

The Equal Rights Trust Advocacy

In the period since the publication of ERR Volume 5 (August 2010), ERT has been continuing with its work to expose patterns of discrimination globally and to combat inequality and discrimination both at the national and international level. Below is a brief summary of some of the most important ERT advocacy actions.

ERT Launches *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons*

On 19 July 2010, ERT launched its report *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons*.¹ The report, which is the result of two years of research, reflection and debate, is ERT's contribution to a growing body of expertise on statelessness. Stateless persons are those who have no nationality, or whose nationality is ineffective. The report approaches the subject through the prism of detention - a crucial issue which offers unique insight into the broader challenge of statelessness.

The report finds that inequality and discrimination lie at the heart of the statelessness problem, as does the eternal tug-of-war between universal human rights and national sovereignty. It also finds that many persons who are held in long term immigration detention "awaiting removal" are in reality stateless, and therefore cannot be removed.

The report argues that statelessness should primarily be seen as a human rights issue, that the UNHCR and human rights treaty bodies should work in partnership to address the challenge, that all countries should

implement statelessness determination procedures and that authoritative guidelines should be developed to regulate the detention of stateless persons.

ERT Challenges French Authorities over Illegal Deportation of Roma Immigrants

On 9 September 2010, ERT called on the government of France to adhere to a European Parliament Resolution and immediately halt a process of "voluntary deportation" of Roma immigrants residing in the country. ERT - also concerned by the news that the Italian authorities too had resumed dismantling Roma camps - called on the European Commission to adopt a Roma strategy which would ensure equal rights for the Roma in a manner which respects them as European citizens.

On 19 August 2010, the French authorities commenced a wave of deportations and within two weeks, approximately 1000 Roma had been deported and 128 Roma camps dismantled. ERT's statement condemned this discriminatory action by the French authorities which is in clear contravention of France's obligations under international and European law.

The statement highlighted a number of ways in which France's actions breached its obligations under International law.

- **Racial Discrimination** - The statement cited Article 18 of the Treaty on the Functioning of the European Union which enshrines the right to non-discrimination on grounds of nationality and Directive 2004/38/EC (Freedom of Movement

Directive)² which protects the freedom of movement and the right of migrant European Union citizens to reside in other EU member states. ERT argued that a law or policy which singles out one ethnic group within a European nationality for less favourable treatment – in this case, citizens of Romania and Bulgaria of Romani ethnic origin residing in France – is strongly prohibited and constitutes a clear case of race discrimination in violation of Articles 2(1) and 26 of the International Covenant on Civil and Political Rights, Article 2(1) of the International Convention on the Elimination of all forms of Racial Discrimination, Article 19 of the Treaty on the Functioning of the European Union and Directive 2000/43/EC4 (Race Equality Directive)³.

- **Collective Expulsion** – ERT argued that the actions of the French authorities violated the legal prohibition on collective expulsion under Article 4 of Protocol 4 to the European Convention on Human Rights. This provision has been interpreted by the European Court of Human Rights as “any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group” (*Conka v. Belgium*, Application no. 51564/99, Para 59). Consequently, collective expulsions are prohibited under European law, including in cases where such measures are targeted solely against those who have overstayed the three month residency period allowed under the Freedom of Movement Directive and have failed to register with local authorities.

- **Alleged “Voluntary” Nature of Deportations** - ERT also questioned the “voluntary” nature of the deportations. ERT argued that a cash incentive of 300 Euro for each adult and 100 Euro for each child deported

“voluntarily” did not mask instances of rough policing, destruction of Roma homes and the confiscation of identity papers by those managing the deportation process and that such treatment cast severe doubt upon the “voluntary” nature of the deportations.

ERT’s statement expressed concern that the French deportations were merely one extreme manifestation of a wider xenophobic and discriminatory trend in French policy. The deportations followed a proposal made by President Nicolas Sarkozy on 30 July 2010 to strip “French citizens of foreign origin” of their nationality as punishment for violent crimes committed against law enforcement officers.⁴ If passed into law, this proposal would violate Article 1 of the French Constitution as well as France’s obligations under European and international law, and may also contravene France’s treaty obligation to prevent statelessness.

ERT Urges India to Reform Visa Policy which Discriminates on Grounds of Race

On 14 September 2010, ERT wrote to the Prime Minister of India and the Indian External Affairs Minister to urge a change to the country’s visa and immigration policy, which discriminates against UK citizens of Pakistani origin. ERT’s letter referred to guidance on application processing time provided on the Indian High Commission’s visa application website for the United Kingdom. The guidance indicated that processing time for UK citizens of Pakistani origin was a minimum of 7-8 weeks, compared to a suggested minimum processing time of 5-7 days for all other UK citizens. This policy has affected a number of UK nationals, including students.

ERT research indicates that in addition to discriminating against UK citizens of Pakistani ethnic origin, the practice of imposing

different processing times on former nationals of Pakistan and a number of other countries is evident in Indian Embassies and High Commissions elsewhere. In particular, in Australia “former nationals” of Pakistan as well as Afghanistan, China, North Korea, Iran or Sri Lanka are subjected to longer waiting times while their application is processed.

ERT argued that these practices constitute racial discrimination against the affected group. The letter cited India’s obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and the Covenants on Civil and Political and Economic, Social and Cultural Rights and draws attention to the recommendations of the Committee on the Elimination of Racial Discrimination in its General Comment 30 related to non-citizens, as well as to relevant case law.

Leading Experts Discuss ERT's Report *Unravelling Anomaly*

On 29 September 2010, ERT and the International Commission of Jurists co-hosted a side-event to the 15th Session of the UN Human Rights Council on Statelessness, Discrimination and Human Rights, which was informed by the findings of *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons*. Speakers included Volker Türk, Director of International Protection at the UNHCR; Jan Borgen, Deputy Secretary General of the International Commission of Jurists, and Tamas Molnar, Legal Advisor at the Ministry of the Interior of Hungary, who played a key role in developing that country’s statelessness determination procedure.

Amal de Chickera, Head of Statelessness and Nationality Projects for ERT, spoke of the four fundamental challenges – legal, po-

litical, institutional and equality – which face the human rights community in addressing the statelessness problem. He said that the legal challenge arises from the difficulties in promoting a right to a nationality for all people, while also ensuring that lack of effective nationality does not result in other human rights abuses. This reflects the tension between balancing interests of national sovereignty with the universality of human rights. At the national level, De Chickera said, the difficulties for stateless people in coming together and identifying visible spokespersons to raise their plight presented a major challenge in raising awareness of the discrimination and ill-treatment they face. At an institutional level, challenges arise because though statelessness falls within the mandate of many international human rights and humanitarian bodies, to date many of these institutions have failed to see the impact of statelessness on their particular area of focus. Turning to equality, De Chickera said that stateless people face inequalities and discrimination both within their countries of residence and as migrants, and that further, within the stateless community the *de facto* stateless (those with ineffective nationality) do not receive the same level of protection as *de jure* stateless persons, creating a further layer of inequality.

ERT Contributes to OSCE Review Conference on Tolerance and Non-discrimination

On 8 October 2010, Dr Dimitrina Petrova, Executive Director of ERT delivered the introductory speech at the session on Intolerance against Migrants at the Organisation of Security and Cooperation in Europe (OSCE) Review Conference in Warsaw. ERT also submitted two written statements to the Review Conference: on tolerance and non-discrimination and on problems pertaining to statelessness.

Intolerance against Migrants: Dr Petrova presented an overview of issues of hate crime against migrants and intolerant anti-immigration discourses in the OSCE area from the perspective of equality and human rights. She further set out the various ways in which migrant rights have been restricted recently at all stages of the migration cycle, including in access to the destination country, admission processes, integration into the host society, and removal procedures. Dr Petrova also highlighted the situation of a number of migrant groups which are particularly vulnerable to discrimination, including Roma, stateless persons, children, and persons with mental health problems. Finally, she made recommendations to OSCE Participating states related to combating discrimination and intolerance against migrants.

Tolerance and Non-discrimination Legislation: ERT's written submission called on participating states to address issues of intolerance and discrimination by ensuring the full implementation of the right to equality in domestic legislation and ensuring that all essential elements of equality law are enshrined in national law. The submission focused on some of the basic elements of national equality law, relying on the principles contained in international human rights law, the authoritative interpretations of UN treaty bodies and the Declaration of Principles on Equality.⁵

Problems Pertaining to Statelessness: ERT's submission sought to highlight five particular problems of statelessness and urged OSCE Participating states to come together to find a common and sustainable solution to statelessness. The statement discussed: (i) present inequalities between the treatment of *de jure* and *de facto* stateless persons; (ii) the failure of the majority of the OSCE participating states to implement statelessness

determination procedures; (iii) the failure of immigration detention regimes to recognise and respond to the specific challenge posed by statelessness, and to ensure that immigration detention practices and policies do not discriminate against stateless persons; (iv) the failure of security detention regimes to recognise the impact that security detention may have in creating and exacerbating statelessness; and (v) specific challenges which emerge from protracted cases of statelessness, focusing on the Latvian case.

ERT Submits Shadow Report to the Universal Periodic Review for Sierra Leone

On 1 November 2010, ERT submitted a shadow report to the Universal Periodic Review of Sierra Leone. In the submission, ERT highlighted some of the most significant challenges and problems facing the government of Sierra Leone in fulfilling its obligations to promote equality and combat discrimination.

The submission recommended that the government: (i) undertake a comprehensive review of domestic legislation to identify discriminatory laws and take immediate steps to amend or repeal such laws to ensure compliance with its international obligations; and (ii) take steps to develop and adopt comprehensive anti-discrimination legislation and policies providing protection from discrimination on all relevant grounds, in all areas of life governed by law, and making provision for the establishment of a national institution to ensure effective implementation and enforcement of the law.

ERT Recognises Human Rights Defenders Who Are Fighting Discrimination

On 10 December 2010, International Human Rights Day, ERT recognised human rights

defenders who act to end discrimination by highlighting the work of three remarkable individuals with whom it works, who fight against discrimination despite the constant threat to their security.

Asha el Karib is the Executive Director of the Sudanese Organisation for Research and Development (SORD), an organisation established in 2007 by a group of Sudanese activists to build the capacity of Sudanese civil society organisations (CSOs). In recent years, repeated crackdowns on human rights defenders have had a crippling effect on the ability of civil society to organise themselves and to monitor human rights violations in Sudan. In 2009, in the immediate aftermath of a decision by the Prosecutor of The International Criminal Court (ICC) to issue an international arrest warrant against Sudanese President Omar Al Bashir, three national human rights organisations were closed down. Despite the difficulties facing civil society organisations in the country, SORD continues to operate in Sudan, challenging the government through advocacy for reform of discriminatory family laws and leading an awareness campaign on voter registration in advance of the referendum on independence for South Sudan in 2011.

David Kuria, the Chairman of the Gay and Lesbian Coalition of Kenya (GALCK), is a human rights activist fighting against the discrimination and ill-treatment of lesbian, gay, bisexual, transsexual and intersex persons. GALCK – established in 2006 as an umbrella body for organisations working to protect and promote the rights of LGBTI persons – provides capacity-building functions and coordinates awareness raising and advocacy activities. As the most prominent voice of the LGBTI community in Kenya – where male homosexual conduct is illegal and widespread discrimination against sexual minorities is

the norm – David Kuria and GALCK’s other staff face a range of personal difficulties and remain at risk of their organisation being closed down or their activities restricted by the government.

Wan Yan Hai - Wan Yan Hai is the founder and former director of the Beijing Aizhixing Institute, the first organisation working on issues of AIDS and HIV in China, which was founded in 1994. In the last few years, Aizhixing has regularly experienced government interference, including “investigations” by the local Taxation Bureau and the interruption of foreign donations when its bank refused to receive them on their behalf. In recent years, Wan has routinely faced denials of his rights and freedoms, censorship in the press, interruption during speeches, arbitrary detention and constant police monitoring outside his family home. Under increasing pressure from the Chinese authorities, Wan left China in April 2010.

ERT Submits Parallel Report on Belarus to the 48th Session of the Committee on the Elimination of Discrimination against Women (CEDAW)

On 4 January 2010, ERT submitted a parallel report on Belarus to the 48th session of CEDAW. The report assessed the adequacy and effectiveness of legal provisions designed to protect women in Belarus from discrimination in light of Belarus’ obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (the Convention). ERT expressed concern about the inadequacy of the Belarus government’s legislative response to discrimination faced by women in a number of situations.

ERT submitted that anti-discrimination legislation in Belarus is inadequate in addressing the discrimination and disadvantages

faced by women. Despite significant positive developments in the law, legislative protections are still weak and inconsistent. In some fields the discriminatory application of laws is not effectively prohibited. There is no specific anti-discrimination law providing legal definitions of key concepts, general standards of protection or effective remedies and sanctions.

In its submission, ERT urged CEDAW to recommend that Belarus adopts comprehensive anti-discrimination legislation which prohibits, *inter alia*, all forms of gender-based discrimination and which: a) includes a comprehensive legal definition of discrimination; b) covers direct and indirect discrimination, multiple discrimination, discrimination by association or perception, segregation and harassment; c) creates protection against victimisation; and d) provides a basis for applying temporary special measures.

In addition, ERT also urged CEDAW to: (i) Recommend that the Belarus Government takes steps, including through well-resourced judicial training, to capacitate and improve understanding by the judiciary and other stakeholders of the concept of discrimination and the legal remedies that should be available to victims of discrimination; (ii) Recommend that the Belarus Government implements policy and resource mechanisms to ensure the equal engagement of women in all areas of political and public life, and adopts measures to ensure the equal participation of women at the highest levels of government; (iii) Recommend policy responses designed to reduce the gender pay gap and to enforce the principle of equal remuneration for work of equal value; (iv) Recommend that Belarus ratify the International Labour Organisation Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibili-

ties (ILO Convention 156); (v) Recommend that the Belarus Government adopts measures to overcome the differences in pension entitlement between men and women; and to (vi) Recommend that the Belarus Government takes immediate legislative action to protect women from domestic, sexual and gender-based violence.

ERT Submits Parallel Report on Kenya to the 48th Session of the Committee on the Elimination of Discrimination against Women (CEDAW)

On 4 January 2010, ERT submitted a parallel report on Kenya to the 48th session of CEDAW. The report assessed the adequacy and effectiveness of legal provisions designed to protect women in Kenya from discrimination in the light of Kenya's obligations under the Convention. In so doing, it commented directly on the report of the Kenya Government to CEDAW and also used ERT's own research and evidence to raise issues of concern which were not addressed in the government's report.

ERT submitted that despite significant positive developments in the law – particularly as a result of the adoption of a new Constitution – anti-discrimination law in Kenya is inadequate in providing redress to women experiencing discrimination. In some fields, discriminatory laws remain in place, while the discriminatory application of other laws is not effectively prohibited. In a number of significant areas, including healthcare, education and criminal law, legislation does not prohibit discrimination or place a duty on public sector bodies to promote greater equality. There is no specific anti-discrimination law providing definitions of key concepts, general standards of protection or effective remedies and sanctions.

ERT urged CEDAW to recommend that Kenya adopts comprehensive anti-discrimination legislation which: a) covers direct and indirect discrimination, multiple discrimination, discrimination by association or perception, segregation, and harassment, and also outlaws victimisation; b) includes sexual orientation, gender identity and genetic inheritance as specified grounds of discrimination in addition to those specified in the Constitution and incorporates a test for the admission of new grounds in cases judged to be analogous to those listed; and c) provides protection from discrimination in all areas of life including education. In addition, ERT also substantiated nine further recommendations to CEDAW, including: (i) Recommend that the Kenya Government extends its much wel-

comed National Legal Aid Programme pilot scheme to cover anti-discrimination law and also extends the Programme's geographical scope; (ii) Recommend that the Kenya Government brings forward legislation which establishes the mandate, functions and powers of the Kenya National Human Rights and Equality Commission (KNHREC) and sets out the principles and content of comprehensive anti-discrimination law; (iii) Recommend the amendment of the Kenyan Employment Act to remove section 3(5) which excludes the country's Export Processing Zones from the scope of the Act, along with the adoption of comprehensive anti-discrimination law extending protection from discrimination in employment to cover those working in the Export Processing Zones.

¹ The Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and the Protection of Stateless Persons*, July 2010, available at: <http://www.equalrightstrust.org/view-subdocument/index.htm?id=748>.

² European Parliament and Council Directive 2004/38/EC of 29 April 2004.

³ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

⁴ "Sarkozy crackdown on foreign-born criminals", *BBC News*, 30 July 2010, available at: <http://www.bbc.co.uk/news/world-europe-10820457>.

⁵ The Equal Rights Trust, *Declaration of Principles on Equality*, October 2008, available at: <http://www.equalrightstrust.org/endorse/index.htm>.