and laws prohibiting discrimination.

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<sup>19</sup> See footnote 17.

<sup>20</sup> The EU Fundamental Rights Agency (FRA) has developed a guide toward more effective policing, understanding and preventing discriminatory ethnic profiling <http://fra.europa.eu/en/tags/ethnic-profiling>. The prohibition of discrimination does not mean that personal characteristics cannot be used as legitimate factors for profiling in the context of criminal investigations or border checks (see Section 2.4 of the FRA guide). However, there must be reasonable grounds for suspicion based on information other than the protected grounds.

## Multiple discrimination

Persons may be discriminated against on more than one ground. The Employment Equality Directive<sup>21</sup> and the aforementioned Racial Equality Directive<sup>22</sup> make specific reference to multiple discrimination. Among the United Nations human rights instruments, the Convention on the Rights of Persons with Disabilities (CRPD) is the only human rights instrument that refers to multiple discrimination:

*Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status*<sup>23</sup>.

Multiple discrimination is related to the concept of “intersecting discrimination” which refers to a situation where several grounds interact with each other at the same time in such a way that they become inseparable and their combination creates a new ground for discrimination.

## Non-discrimination and equality as complements

The principles of non-discrimination and equality are often described as complementing principles and are rooted in article 1 of the Universal Declaration of Human Rights, which states that all human being are born free and **equal** in dignity and rights, and in article 2, which states that everyone is entitled to all the rights and freedoms set forth in “this declaration” without distinction of any kind. The abovementioned EU Employment Equality Directive and the EU Racial Equality Directive have the stated purpose to “lay down a framework for combating discrimination on the grounds (enumerated in the directives), with a view to putting into effect in the Member States the principle of **equal** treatment”.

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<sup>21</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

<sup>22</sup> In recital 14 of the Directive

<sup>23</sup> CRPD Preamble paragraph “P”.

## 2. How to fight discrimination – the prevention and prohibition of discrimination.

In any given country, States need to take steps to effectively prevent and eliminate discrimination. These steps are well-described in human rights law as well as in the General Policy Recommendations of treaty monitoring bodies. This section describes the most basic features of anti-discrimination measures.

### General non-discrimination policies

In promoting and upholding the principles of non-discrimination, international human rights law requires States to undertake to pursue all appropriate means to eradicate discrimination, including in the social, economic, cultural and other fields. This includes policy, legislative and administrative measures which can be further detailed, such as in the establishment of human rights training and education as well as public awareness programmes, including promotion of mutual understanding, tolerance and peace. Many States develop National Action Plans. In regards to fighting racism and xenophobia, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in 2001 also recommended the development of actions plans. The Office of the High Commissioner for Human Rights has a practical guide on developing national actions plans against racial discrimination<sup>24</sup>. The European Commission against Racism and Intolerance (ECRI) which is a monitoring body of the Council of Europe has also issued General Policy Recommendations in the form of guidelines to develop non-discrimination policies.<sup>25</sup> Within the European Union, the National Roma Integration Strategies of many EU Member States are also examples of National Action Plans.

In the **field of employment and occupation** several conventions of the International Labour Organisation (ILO), two of which are classified by the ILO as fundamental conventions, prescribe the development of national policies.

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<sup>24</sup> <http://www.ohchr.org/Documents/Publications/HR-PUB-13-03.pdf>

<sup>25</sup> See e.g. [https://www.coe.int/t/dghl/monitoring/ecri/activities/GeneralThemes\\_en.asp](https://www.coe.int/t/dghl/monitoring/ecri/activities/GeneralThemes_en.asp).

The first is the ILO Equal Remuneration Convention no. 100. It requires that ratifying states promote and ensure application to all workers of the principle of equal remuneration for men and women workers for work of equal value. The second being ILO Convention concerning Discrimination in Respect of Employment and Occupation no. 111, which is of a more general scope, requires ratifying States to develop and implement national policies designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination. Furthermore, adopted in 1998, the Declaration of the International Labour Organisation (ILO) on Fundamental Principles and Rights at Work<sup>26</sup> commits ILO Member countries to respect, promote and realise these principles and fundamental rights, including the elimination of discrimination in respect of employment and occupation, whether or not they have ratified the abovementioned two fundamental conventions. The ILO further adopted a resolution concerning fundamental principles and rights at work in 2017<sup>27</sup> providing for renewed commitment and concrete actions in this field, including the development of non-discrimination policies.

### **Prohibition of discrimination in law**

Many States have legislation in place that explicitly prohibits discrimination in line with international human rights law. In many countries the prohibition of discrimination and the equality of all persons is embedded in the national constitution and supplemented with more detailed national legislation which includes the grounds of discrimination. Judicial and administrative structures, institutions and mechanism are set in place for the prevention and enforcement of the prohibition of discrimination. Discriminatory attitudes and prejudice are often manifested in public incitement to hatred and violence directed toward a person or a group defined by protected characteristics in the form of racist or xenophobic hate speech and violent acts (hate crimes). Therefore, it is important that the prohibition of discrimination is complemented with the prohibition in law of public incitement to hatred and violence as well as hate crimes and incitements thereto, in full respect of freedom of expression<sup>28</sup>.

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<sup>26</sup> <http://www.ilo.org/declaration/lang--en/index.htm>

<sup>27</sup> see [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_561873.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_561873.pdf)

<sup>28</sup> The EU's own legislation on incitements to hatred and violence offer a good example: Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law

## Effective remedy

As a minimum the laws will need to include adequate means of protection against discrimination and victimisation. This includes access to justice administered by judicial tribunals or other competent administrative bodies that can guarantee the victim effective remedy, including reparation or satisfaction for any damage or detriment suffered. For effective remedy to be achieved it is important that those perpetrating discrimination offences are made accountable and that legal sanctions for breaching anti-discrimination laws are effective, proportionate and dissuasive<sup>29</sup>.

## Reasonable accommodation

In the UN Convention on the Rights of Persons with Disabilities (CRPD, 2007), reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. The CRPD prescribes State Parties to take all appropriate steps to ensure that reasonable accommodation is provided. Provision of reasonable accommodation can also be relevant in relation to other grounds for discrimination such as on grounds of religion or belief. The EU Council directive on equal treatment in employment and occupation also contains a provision on reasonable accommodation.<sup>30</sup>

## Universal design

Also according to the CRPD, “Universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaption or specialised design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

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<sup>29</sup> In this regard the EU Victims’ Rights Directive offers a good example (Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA).

<sup>30</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

## Special measures and affirmative action

As prescribed by international human rights law, the constitutions and laws of some countries contain specific provisions on the elimination of inequality and measures for promoting equality often referred to as special measures or affirmative action. For instance the Convention on the Elimination of Discrimination against Women (CEDAW) in its Article 4 prescribes special measures: “*Adoption by State parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered as discrimination, but it shall in no way entail as a consequence the maintenance of unequal or separate standards: these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.*” Similarly, the Convention on the Rights of Persons with Disabilities prescribes “specific measures” necessary to accelerate or achieve *de facto* equality of persons with disabilities<sup>31</sup>.

Many countries apply certain quota systems to foster greater equality by supporting persons belonging to groups who face, or have faced, entrenched discrimination so they can have the same opportunities as others in for instance accessing education or employment. In some countries quotas are also set to ensure the participation of representatives from minority groups in the political representative bodies such as national parliaments.

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<sup>31</sup> Another example is the International Convention on the Elimination of All Forms of Racial Discrimination, which states in its Article 1.4 that: “*Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individual equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved*”.

## Monitoring and assessment

In order for antidiscrimination measures to be effective there needs to be a continuous monitoring of the state of discrimination so that deterioration as well as progress can be assessed properly. Precise assessments of the state of discrimination allows for evidence based actions and measures in either correcting negative tendencies or further enhancing positive developments. Furthermore, the monitoring and assessment reports and data are essential elements of the national reports that States<sup>32</sup> are under obligation to submit to the treaty bodies under the Human Rights Conventions, the Human Rights Council's Universal Periodic Review and the ILO supervisory bodies. For the EU, Article 13 of the EU Racial Equality Directive requires that the national bodies for the promotion of equal treatment (Equality bodies), which all EU Member States are required to have, are, among other functions, to 'conduct independent surveys concerning discrimination' for the purposes of analysing the problems involved and studying possible solutions<sup>33</sup>. The capacity for monitoring is in some countries vested with specific government agencies. In some countries such agencies are assisted by national statistics bureaus in the conduct of surveys and data collection<sup>34</sup>. Within the EU, EU Member States also benefit from the EU-wide data collection, monitoring and research on discrimination of the Fundamental Rights Agency (FRA). Statistics by gender and age groups are also available on Eurostat's website<sup>35</sup> as well as data on disability<sup>36</sup>.

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<sup>32</sup> Also the EU under the UN Convention on the Rights of Persons with Disabilities.

<sup>33</sup> Article 13 and Recital 24 of the Racial Equality Directive

<sup>34</sup> In data collection a human rights based approach must be complied with. To this aim the OHCHR has developed a Guidance note for a Human Rights-based approach to data collection and disaggregation.

<http://www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf>

The European Commission has issued a European Handbook on Equality Data with the aim of promoting equality and contributing to the fight against discrimination in the EU by analysing why and what kind of data should be collected in relation to equality and discrimination while ensuring data protection and the anonymity and privacy of persons. Furthermore, the EU High Level Group on Non-discrimination, Equality and Diversity's Subgroup on Equality Data, in July 2018, issued Guidelines on improving the collection and use of equality data.

<sup>35</sup> <https://ec.europa.eu/eurostat/web/equality/data/database>

<sup>36</sup> [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Disability\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Disability_statistics)



## National Human Rights Institutions and Equality bodies

Assessment and monitoring obligations are also sometimes vested in specific anti-discrimination bodies such as national equality bodies (as in the EU Member States<sup>37</sup> and in the Member States of the Council of Europe<sup>38</sup>). Elsewhere National Human Rights institutions such as National Human Rights Commissions or Ombudsman institutions have this task.

Under EU law, Equality bodies – which have to be set up under the EU Racial Equality Directive and also under the Gender Equal Treatment Directive<sup>39</sup> - must be able to provide independent legal assistance to victims of discrimination; conduct independent surveys concerning discrimination; publish independent reports and make recommendations on any issue relating to discrimination. To ensure that Equality bodies function in an effective and independent manner, the EU Member States are recommended to take into account the Commission Recommendation on Standards for Equality Bodies adopted on 22 June 2018 (C (2018) 3850 final)<sup>40</sup>. This Recommendation is particularly addressed to the States and includes numerous standards concerning the mandate of the equality bodies, their independence, resources, access and accessibility, as well as their capacity to coordinate and cooperate at national and international levels.

At the Council of Europe level, the European Commission against Racism and Intolerance (ECRI) adopted on 7 December 2017 a revised General Policy Recommendation No. 2: "Equality Bodies to Combat Racism and Intolerance at National Level" to further strengthening the effectiveness, functioning and independence of Equality bodies<sup>41</sup>.

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<sup>37</sup> The EU equal treatment legislation requires Member States to set up an equality body. Member States have implemented the Racial Equality Directive (2000/43/EC) and the Gender Equal Treatment Directives (2010/41) either by designating some existing institution or by setting up a new institution to carry out the competences assigned by the new legislation.

<sup>38</sup> For more on the Council of Europe (CoE), see annex II

<sup>39</sup> Directive 2004/113/EC, Recast Directive 2006/54/EC and Directive 2010/41/EU.

<sup>40</sup> Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018H0951>

<sup>41</sup> The original Recommendation No. 2 was adopted on 13 June 1997. Available at <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.2>

The Paris Principles adopted by the UN General Assembly in 1993<sup>42</sup> constitute the principles of the competence and responsibilities of the National Human Rights Institution (NHRI) in promoting and protecting human rights. According to the Paris Principles, the combatting of all forms of discrimination and in particular racial discrimination, by raising public awareness, especially through information and education falls within the responsibilities of the NHRIs. NHRIs can also scrutinize legislation and administrative provisions and make recommendations for the adoption of new laws or amendments to strengthen conformity with human rights principles.

According to the Paris Principles, NHRIs can also establish grievance mechanisms. Grievance mechanisms allow NHRIs to hear and consider complaints and petitions brought forward by individuals or civil society, analyse the matter at hand, study and recommend possible solutions including through conciliation and to provide concrete assistance to victims in seeking and accessing remedies.

### **3. Operational Guidelines**

#### **EU tools, instruments and actions to fight discrimination in EU Human Rights Policy in External Action**

Within the context of the Common Foreign and Security Policy and as part of its human rights policies the EU will make use of all its tools, including by strengthening the synergies between the implementation of its EU Guidelines on Human Rights, to ensure and promote respect for the prohibition of discrimination.

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<sup>42</sup> UN General Assembly resolution A/48/134

While all EU Human Rights Guidelines offer guiding instructions that are applicable to fighting discrimination, the following Human Rights Guidelines are particularly relevant:

*EU Guidelines on Human Rights Defenders (2008)*

*Violence against women and girls and combatting all forms of discrimination against them (2008)*

*EU Guidelines on children and armed conflict (2008)*

*Promote and protect the enjoyment of all Human Rights by lesbian, gay, bisexual, transgender and intersex persons (LGBTI) (2013)*

*On the promotion and protection of freedom of religion or belief (2013)*

*Rights of the Child Guidelines (2017).*

Furthermore, the EU's Gender Action Plan 2016-2020 (GAP II)<sup>43</sup> provides for operational guidelines on gender equality, the empowerment of women and girls and the eradication of all forms of gender based violence<sup>44</sup>.

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<sup>43</sup> Council conclusions on the Gender Action Plan 2016-2020 of 26 October 2015 (13201/15)-GAP II for external relations aims to ensure effective delivery on EU commitments to gender equality, increased accountability by defining expected results, track resources and also to improve the quality of partnerships, coordination and dialogue at all levels. One of the three thematic pillars within this Gender Action Plan is Physical and Psychological Integrity, where the fight against all forms of violence against women and girls, both in the public and in the private sphere, is a key area of action. Relevant for Gender equality actions and indicators are also EU's the Strategic Engagement for Gender Equality for the period 2016-2019; <https://ec.europa.eu/anti-trafficking/eu-policy/strategic-engagement-gender-equality-2016-2019>

<sup>44</sup> All EU Human Rights Guideline can be found on the website [https://eeas.europa.eu/topics/human-rights-democracy/6987/eu-human-rights-guidelines\\_en](https://eeas.europa.eu/topics/human-rights-democracy/6987/eu-human-rights-guidelines_en). Besides those listed on this page there are guidelines on (inter alia): Freedom of Expression Online and Offline, Death penalty, Human rights dialogues with third countries, Human rights and International Humanitarian Law, and Torture and other cruel, inhuman or degrading treatment or punishment.

## **The Good Human Rights Stories initiative**

Highlighting and commending progress in individual countries in regard to the fight against discrimination can be highly effective. And for this purpose the Good Human Rights Stories initiative offer an important vehicle for showcasing and exchanging on good stories related to Non-discrimination. At the 73rd UN General Assembly in 2018, the EU together with Ministers and representatives from thirteen countries launched a global initiative to promote 'Good Human Rights Stories'. The Good Human Rights Stories initiative aims to promote a fresh positive narrative on human rights in the world, based on celebrating individual and cross-regional ownership of the universality and indivisibility of human rights. The participants commit to upholding and improving human rights domestically and internationally, through good governance, strong independent rule-of-law and democratic institutions, and by working closely with civil society. The participants to the initiative committed to continue their work based on thematic cooperation, notably at the Human Rights Council.

### **3.1 Addressing discrimination through bilateral cooperation and dialogue**

#### **Assessment, analysis and reporting of non-discrimination**

The EU will continuously assess, analyse and report on the state of discrimination in its partner countries on all prohibited grounds to ensure respect for the principles of non-discrimination and in order to track progress and to identify setbacks. The description and analysis of legal and policy measures taken to combat discrimination contribute to giving the full picture of the state of discrimination. Furthermore, court proceedings and rulings in discrimination cases give important indications on setbacks and progress on non-discrimination.

The assessment and analysis of the state of non-discrimination should be based on information made available by national and local governments, including national statistical bureaus; national human rights institutions, including Equality bodies and Ombudsmen's offices; civil society (both country based and international); academia as well as the information and monitoring reports provided by international mandate holders, such as the UN Special Procedures mechanisms, the UN Treaty bodies, the Universal Periodical Review (UPR) of the UN Human Rights Council, and the Council of Europe monitoring bodies, and the standard supervisory bodies of the International Labour Organisation (ILO). The reports of the Voluntary National Reviews (VNR) on progress at the national and sub-national levels on the SDGs submitted to the High-Level Political Forum for Sustainable Development (HLPF) are also important sources of information. The European Commission's biannual monitoring reports under the EU's Generalised System of Preferences+ (GSP+) arrangement are also an important source of information on the countries benefitting under the scheme. Furthermore, the monitoring reports provide a good basis for political dialogue with leverage on the issues concerned (as maintaining trade preferences are important for GSP+ countries).

The assessment and analysis of the state of non-discrimination should be presented in the forthcoming EU Human Rights and Democracy Strategies (HRDCS)<sup>45</sup> under the chapter pertaining to Non-discrimination and Exclusion as well as its relevant sections on the specific grounds for discrimination and/ or for discriminated groups. Summaries of the state of non-discrimination should also be reflected as a priority topic in the overall introductory summary of the HRDCS. Whenever relevant, updates to the state of non-discrimination should be reflected in the Annual Implementation reports of both current and future HRDCS.

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<sup>45</sup> Current HRDCS cover the years 2016-2020.

## **EU Heads of Mission reports**

Pertinent or urgent updates on the state of non-discrimination could also be communicated through reports of EU Heads of Missions (HoMs' reports). When relevant the HoMs' reports can include plans or recommendations for measures to be taken by the EU to address individual and emblematic cases of violations of the right to non-discrimination on prohibited grounds as well as structural discrimination. Proposed measures *can include* conducting confidential demarches with the relevant authorities, include the cases under the agenda item pertaining to non-discrimination in political, *including* human rights, dialogues as well as actions planned or taken to address or combat the violations, including through public events. HoMs' are also encouraged to make suggestions for the Good Human Rights Stories initiative. Another measure to be taken can also include that of proposing and carrying out public statements, either through a local statement agreed among HoMs or through a Spokespersons' statement from Headquarters.

## **Démarches and public statements**

Confidential démarches and public statements on non-discrimination issues are particularly relevant in high risks cases and situations. However it can also be just as relevant to react to positive developments such as when partner-countries ratify important human rights instruments that have a bearing on combatting discrimination in the partner-country.

It should be noted that in EU's External Action, the HRVP on behalf of the EU issues statements on individual cases as well as for international days pertaining to particularly discriminated groups or on prohibited grounds for discrimination.

These include:

*8 March, International Women's day*

*21 March, the International day for the Elimination of Racial Discrimination*

*17 May, the International Day against Homophobia, Transphobia and Biphobia<sup>46</sup>*

*9 August, the International Day for the World's Indigenous Peoples*

*25 November, the International Day for the Elimination of Violence Against Women*

It should further be mentioned that the HRVP and the European Commission<sup>47</sup> issues a statement for the Universal Children's Day on 20 November.

### **Individual cases**

The **EU Guidelines on Human Rights Defenders** (the HRD guidelines)<sup>48</sup> apply in the attention and support provided by EU delegations and Member State Embassies to individuals or groups who are threatened either as victims of discrimination or as human rights defenders working to combat discrimination. It is important to note that the HRD guidelines prescribe that where appropriate human rights defenders should be consulted in relation to actions which might be contemplated by the EU.

The HRD guidelines also foresee attending and observing, where appropriate, trials of human rights defenders among the measures that could be taken.

In the field of non-discrimination attending and observing court trials is also relevant in cases where there is no direct threat, but when discrimination related or discriminatory laws are being tried or contested.

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<sup>46</sup> Issued as an EU declaration.

<sup>47</sup> Note also that relevant EU Commissioners issue annual statements for, inter alia, the European Action Day countering Hate Speech against Muslims, the International Roma Day, International Albinism Awareness day, International Day for Persons with Disabilities.

<sup>48</sup> [https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/3958/EU%20Guidelines%20on%20Human%20Rights%20Defenders](https://eeas.europa.eu/headquarters/headquarters-homepage_en/3958/EU%20Guidelines%20on%20Human%20Rights%20Defenders)

## Political Dialogues

Combating all forms of discrimination is one of the priority issues included in the agenda for every human rights dialogue. This applies not only to Human Rights dialogues as such but also to other types of dialogues that the EU has with third countries and regional organisations. For instance, under the trade preferences provided under the special incentive arrangement for sustainable development and good governance ("GSP+") countries have to sign a binding agreement to sustain dialogue with the EU on the implementation of 27 international conventions, three of which explicitly related to discrimination (see earlier on the GSP+). Dialogue on human rights issues also takes place under various other EU cooperation agreements such as under the Cotonou agreement. The updates to the state of non-discrimination in the Annual Implementation Reports of the HRDCS and HoMs' reports are vital for the preparations of and in informing the Human Rights dialogues. Issues that could be raised during the dialogues include the following:

- Individual cases of human rights violations/breaches of non-discrimination law and principles.
- Encouraging partner countries to initiate changes to end harmful practices which, inter alia, discriminate against women and girls.
- Encouraging partner countries to initiate legislative changes to ensure non – discrimination and equality before the law.
- Encouraging partner countries to sign and/or ratify relevant international instruments, and lift any reservations to these instruments.
- Encouraging partner countries to issue a standing invitation to UN Human Rights Special Procedures, as well as those of other international organisations, to accept their recommendations and implement them.
- Supporting partner countries that are in favour of the promotion and the protection of non-discrimination, encouraging a closer cooperation in multilateral fora and promoting their efforts as examples on a regional and global level, including as part of the Good Human Rights Stories Initiative.



- Encouraging an exchange of information of lessons learned and best practices with partner countries.

In preparing for the exchange of information, the EU should be equipped and open to discuss the state of discrimination in the EU as well as EU-level political and legislative developments.

The dialogues should lead to concrete deliverables in the form of political commitments on both sides and when appropriate in commitments for financial or practical support under the relevant cooperation programmes.

### **EU High-level visits to EU and Member States Missions in third countries**

EU high-level representatives (The Council President, the High Representative/ Vice-president; the European Commission President and Commissioners, Heads of State or Government and government ministers, and the EU Special Representatives) visiting EU and Member States missions in third countries, should be equipped with information on non-discrimination and be encouraged to raise the issue with local counterparts and meet human rights defenders and representatives of discriminated persons and groups, including through visits to rural and geographically distant/ isolated areas.

### **3.2 Addressing discrimination through EU Development Cooperation and Humanitarian Assistance**

The 2030 Agenda offers a powerful platform for addressing discrimination and inequalities in any country. In September 2015, the 2030 Agenda for Sustainable Development was adopted by the United Nations General Assembly in New York. The 2030 Agenda with its 17 Sustainable Development Goals (SDGs), their 169 targets and its guiding principle “Leave no one behind” marks a paradigm shift towards a more balanced model for economically, socially and environmentally sustainable development aiming to secure “freedom from fear and freedom from want for all” without discrimination.

The 2030 Agenda calls for the follow-up and review processes for the SDGs to be based upon evidence and data disaggregated by “income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts”<sup>49</sup>

The High-level Political Forum (HLPF) of the 2030 Agenda assesses progress, achievements and challenges faced by all countries in implementing the 2030 Agenda and the SDGs. The HLPF meets every year and conducts a thematic review where a sub-set of goals are chosen for an in-depth and integrated review. The HLPF session also include *Voluntary National Reviews* on the follow-up and implementation of the SDGs at national level.

The European Consensus on Development adopted in 2017 is the EU's response to the UN 2030 Agenda for Sustainable Development in its development policy. It sets out the policy framework which will guide the approach of the EU and its Member states to cooperation with developing countries and puts emphasis on differentiated, better tailored partnerships with partner countries at different levels of development for reaching the Sustainable Development Goals (SDGs) aiming to leave no one behind. Together with the Global Strategy on the EU's Foreign and Security Policy and the Action Plan on Human Rights and Democracy, the Consensus also contributes to achieving the priorities of the EU's external action. In addition, a reflection paper 'Towards a Sustainable Europe by 2030'<sup>50</sup> will be issued with the view to prepare the EU's long-term vision on the follow-up to the UN SDGs after 2020.

The European Consensus on Development reaffirms the EU and its Member States commitment to implementing a rights-based approach (RBA) to development cooperation, encompassing all human rights. It thereby reinforces the EU's commitment to an RBA as outlined in the 2012 EU Strategic Framework on Human Rights and Democracy and to systematically mainstream human rights across all policy sectors as foreseen in the Global Strategy on the EU's Foreign and Security Policy. As these Guidelines on Non-discrimination, alongside other EU Human Rights Guidelines are intended also to complement and inform the RBA, the section below is dedicated to a brief description of the RBA and its guiding principles.

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<sup>49</sup> (See list under, Target 17.18 in doc. A/RES/70/1).

<sup>50</sup> [http://europa.eu/rapid/press-release\\_IP-18-6111\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6111_en.htm)

## What is the Rights-based approach?<sup>51</sup>

The rights-based approach, encompassing all human rights (RBA) for EU development cooperation is a working methodology directed to the realization of human rights in practice.

The RBA integrates the norms, standards and principles of international human rights law into the plans, policies and processes of development programmes and projects and applies to all sectors, all modalities, and each step of the project cycle – identification, formulation, implementation, monitoring and evaluation.

The RBA implies that target groups are considered as ‘rights-holders’ with legal entitlements, and where government institutions are not mere service providers but ‘duty-bearers,’ who are under an obligation to deliver on human rights. In line with a Rights-Based Approach, development cooperation should contribute to the development of the capacities of ‘rights-holders’ to claim their rights and ‘duty-bearers’ to meet their obligations.

Development projects can have unintended negative impact in terms of human rights, such as disadvantaging certain groups, interfering with participation rights and labour rights or contributing to forced displacement. It is therefore important to abide by the 'do no harm' principle and carry out the required analysis and mitigation.

Achieving human rights should be the end objective of all EU development interventions. Programmes and projects need to assess the capacities of rights-holders and duty-bearers and develop the appropriate strategies to build these capacities. At the heart of the RBA is the recognition that unequal power relations and social exclusion deny people their human rights and often keep them in poverty. The approach therefore puts strong emphasis on discriminated, vulnerable, disadvantaged, and excluded persons and groups.

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<sup>51</sup> Further guidance on the rights based approach methodology is presented in the EU RBA Tool-box available in English, French and Spanish here: [http://www.ec.europa.eu/europeaid/sectors/rights-based-approach-development-cooperation\\_en](http://www.ec.europa.eu/europeaid/sectors/rights-based-approach-development-cooperation_en)

The RBA working methodology recognises that pursuing desired human rights outcomes are not, in itself, enough. The way these outcomes are achieved is equally important. Programmes therefore monitor and evaluate both outcomes and processes. One of the key working principles of EU RBA is "Non-discrimination and equal access"<sup>52</sup> to ensure that all activities prioritise the most excluded and vulnerable persons and groups and avoid contributing to established patterns of discrimination.

### **The European Consensus on Humanitarian Aid**

The European Consensus on Humanitarian Aid signed by the Council, European Parliament and European Commission in 2007 aims at improving the coherence, effectiveness, and quality of the EU's humanitarian response. Preserving life, preventing and alleviating suffering and helping to maintain human dignity in the face of natural and man-made disasters are the overriding objectives of humanitarian actions, as enshrined in the Consensus. In the document the EU reaffirms its commitments to the fundamental principles of humanitarian aid - neutrality, humanity, independence, and impartiality- and to the respect of international humanitarian law.

The principle of impartiality is linked to the principle of Non-discrimination as humanitarian aid must be provided solely on the basis of needs, without discrimination between or within affected populations.

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<sup>52</sup> **The five EU RBA Working Principles: 1. Applying all rights** (legality, universality and indivisibility of human rights) – Human rights are universal, inalienable and indivisible – all human rights, whether economic, political, civil, cultural or social, are of equal validity and standing. **2. Participation and access to the decision making process** –Participation is the basis for active citizenship. Active, free and meaningful participation is both a means and an end in itself. **3. Non-discrimination and equal access** –activities have to prioritise the most marginalised groups and avoid contributing to established patterns of discrimination. **4. Accountability and access to the rule of law** –activities have to promote accessible, transparent and effective mechanisms of accountability. **5. Transparency and access to information** – development programmes and projects have to be transparent, with information available in accessible formats, including for the marginalised groups.

### 3.3 Addressing discrimination through multilateral cooperation

The EU should continue its active engagement on non-discrimination issues and in the protection and promotion of the right to non-discrimination in all relevant multilateral fora the EU and its Member States are active in by

- Encouraging relevant international organisations to encourage states to ratify and comply with relevant international norms and standards.
- Incorporating non-discrimination concerns in statements and in questions during interactive dialogues.
- Supporting the work of special procedures of the UN Human Rights Council (HRC) and Treaty bodies, the Council of Europe’s Commissioner for Human Rights, the European Commission against Racism and Intolerance as well as other relevant international and regional human rights mechanisms.
- Encouraging third countries to issue invitations to human rights special procedures from international organisations, and to accept and implement their recommendations.
- Including non-discrimination questions and recommendations in interventions during the UPR process at the HRC in Geneva.
- Presenting EU statements on general discussions and country cases related to employment/occupational discrimination discussed within the International Labour Conference and the ILO Governing Body.
- Participating actively in presenting the EU policy and interacting with relevant stakeholders during the OSCE/ODIHR Human Dimension Implementation Meetings and other OSCE forums.
- Including non-discrimination issues when international and regional organisations develop human rights protection instruments and guidelines.

- Identifying like-minded States; collaborating on a cross-regional basis (e.g. in organising side-events); sharing good practices, including through the Good Human Rights Stories Initiative.
- Paying attention to the recommendations adopted by relevant international and regional organisations, and encouraging States to accept and implement them.
- Collaborate with the local offices of international organisations (e.g. OHCHR, other UN entities, ILO, Council of Europe and OSCE) in addressing non-discrimination.
- Including civil society organisations, including workers and employers' organisations and representatives of discrimination affected persons and groups in side-events that take place in multilateral fora.
- Participate actively in UN mechanisms and processes dedicated to general and specific discrimination related issues such as, inter alia, religion or belief, racism and xenophobia, rights of persons with disabilities, Roma, discrimination based on caste (work and descent), LGBTI persons, older persons, peasants, indigenous peoples and persons belonging to minorities.

### 3.4 Addressing discrimination through supporting efforts by civil society<sup>53</sup>

In the 2017 Council Conclusions on EU engagement with civil society in external relations<sup>54</sup>, the Council reaffirms **“that EU support to Civil Society Organisations (CSOs) should feature more prominently in all partnerships and a more strategic engagement with CSOs should be mainstreamed in all external instruments and programmes and in all areas of cooperation, in particular in EU Development Policy, the European Neighbourhood Policy and the EU Enlargement Policy”**. **Engagement with civil society is also indispensable for the EU’s strategic approach to resilience in the EU’s External Action<sup>55</sup>**.

Civil society, including workers’ and employers’ organisations, as well as organisations and institutions representing discriminated persons and groups, play a vital role in the promotion of non-discrimination at local, national, regional and international levels. It is therefore also important to ensure attention to organisations fighting discrimination and/or representing discrimination affected persons and groups in the Civil Society Road Maps, elaborated by the EU as foreseen by the abovementioned Council conclusions as well as the related 2012 Commission Communication and related Council conclusions<sup>56</sup>.

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<sup>53</sup> Civil society is used in the broadest sense as encompassing non-profit organisations, institutions and entities outside government and public administration and that are independent of the state; are active in different fields (Human Rights, poverty reduction, emergency , environment etc.) They include non-governmental organisations, grassroots organisations, cooperatives, trade unions, professional associations, universities, media and independent foundations, disabled persons organisations, indigenous peoples’ representative organisations and institutions etc.

<sup>54</sup> Brussels, 19 June 2017 (OR. en) 10279/17,  
<https://data.consilium.europa.eu/doc/document/ST-10279-2017-INIT/en/pdf>

<sup>55</sup> Council conclusions “A Strategic Approach to Resilience in the EU’s External Action, Brussels, 13 November 2017 (OR. en) 14191/17

<sup>56</sup> “Roots of democracy and sustainable development: Europe's engagement with Civil Society in external relations, 13788/12 - COM(2012) 492 final

In its engagement with civil society the EU should maintain a conversation on combatting all forms of discrimination. Civil society organisations, including workers' and employers' organisations, should be consulted before or when contemplating measures of support. Such measures could include:

- Providing messages of political support to civil society working at country or international levels.
- Ensure frequent outreach activities in rural and geographically isolated areas.
- Facilitating information on the available funding, both under EU funding instruments and/or under relevant instruments of the EU Member States.
- Providing information on the situation within the EU and the EU's relevant laws and practices.
- Promoting the visibility of local organisations (e.g. hosting debates and seminars; endorsing cultural events, conferences, media exposure and use of social media or social projects.)
- Supporting/facilitating/enabling human rights training and education for civil society
- Supporting efforts by civil society and local communities to initiate changes to end harmful practices which, inter alia, discriminate against women and girls
- Encouraging and supporting dialogues with and outreach to national and local authorities on combatting discrimination
- Encouraging and supporting active participation in multilateral fora and mechanisms on general and specific discrimination related issues such as, inter alia, discrimination based on religion or belief, racism and xenophobia, human rights of LGBTI persons, rights of persons with disabilities, discrimination against Roma, discrimination based on caste (work and descent), indigenous peoples and persons belonging to minorities.



- Encouraging local and international CSOs to include information on non-discrimination in their alternative reports to regional human rights mechanisms, UN treaty bodies, the Universal Periodic Review by the UN Human Rights Council, ILO standard supervisory mechanisms as well as the Voluntary National Review (VNR) mechanism under the HLPF of the SDGs.
- Encouraging the participation and contributions of CSOs to the Good Human Rights Stories initiative.
- Suggesting that visiting UN Special Rapporteurs, UN Resident Coordinators, ILO Supervisory Missions, EU Special Representatives and equivalent from international and regional human rights bodies meet local CSOs working on non-discrimination and/or representing discrimination affected persons and groups.

#### **4. Follow-up and review of the EU Human Rights Guidelines on Non-Discrimination**

The Council Working Party on Human Rights (COHOM) will support the implementation of the EU Human Rights Guidelines on Non-discrimination. COHOM will involve, when appropriate, other Council working groups, including the Council Working Group on Development Cooperation. Regular exchanges of views will be held on the implementation and review of these Guidelines.

## **ANNEX I: International Human Rights Instruments, International Labour Instruments (of the ILO) and Humanitarian law instruments particularly relevant for the elimination of discrimination**

The universality, indivisibility and interdependence and interrelatedness of human rights are mirrored in the human rights instruments, both binding and non-binding. Therefore all human rights instruments are relevant for the elimination of discrimination. The international instruments listed below are either the ones which clearly pronounce the prohibition of discrimination, enounce the prohibited grounds and/or address specific grounds for discrimination.

The Universal Declaration of Human Rights (UDHR, 10 December 1948)

Convention against Discrimination in Education (UNESCO1960)

Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 21 December, 1965)\*

International Covenant on Civil and Political Rights (ICCPR, 16 December, 1966)\*

International Covenant on Economic, Social, and Cultural Rights (ICESCR, 16 December, 1966) \*

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 18 December, 1979) \*

Convention on the Rights of the Child (CRC, 20 November, 1989) \*

Convention on the Rights of Persons with Disabilities (CRPD, 13 December, 2007)

Convention on the Right to Organise and Collective Bargaining (ILO C.98, July, 1949)

Convention on Migration for Employment (Revised) (ILO c. 97, July 1949)

Convention on Equal remuneration (ILO c.100, June, 1951) \*

Convention on Discrimination in Employment and Occupation (ILO C.111, June, 1958) \*,

Convention on Migrant Workers (Supplementary Provisions) (ILO c. 143, June, 1975)

Convention on Indigenous and Tribal Peoples (ILO c.169, June, 1989)

Convention on Workers with Family Responsibilities (ILO c. 156, June, 1981)

Convention on Vocational Rehabilitation and Employment of Disabled Persons (ILO, c. 159, June, 1983)

Convention on Domestic Workers (ILO c. 189, June, 2011)

Geneva Convention (I) on Wounded and Sick in Armed Forces in the Field, 1949

Geneva Convention (II) on Wounded, Sick and Shipwrecked of Armed Forces at Sea, 1949

Geneva Convention (III) on Prisoners of War, 1949

Geneva Convention (IV) on Civilians, 1949.

As well as the additional protocols of the above Geneva Conventions: Additional Protocol I relating to the Protection of victims of International Armed Conflict and Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflict.

### **Human Rights Declarations adopted by the UN General Assembly**

The Universal Declaration of Human Rights (UDHR, 10 December 1948)

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (UN, 1981)

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN, 1992)

Declaration on the Rights of Indigenous Peoples (UN, 2007)

UN Declaration on Sexual orientation and Gender identity (UN, 2008)

\* These UN/ILO conventions are defined as core human and labour rights under the GSP+ (see Annex VIII of the EU Regulation 978/2012 of the European Parliament and the Council on a generalised system of preferences). The Convention on the Rights of Persons with Disabilities is categorized by the Office of the High Commissioner for Human Rights as a core human rights convention.

## **ANNEX II: Where to learn more: websites of the EU, its institutions and agencies and international and regional organisations**

A wealth of knowledge regarding the international and regional human rights instruments as well as policies, guidance notes and operational tools in the field of non-discrimination are available on-line, including on the websites of civil society organisations. This chapter gives an overview of where and what to find on some websites of international and regional treaty organisations.

### **European Union**

The present EU guidelines on Non-discrimination make references to TEU and TFEU, including the Charter of Fundamental Rights of the European Union as well as a number of EU directives prohibiting discrimination. The European Commission as the guardian of EU treaties has a dedicated website on non-discrimination. EU human rights policies in external action can be found on the website of the European External Action Service.

#### **The European Commission:**

[https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/equality/non-discrimination\\_en](https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/equality/non-discrimination_en)

On Charter: [https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights\\_en](https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en)

[https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination_en)

**The European External Action Service (EEAS):** [https://eeas.europa.eu/topics/human-rights-democracy\\_en](https://eeas.europa.eu/topics/human-rights-democracy_en)

## **The European Union Fundamental Rights Agency (FRA) <http://fra.europa.eu>**

The website of the FRA provides for text of the Charter of Fundamental Rights and related tools. The website of FRA also provides information on and results of research and surveys conducted by FRA on specific topics, including surveys on the state of discrimination within the EU. Furthermore the **Handbook on European Non-discrimination Law** (2018 edition) on European non-discrimination case law is downloadable from the website.

## **United Nations – The Office of the High Commissioner for Human Rights**

### **[www.ohchr.org](http://www.ohchr.org)**

The website of the Office of the High Commissioner for Human Rights (OHCHR) maintains a repository of the UN Human Rights Instruments. Texts of all the UN Human Rights instruments, signatories and ratifications by States as well as the work of the related Treaty bodies can be found on the OHCHR website: [www.ohchr.org](http://www.ohchr.org). The documentation of the work of treaty bodies includes the national reports, the shadow reports of civil society, the compilation of country reports by the UN system as well as reports and outcomes of the Treaty bodies' dialogues with State parties and their general recommendations. In the same vein the Universal Periodic Review of the Human Rights Council has a dedicated webpage on which country specific information can be found. Furthermore, there is a specific link to a topical introduction to the issue of "Discrimination"<sup>57</sup> providing both the normative content and the work and tools of the OHCHR to advocate for and promote human rights.

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<sup>57</sup> <http://www.ohchr.org/EN/Issues/Discrimination/Pages/discrimination.aspx>

## **The United Nations educational, scientific and cultural organization**

**(UNESCO) [www.unesco.org](http://www.unesco.org)**

In its constitution the purpose of the UNESCO is to contribute to peace and security by promoting collaboration among nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations. Several of UNESCO's overarching objectives are supported by conventions. In regard to Non-discrimination, the Convention against Discrimination in Education prohibits any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education.

UNESCO has a procedure for the examination of complaints received concerning alleged human rights violations in its fields of competence, namely within education, science and culture.

## The International Labour Organisation (ILO) [www.ilo.org](http://www.ilo.org)

The ILO website ([www.ilo.org](http://www.ilo.org)) maintains a repository of the ILO Labour conventions and protocols, including a large number of conventions that directly or indirectly are dedicated to the prohibition of discrimination in work. These include the so called core or fundamental labour conventions and notably the ILO conventions on discrimination in Employment and Occupation (c.111), and Equal remuneration (c.100). It is also worth noting the ILO Convention on Migration for Employment (c. 97 Revised), the Convention on Migrant Workers (c. 143 Supplementary Provisions), the Convention on Workers with Family Responsibilities(c.156), the Convention on Disabled persons (c.159), the Convention on Indigenous and Tribal Peoples (c.169) and the Convention on Domestic Workers (c.189).. The ILO has a designated department for Conditions of Work and Equality, including a branch for gender, equality and diversity (GED). The GED expertise focuses on issues related to equal opportunities and treatment for all women and men in the world of work, and eliminating discrimination based on gender, race, ethnicity, indigenous identity and disability. The Branch provides policy advice, tools, guidance and technical assistance to constituents including with respect to promoting more inclusive workplaces, and ensuring that policies, programmes and institutions are gender-responsive.<sup>58</sup> The ILO also regularly publishes reports on current global trends on discrimination at work and on the compliance with international labour standards on non-discrimination and equality.<sup>59</sup>

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<sup>58</sup> For more information go to <http://www.ilo.org/global/topics/equality-and-discrimination/lang-en/index.htm>

<sup>59</sup> See e.g. the report on fundamental principles and rights at work to the 2017 International Labour Conference, available at [http://www.ilo.org/ilc/ILCSessions/106/reports/reports-to-the-conference/WCMS\\_549949/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/106/reports/reports-to-the-conference/WCMS_549949/lang--en/index.htm)

## Regional Instruments

### Council of Europe (CoE) [www.coe.int](http://www.coe.int)

The aim of the regional organisation is to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress". The CoE has adopted more than 200 treaties within its mandated areas whereof the European Convention on Human Rights<sup>60</sup> (1950) and its protocols enounce and make legally binding the rights covered in the Universal Declaration of Human Rights. The Convention also established the European Court of Human Rights as the highest European Human Rights Court. Article 14 of the European Convention on Human Rights prohibits discrimination: 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 national minority, property, birth or other status.

The CoE also disposes over monitoring bodies and expert committees associated with specific topics or conventions. In context of non-discrimination the following should be mentioned:

- The European Commission against Racism and Intolerance (ECRI) and its 16 General Policy Recommendations.
- the Convention on preventing and combating violence against women and domestic violence (Istanbul convention) and the Group of Experts on action against violence against women and domestic violence (GREVIO).
- The European Social Charter
- The European Charter for Regional or Minority Languages
- The Framework Convention for the Protection of National Minorities

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<sup>60</sup> Convention for the Protection of Human Rights and Fundamental Freedoms



## **Organisations for Security and Co-operation in Europe (OSCE) [www.osce.org](http://www.osce.org)**

The OSCE has a comprehensive approach to security that encompasses politico-military, economic and environmental, and human aspects. It therefore addresses a wide range of security-related concerns, including human rights, minority issues including for Roma and Sinti, tolerance and non-discrimination and gender equality. The **OSCE Office for Democratic Institutions and Human Rights (ODIHR)** provides support, assistance and expertise to participating States and civil society to promote democracy, rule of law, human rights and tolerance and non-discrimination. The Office conducts training programmes for government and law-enforcement officials and non-governmental organizations on how to uphold, promote and monitor human rights. All 57 participating States enjoy equal status, and decisions are taken by consensus on a politically, but not legally binding basis.

## **African Commission on Human and Peoples Rights (ACHPR) [www.achpr.org](http://www.achpr.org)**

The African Charter on Human and Peoples Rights adopted by the Organisation of African Unity (African Union) in 1981 has the principle of non-discrimination enshrined in its Article 2: Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

The charter also established the African Commission on Human and Peoples Rights. The mandate of the Commission is complemented by the African Court on Human and Peoples Rights that was established in 1998.

The Commission also have established special rapporteurs, working groups and committee pertaining to commonly discriminated groups such as

- Rights of Older Persons and People with Disabilities
- Rights of Women
- Protection of Rights of People living with HIV and Those at Risk, Vulnerable to and Affected by HIV.
- Refugees, Asylum Seekers, Migrants and Internally Displaced Persons
- Human Rights Defenders
- Indigenous Populations/Communities in Africa

### **The Inter-American Commission on Human Rights (IACHR) [www.oas.org/en/iachr/](http://www.oas.org/en/iachr/)**

The IACHR is a principal and autonomous organ of the Organization of American States (“OAS”) whose mission is to promote and protect human rights in the American hemisphere. It is composed of seven independent members who serve in a personal capacity. Created by the OAS in 1959, the Commission has its headquarters in Washington, D.C. Together with the Inter-American Court of Human Rights (“the Court” or “the I/A Court H.R.”), installed in 1979, the Commission is one of the institutions within the inter-American system for the protection of human rights (“IAHRS”).

The principle of Non-discrimination is enshrined in the American Convention on Human Rights: “The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition”.

The grounds for discrimination were further developed with the adoption, in 2013, of the Convention against all Form of Discrimination and Intolerance and the Convention against Racism, Racial Discrimination, and related Forms of Intolerance

While the latter covers race, colour, lineage, or national or ethnic origin, the first covers discrimination as based on nationality; age; sex; sexual orientation; gender identity and expression; language; religion; cultural identity; political opinions or opinions of any kind; social origin; socioeconomic status; educational level; migrant, refugee, repatriate, stateless or internally displaced status; disability; genetic trait; mental or physical health condition, including infectious-contagious condition and debilitating psychological condition; or any other condition.

The principle of non-discrimination is further enounced in other conventions and declarations for specific groups:

- The Convention for the Prevention, Punishment and Eradication of Violence against Women
- The Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities
- The Convention on Protecting the Human Rights of Older Persons
- The American Declaration on the Rights of Indigenous Peoples

### **Other regional instruments**

#### **League of Arab States (LAS) [www.lasportal.org](http://www.lasportal.org)<sup>61</sup>**

**The Arab Charter on Human Rights** adopted in 2004 in its article 3.1 prescribes: Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability.

It should be noted that the Arab Charter on human rights has been deemed, including by the former High Commissioner for Human Rights Ms. Louise Arbour, as not being fully compatible with international human rights standards in particular as regard the rights of the child and of women as well as in equalizing Zionism with racism.

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<sup>61</sup> Note that much of the content of this website is in Arabic only.

LAS has established the **Permanent Arab Committee on Human Rights**. The Committee, which does not have a monitoring nor a complaints mechanism, is responsible for

- Establishing rules of cooperation among member states in the field of human rights;
- Formulating an Arab position on human rights issues at the regional and international level;
- Drafting human rights treaties, to be referred to the Arab League Council of Ministers of Foreign Affairs for adoption;
- Studying Arab agreements pertaining to human rights in order to give an opinion on their compatibility with human rights principles and standards;
- Promoting the implementation of human rights treaties and recommendations;
- Providing recommendations on any issues related to human rights that are referred to the Permanent Committee by the Council or the Arab League General Secretariat or any of the member states;
- Promoting cooperation in the field of human rights education.

**ASEAN<sup>62</sup> [www.humanrightsinasean.info](http://www.humanrightsinasean.info)**

The ASEAN **Human Rights Declaration** adopted in 2012 in its General Principle No 2 states that “Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.”

The ASEAN Intergovernmental Commission on Human Rights (AICHR) is an ASEAN regional human rights institution established in 2009.

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<sup>62</sup> The Association of South East Asian Nations

The mandate of the AICHR is to:

- Develop strategies for the promotion and protection of human rights and fundamental freedoms
- Develop an ASEAN Human Rights Declaration
- Enhance public awareness of human rights through education, research, and dissemination of information
- Undertake capacity building for the effective implementation of ASEAN Member States' international human rights treaty obligations and ASEAN human rights instruments
- Encourage ASEAN Member States to ratify international human rights instruments
- Provide ASEAN with advisory services and technical assistance on human rights matters upon request
- Engage in dialogue and consultation with other ASEAN bodies and entities associated with ASEAN, including civil society organizations and other stakeholders
- Obtain information from ASEAN Member States on the promotion and protection of human rights
- Develop common approaches and positions on human rights matters of interest to ASEAN
- Prepare thematic human rights studies
- Perform any other tasks assigned by the ASEAN Foreign Ministers Meeting

In its mandate, the AICHR was not foreseen as a monitoring, or as a complaints mechanism. However in recent years, a practice has evolved allowing AICHR to receive communications and complaints. As discussions of complaints take place during closed meetings it cannot be confirmed if and what cases have been discussed by AICHR. AICHR has not yet taken any public action to respond to a human rights situation or complaint.

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