

PLANNING HUMAN RIGHTS ACTION – BEST PRACTICES

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Morten Kjaerum
Director of the European Union Agency for Fundamental Rights

Ladies and gentlemen

As you may know the European Union Agency for Fundamental Rights is based in Vienna. And it was here in 1993 that the World Conference on Human Rights adopted a Declaration and Programme of Action recommending each State to ‘consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights’.

Progress on this has been slow. Only around 30 States in the world have currently, or have had in the past, a national action plan on human rights. And to date only 4 of these are EU Member States. So Finland’s initiative is an inspiration to other Member States.

The 1993 Vienna Conference marked a shift in emphasis in human rights protection. For over thirty years efforts to promote human rights had revolved around getting States to agree to put them into legally binding treaties. From the 1990s greater attention has been paid to building up the necessary architecture at national level to actually implement these rights.

In 1990, only five internationally accredited national human rights institutions existed world-wide. Today, there are more than 100. In the EU only ten Member States have an NHRI with ‘A’ status – and Finland’s plans to establish a new Human Rights Centre will pave the way for it to join this group.

Having a National Action Plan and a National Human Rights Institution are therefore two important steps away from rights as abstract international standards and towards rights as concrete national practice.

A successful action plan depends on at least three factors, which I would like to explore today:

- Firstly, a strong human rights architecture
- Secondly, the ability to measure the success of policies
- Thirdly, tying international standards and monitoring mechanisms in with national action plan.

1. This leads me to the question of the national human rights architecture.

A successful national action plan requires a strong National Human Rights Institution as a key focal point. Its powers should include monitoring rights implementation, analysing the compatibility of legislation and policy with human rights, providing support to victims of violations and raising public awareness.

Last year the agency held a Symposium which addressed this very question of the national human rights architecture. Here we launched two reports which examined the mandates and practices of Data Protection Authorities and National Human Rights Institutions in the Member States. The agency's research found that in several Member States across the EU bodies were frequently not given sufficient resources to fulfil the tasks that I described. In particular these bodies are often forced to limit their support for victims and frequently lack the budget to engage in awareness-raising.

Awareness-raising is of special importance since victims are often unaware of their rights and unaware of complaints mechanisms or where they can turn for assistance. In a survey carried out by the agency in 2009 that interviewed members of ethnic minorities and immigrants 80% of interviewees could not name a single body that provided support to victims of discrimination, including NHRIs. And only 25% were aware of non-discrimination legislation. In order to implement as Action Plan the victims need to come forward since this is the way to identify the weakest in the system.

Civil society organisations also play important roles through the delivery of services, and in representing the views of their members in dialogue with the government, as well as providing support to victims of human rights violations. In this respect, while they are not part of the 'architecture' of the State, the State may nevertheless provide them with support for their activities. This does not need to be limited to financial support, and could include, for example, offering incentives for people who volunteer their time. For example, in the UK unemployed lawyers who worked providing free legal advice were provided with free practicing certificates.

Finally, the role of local authorities and public services should also be considered in the context of the national human rights architecture. International standards that are incorporated into national policy go on to be implemented at the local level. Ultimately human rights are delivered by public servants in front-line services. The nurse, the teacher, the police officer and the social worker are responsible for my right to health, education, physical safety or protection from abuse.

This requires an adequate level of coordination between different levels of government. For example, a strategy to promote adequate treatment of persons with mental health problems needs central government to develop policies together with local government in the area of health and housing planning. Equally a strategy to prevent homophobic bullying in schools requires national ministries to work together with local authorities and local schools.

At the same time these bodies may not understand the applicability or relevance of human rights standards to their day-to-day work. So in addition to coordination, adequate training on human rights also needs to be given, so that civil servants can understand what principles should apply to the way that their powers are implemented, and how they are instrumental to the implementation of a broader nation-wide plan.

In a time of cut-backs in public spending, attracting sufficient political support for human rights work is a challenge. In many Member States we see the budgets of human rights bodies being cut significantly. Without political will at a national and local level, and among the public, it is difficult to see how a national action plan can be a success.

In part, this is because human rights are misunderstood. They are often misrepresented in the media or by politicians as something that exist to create privilege instead of equality, and as something that is abused by criminals who play the system, rather than existing to protect the weak and the vulnerable.

This view point needs to be challenged if we are to ensure sustained political and public support for a national action plan and support for investment in a strong national human rights institution. People need to know that they are using their rights when their children go to school, when they go to see a doctor, when they get support to retrain after losing their job, every time they cast their vote in elections, or when they report a crime. And that task – which could be carried out in advance of the National Action Plan, or as part of it – lies partly with the government, with the National Human Rights Institution, and also with civil society organisations. It may be

in times of an economic crisis that we in particular need a very strong human rights awareness.

2. I will now turn to my second point. To measure the success of a national action plan, decision-makers will need to develop indicators. Indicators allow policy makers to understand where rights implementation stand at any given point in time, and to track whether particular policies are having a positive impact or whether they need re-thinking – so indicators are like head lights on a car: they help us to find the way.

Indicators are not uncommon in areas of economic policy and social policy – at least at the EU level, where they already exist in areas such as poverty and social exclusion, education, pensions and health care. But if we are measuring the impact of policies specifically on the level of human rights implementation, it is not enough to work with existing socio-economic indicators. Instead we need indicators specifically designed around human rights, because these add several dimensions:

a). Firstly, they add the ability to measure enforceability. To be made effective in practice every human right depends on an enforcement mechanism. So a human rights indicator on the right to health would track not just whether access to healthcare exists, but whether complaints mechanisms exist to enforce this right, for example emergency care for non-documented migrants.

b). Secondly, human rights indicators are based around the substance of the rights themselves. This would ensure that indicators are measuring progress towards already internationally agreed human rights standards. This in turn can feed into the international monitoring processes that I will refer to in my last point.

c). Thirdly, human rights indicators add the ability to measure equality, which lies at the heart of human rights. Human rights indicators would require data to be disaggregated on the basis of grounds like gender, age, ethnicity, disability, religion or sexual orientation. Although this occurs to a degree with some existing indicators, it is not done systematically across all grounds of discrimination.

Of course, using indicators in order to measure the degree of human rights implementation requires the collection of data. Put otherwise, indicators are the questions that need asking, in order to determine whether rights are being implemented. But these need backing up with adequate machinery to get the answers.

In some cases this can be relatively simple. For example, recording of complaints registered with the courts or the ombudsman on particular human rights issues will form part of the measurement of the extent to which rights are being implemented. However, at the other end of the scale data collection will also include large scale

quantitative surveys based on in-depth interviews with particular groups. The agency has built up significant experience with these kinds of surveys. Although they require substantial resources, they are often the most effective way available of measuring accurately how human rights are actually experienced on the ground. And without a clear picture of the nature and scale of the problems that are experienced in day-to-day life it is very difficult to formulate properly targeted policies.

One of the agency's tasks, according to its founding regulation, is to improve comparability in data collection between the Member States. The agency is therefore in the process of developing indicators to be applied in its own research, but also for use by the Member States and EU institutions.

In doing so we apply the same approach as the UN Office of the High Commissioner for Human Rights by breaking rights down into the tripartite classification of structure-process-outcome. It is our goal to ensure full consistency with UN standards, while at the same time adapting indicators to the specific social and economic context of the EU. Earlier this year the agency held a Symposium on the subject of human rights indicators, gathering a range of expertise from the international and national level, including statistical offices.

Our work in this area is most advanced in the field of the rights of the child where we published a report in 2010 on indicators relating to four areas:

- the family environment and alternative care,
- protection from exploitation and violence,
- education, citizenship and cultural activities,
- and adequate standard of living.

During 2011 the Agency has further developed these indicators in the area of child friendly-justice. One reason for this is to facilitate the implementation of the Council of Europe Guidelines on child-friendly justice adopted by the Committee of Ministers in November last year. Over 2012 and 2013 the agency will also be developing indicators across its other areas of work including the areas of access to justice and the rights of persons with disabilities.

The agency would be happy to cooperate with the Finnish government in the development and application of indicators. This can occur at an informal level where we share our in-house expertise and give input into your work and include you in our consultation and networking activities. But we could also respond to a formal request to undertake a specific project if this is made through one of the EU institutions.

3. So, thirdly, I will turn to linking international monitoring with the National Action Plan.

Primary responsibility for implementing human rights obligations lies at the national level. But responsibility for determining the meaning and content of States' obligations as well as monitoring their correct implementation by the State lies at the international level. With bodies like the Human Rights Council, the UN treaty bodies as well as European supervisory bodies.

Because of this there has to be a two-way street between the State and European and UN monitoring mechanisms. There has to be a flow of information upwards from the State to monitoring bodies, because their recommendations to States need to be based on national reports that represent the situation accurately and completely. There has to be a flow of information downwards, so that the recommendations of monitoring bodies are systematically followed-up by relevant organs at the national level.

The National Action Plan opens for an entirely new meaning and function of the monitoring mechanisms: They become an external auditor of the action plan.

So ideally the data collection according to the indicators will shape the backbone of the report to the monitoring mechanisms and then the feedback from the monitoring mechanism will help to adjust the next updating of the National Action Plan.

I am fully aware that this is not done in year one or two, but takes time – here the network of human rights contact points will of course play a key role both in terms of ensuring the information flow from their specific areas to the monitoring mechanisms and the recommendations back to the reality in their area.

In this way we create a much stronger and more meaningful human rights architecture.

At the national level, the task of following-up on the recommendations of UN monitoring bodies or of preparing State reports often rests with just one ministry, even though policies with a potential impact on human rights are, of course, spread over all government departments. If ministries at the national level are not directly involved in the reporting process, it can be seen by them as a question of external relations which does not affect them directly.

And that can make follow-up by relevant ministries less thorough. It can also mean that the department responsible for producing reports is not able to collect all the relevant information for the purpose of reporting to the monitoring bodies. The proposed creation of a permanent network of Ministries' human rights contact points

could help to ensure that there is systematic distribution of feedback to the relevant government departments.

At the same time there may be additional benefits that can increase the effectiveness of follow-up. I will give four examples. The first two relate to creating ownership. Firstly, consideration could be given to ensuring that the process of preparing national reports becomes a decentralised task that is divided between different government departments. This would mean that each ministry becomes conscious of how the State's international obligations apply to their specific policy area.

Secondly, consideration could be given to ensuring that several government departments take part in the oral dialogue that takes place as part of the reporting process. This would make a more in-depth and better informed exchange between monitoring bodies and the State more likely. And this first hand participation, rather than second hand feedback, would also bring the entire monitoring process closer to different ministries, which could itself improve follow-up and ownership of the report-writing process. There is also a role to be played by National Human Rights Institutions in this respect since they are able to put forward an alternative picture of human rights implementation that can complement that of the State.

My third example relates to follow-up as between different layers of government. It is likely that the recommendations of international monitoring bodies carry implications for bodies other than central government departments, in particular local authorities, service providers and law enforcement agencies. The 2008 Universal Periodic Review of Finland produced a series of recommendations, including that Finland take effective measures to prevent domestic violence.

Although this may require measures at the central government level, such as legal reform, it may also require special training in law enforcement bodies, as well as measures of victim support provided by local social services and civil society organisations. So introducing mechanisms that allow for horizontal follow-up between different government departments could be made more effective if they are accompanied by vertical follow-up between different levels of government. I will return to the need to ensure a joined-up approach between different levels of government in a moment.

Fourthly, National Human Rights Institutions can also play a part in following-up whether the recommendations of international bodies are implemented in practice, as part of their monitoring role.

Ladies and gentlemen, in conclusion, I would like to underline the importance of the steps being taken by Finland to establish a coordinated approach to human rights implementation, including the creation of a National Human Rights Institution, which is a cornerstone of a State's human rights architecture. Taking human rights from mere words in international agreements and infusing them into the machinery of the State will require participation and cooperation among a range of bodies.

It will rely on the integration of rights into policy-making at the horizontal level, across central government departments, which should enjoy proper channels of communication with international monitoring mechanisms. But it also requires integration of rights at the vertical level to include all those bodies responsible for the delivery of rights in day-to-day life, and in particular local authorities.

At the same time, we need to think beyond the State apparatus and put in place adequate support for civil society because of their importance in delivering services and representing the views of their members, who are often among the most vulnerable in society.

Anna-Maja, you can count on our support.

I would like to thank you for your attention and look forward to receiving any questions.