

The Equal Rights Trust Advocacy

In the period since the publication of ERR Volume 6 (March 2011), ERT has continued with its work to expose patterns of discrimination globally and to combat inequality and discrimination both nationally and internationally. A major component of ERT's advocacy work involved using the Declaration of Principles on Equality to advocate for the improvement, amendment or introduction of equality laws and policies. Below is a brief summary of some of the most important ERT advocacy actions.

Submission to the UPR on Thailand

On 14 March 2011, ERT made a stakeholder submission on Thailand to the twelfth session of the UN Office of the High Commissioner for Human Rights Working Group on the Universal Periodic Review (UPR). The submission focussed on the treatment of Rohingya “boat people” by the Thai authorities since 2008, and urged Thailand to remedy existing human rights violations against the Rohingya and review its policy with regard to the Rohingya in order to uphold its human rights obligations.

The Rohingya are an ethnic, religious and linguistic minority who live in the North Arakan state of Burma. They were rendered stateless through the 1982 Citizenship Law of Burma, and their human rights and freedoms have been systematically eroded through a series of draconian policies, arbitrary taxes and controls. Due to this acute discrimination and persecution, many Rohingya flee Burma, mainly by boat. These Rohingya “boat people” travel across the sea via Thailand to Malaysia.

In the past, Thailand has dealt with Rohingya boat people intercepted at sea or apprehended on land through immigration detention

and informal deportation back to Burma, in violation of the customary international law principle of *non-refoulement*. In 2008-2009, this policy changed to one of detention on the island of Koh Sain Daeng followed by “push-backs” into the high seas. Under this inhumane and illegal policy, Thailand cast over 1,100 “boat people” adrift in the sea, on boats with no engines and little food or water. Over 300 Rohingya died, and the rest were rescued by Indian and Indonesian authorities. Due to growing international condemnation, Thailand terminated this policy in January 2009. However, recent statements by Thai authorities regarding the deportation of Rohingya to Burma and the rescue of 91 Rohingya “boat people” – who claim they were “pushed-back” by Thai authorities – on the Andaman and Nicobar islands in February 2011, raise serious concerns that the policy has been reintroduced. Of equal concern is the plight of 54 “boat people” who have been in immigration detention in Bangkok since January 2009, and fear they will be informally deported to Burma.

ERT's submitted that Thailand's policy towards, and treatment of, Rohingya “boat people” raises serious human rights concerns.

ERT stated that Thailand's actions amounted to violations of the right to life, the rights to equality and non-discrimination, the right to freedom from torture, cruel, inhuman or degrading treatment or punishment, the right to liberty and freedom from arbitrary arrest and detention, and the right to seek and enjoy asylum. Consequently, ERT asked the Human Rights Council to urge the government of Thailand to review its past actions in light of its human rights obligations by the Rohingya, to rectify past violations, to bring to justice offenders and to ensure that future practice is in keeping with its human rights obligations. It also urged the government of Thailand to:

1. Review its existing immigration policy and establish and implement a new policy which: (i) is consistent with Thailand's international human rights obligations; (ii) does not discriminate against the Rohingya or any other stateless person, irregular migrant or asylum seeker; and (iii) ensures that everyone is provided with effective access to lawful immigration procedures conducted by civilian authorities;
2. Stop all deportations (both informal and formal) of Rohingya to Burma, and respect the customary international law principle of *non-refoulement* in this regard;
3. Immediately cease push-backs into high sea and take steps to ensure that this practice is not repeated;
4. Immediately release the 54 "boat people" still in detention in Bangkok;
5. Review its existing policy of detaining Rohingya "boat people" upon arrest, and because of their failure to pay fines;
6. Ratify the 1951 Refugee Convention and its Protocol, and in the interim, establish a

transparent system to process asylum applications and carry out status determination in cooperation with the UNHCR;

7. Ratify the 1954 Convention relating to the Status of Stateless Persons; and
8. Take steps to adopt comprehensive anti-discrimination legislation and policies which ensure equal rights to stateless persons under Thai jurisdiction or within Thai territory.

Submission to the UPR on Moldova

On 21 March 2011, ERT made a stakeholder submission on the Republic of Moldova to the twelfth session of the UN Office of the High Commissioner for Human Rights Working Group on the Universal Periodic Review. The submission focussed on the issue of gender discrimination and gender-based ill-treatment in Moldova, and urged that Moldova adopt comprehensive anti-discrimination legislation and take concrete steps to ensure gender equality.

On the basis of evidence of the prevalence of gender-based discriminatory ill-treatment in Moldova and limitations in existing legal protections, ERT recommended that the Human Rights Council urge the Government of Moldova to:

1. Take steps to adopt comprehensive anti-discrimination legislation and policies. A draft anti-discrimination law is currently before Parliament and the Government should be encouraged to prioritise its finalisation and enactment.
2. Take steps to amend Law No. 5-XVI on ensuring equal opportunities for women and men in order to guarantee that women have an adequate means of legal redress for the harm they suffer as a result of widespread

discrimination, and more specifically, discriminatory ill-treatment.

3. Take steps to develop and support an information campaign on gender equality and the roles of men and women in Moldovan society, with the aim of overcoming the stereotypes and prejudices that contribute to gender discrimination.

4. Create an independent equality body which would have strong powers, including the provision of assistance to victims of discrimination, research and recommendations on improving legislation, and public education on equality, including gender equality.

5. Take steps to ensure more effective enforcement of the existing legislation intended to protect women from domestic violence. Such steps should include: (i) training of the judiciary and law enforcement officials to recognise the specific factors and challenges involved in both prosecuting in cases of domestic violence and ensuring that Protection Orders are adequately enforced; (ii) allocation of funding to provide adequate shelters for victims of domestic violence to ensure that they are not required to remain in shared accommodation with their aggressor; and (iii) training of social workers to provide immediate assistance to victims of domestic violence.

Urging the Governor of Lagos State to Bring into Force the Lagos State Special Peoples Bill 2010

On 28 March 2011, ERT wrote to the Governor of Lagos State, Nigeria, urging him to bring into force the Lagos State Special Peoples Bill 2010. ERT's letter highlighted that the Special Peoples Bill implements Nigeria's international and national legal obligations, including those under UN Convention on the

Rights of Persons with Disabilities (CRPD) and the Constitution of the Federal Republic of Nigeria 1999. The letter discussed key provisions of the Special Peoples Bill, including:

1. The establishment of an Office for Disability Affairs: the Office is granted a broad range of functions and responsibilities and its establishment will meet the obligations of Lagos State under Article 33 of the CRPD.

2. The Prohibition on Discrimination: Section 21 sets out a broad prohibition of discrimination. The prohibition of discrimination in all aspects of life is vital in order to ensure the equality of persons with disability. The definition incorporates Nigeria's obligations under Article 5 of the CRPD, as well as its obligations under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights.

3. The Prohibition on Cruelty and Inhuman Treatment: Section 22 prohibits cruelty and inhuman treatment, mirroring Nigeria's obligations under Article 15 of the CRPD, Article 7 of the ICCPR and Section 34(1)(a) of the Nigerian Constitution.

Following ERT's submission, and the delivery by Legal Defence and Assistance Project (ERT's partner organisation in Lagos) of a petition signed by one million Lagosians to Mr Fashola on 14 May 2011, Mr Fashola signed and brought into force the Lagos State Special Peoples Bill 2010 on 24 June 2011.

Submission to Parliamentary Commissions of Moldova on the Draft Law on Preventing and Combating Discrimination

On 29 March 2001, ERT submitted written comments to the Parliamentary Commission on Human Rights and National Minorities

ties and the Parliamentary Commission on Legal Affairs and Immunity of the Republic of Moldova on the Draft Law on Preventing and Combating Discrimination. The Draft Law aims to ensure the enjoyment of all persons' in the territory of Moldova to equal rights and equal treatment in political, economic, social and other spheres of life. ERT's submission noted that by adopting a comprehensive anti-discrimination law Moldova was taking a pivotal step towards ensuring the fundamental human rights of all those within its territory. It noted that while some provisions were encouraging, there was a need to improve a number of provisions. ERT applied the standards contained in the Declaration of Principles on Equality to provide an analysis of the Draft Law highlighting several problematic areas, including in relation to the list of protected characteristics, the definitions of prohibited behaviours and the institutional framework established by the Draft Law in order to ensure its enforcement.

ERT was disappointed to learn that as a result of pressure from Orthodox religious organisations in Moldova, the Draft Law was withdrawn from the Parliamentary process and returned to the Ministry of Justice for further consideration. ERT will continue to monitor developments in relation to the Draft Law and take further action when necessary.

Letter to Nigerian President on Disability Bill

On 25 May 2011, ERT wrote to the President of Nigeria, Mr Goodluck Jonathan, to urge him to assent to the Nigerian Disability Bill prior to end of his current term as President, so as to avoid the unnecessary process of this bill being considered for a second time by the National Assembly of the Federal Republic of

Nigeria. ERT noted that the Nigeria Disability Bill is a positive development in the protection of the rights of persons with disabilities – a most vulnerable sector of Nigerian society – who face ongoing discrimination and stigmatisation. The Bill would align Nigeria with other African nations, such as South Africa and Ghana, which have already enacted similar legislation to protect persons with disabilities, and send a strong message in relation to this important and often ignored area of human rights protection.

ERT's letter highlighted that the Disability Bill implements Nigeria's international and national legal obligations, including those under the UN Convention on the Rights of Persons with Disabilities (CRPD), The African Charter of Human and Peoples' Rights, and the Constitution of the Federal Republic of Nigeria 1999. ERT went on to discuss key provisions of the Nigeria Disability Bill, including: (i) the definition of disability which reflects the drafting in Article 1 of the CRPD; (ii) the establishment of a National Commission for Persons with Disability; (iii) the prohibition of discrimination; and (iv) the prohibition of harmful practices and "exploitation, violence and abuse".

As far as ERT is aware, Mr Jonathan has yet to take any further action in relation to the Nigeria Disability Bill, but it is hoped that the passage of the Lagos State Special Peoples Bill may further encourage him to do so.

Urging Moldova not to Deregister Recognised Islamic Group

On 3 June 2011 ERT wrote to the Prime Minister of Moldova to express its concern about reports that the Islamic League, the first legally recognised Muslim organisation in Moldova, may be deregistered. ERT's letter re-

ferred to the difficulties faced by members of some religious minorities in registering their organisations and the application of administrative sanctions to individual members of unregistered religious groups.

ERT welcomed the registration of the Islamic League, in March 2011, as a significant positive step in protecting the equal rights of League members to religious freedom and to freedom from discrimination. Since their registration, Muslims have been able to practice their religion more freely and openly, having previously been forced to meet in private.

ERT expressed concern at reports that the Prime Minister has pledged to review the League's registration. Its letter urges the Prime Minister to ensure that any review of the registration of the Islamic League fully respects Moldova's obligations under international human rights law, in particular, the right of members of religious minorities to equality, contained in the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

As far as ERT is aware, the Prime Minister has not taken any action with regard to de-registering the Islamic League since the date of its submission.

Approving Report on Declaration of Principles on Equality at Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe

On 6 June 2011, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe approved a report entitled "The Declaration of Principles on Equality and the Activities of the Council of Europe" at its meeting in Oslo.

The report, submitted by the Rapporteur, Mr Boriss Cileviès, was approved by a majority vote, following a heated debate and objections by some members. The report contains an analysis of the current implementation of the principles of equality and non-discrimination in the member states of the Council of Europe, and discusses the central role of equality and non-discrimination in the protection of human rights as enshrined in international law. It also expresses concern at the low level of ratification of Protocol 12 to the European Convention on Human Rights, which extends the scope of the prohibition of discrimination to any right set forth by law. The report presents the Declaration of Principles on Equality and recommends that it be endorsed by the Committee of Ministers, as guidance for the development of new national equality legislation, as well as the implementation of existing equality provisions in Member States.

The preparation of the report was based on a hearing on "The Declaration of Principles on Equality and the Activities of the Council of Europe" held in Paris on 8 March 2011, at which ERT provided testimony. At the hearing, ERT Executive Director Dimitrina Petrova presented the Declaration of Principles on Equality to the Committee, focusing on its relationship to existing legal approaches to equality in the Council of Europe and the European Union frameworks, as well as explaining how the Principles could be of use in strengthening the rights to equality and non-discrimination in the member states. The Committee also heard opinions on equality standards from two other experts, Frédéric Edel, Doctor of Law at Ecole nationale d'administration (France) and Michal Gondek, representing the European Commission (DG Justice). The panel presentations were followed by a discussion in which

Committee members posed questions, made comments and engaged the experts in an exchange of views.

Now that the report has been adopted by the Committee it may progress to a plenary of the Parliamentary Assembly which may decide to consider further action as a follow-up to the report.

Parallel Report on Nepal to the Committee on the Elimination of Discrimination against Women (CEDAW)

On Monday 27 June, ERT submitted a parallel report to the 4th and 5th periodic report of the Federal Democratic Republic of Nepal (Nepal) to CEDAW, calling on Nepal to strengthen its constitutional and legislative protection of the rights to equality and non-discrimination in order to meet its treaty obligations. Nepal is currently undergoing a transition – including through a process of constitutional reform – following the cessation of hostilities in the country’s civil conflict. In its parallel report, ERT argued that the reform process provides an ideal opportunity to ensure that equality is central to the new Constitution and Nepal’s efforts to secure a sustainable peace. The report went on to stress that fulfilment of Nepal’s obligations under Article 2 of CEDAW requires not only clear constitutional equality provisions, but also the adoption of comprehensive equality legislation providing women with effective protection from discrimination perpetrated by others.

Relying both on the interpretation of Article 2 of CEDAW in its General Recommendation 28 and on the guidance provided by the Declaration of Principles on Equality, ERT argued that in order to fulfil its obligations under Article 2, Nepal should:

1. Ensure that any new constitution contains provisions on the right to equality which:

a. Define the right to non-discrimination in such a way as to meet the requirements of Article 1 of the Convention;

b. Prohibit direct and indirect discrimination, multiple discrimination, discrimination by association, segregation and harassment and make provision for the achievement of substantive equality;

c. Explicitly prohibit discrimination on grounds of sex, gender, pregnancy or maternity, civil, family or carer status, age, disability, sexual orientation and gender identity;

d. Provide a test for the incorporation of new grounds of discrimination in line with that recommended in the Declaration of Principles on Equality;

e. Prohibit discrimination against all persons within the jurisdiction of Nepal, rather than solely citizens;

f. Prohibit discrimination by state and non-state actors, in all areas of life governed by law.

2. Enact comprehensive equality legislation, ensuring that it would:

a. Prohibit discrimination in all areas of life governed by law, including but not limited to: education, employment, social security (including pensions), housing, provision of goods and services (including public services), clubs and associations;

b. Prohibit direct and indirect discrimination, multiple discrimination, discrimination by association, segregation and harassment;

c. Provide measures for legal aid provision, the transfer of the burden of proof, standing for interested parties in discrimination cas-

es and other measures necessary to ensure adequate access to justice for victims of discrimination;

d. Provide sanctions which are effective, proportionate and dissuasive and which ensure appropriate remedies for those whose right has been breached; and

e. Require the state to take all necessary measures to eliminate discrimination and promote equality, including through the adoption of special measures, and set out conditions for the appropriate implementation of such measures.

Defending the UK Equality Act 2010 against Government's Revision Plans

On 29 June 2011, ERT wrote to David Cameron MP, Prime Minister of the UK, calling on him not to repeal or emasculate the Equality Act 2010, stating that such a move would both damage the UK's international reputation and limit the UK's ability to meet its international law obligations to respect, protect and fulfil the rights to equality and non-discrimination. The letter was a response to the inclusion of the Act in the *Red Tape Challenge* – a consultation on the impact of regulations which are perceived to affect business performance – and focused on the

international dimensions of any decision to repeal or weaken the Act.

ERT's letter stated that the Act is the principle mechanism through which the UK meets its obligation to protect the right to non-discrimination under a range of international instruments, including the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and the European Convention on Human Rights. It stressed that the Act is also the key mechanism through which the UK meets its obligations to fulfil and promote the right by taking measures to address substantive inequality, including through the adoption of equality policies and action plans and the positive action designed to accelerate progress towards equality.

ERT argued that the Act forms a key pillar of the UK's international reputation as a country which is concerned with the protection and promotion of human rights. Drawing on ERT's experience advocating the adoption of comprehensive equality legislation in a range of different states, the letter stressed the extent to which ERT's own work has drawn on the UK experience. It highlighted the increasing extent to which concepts and principles from the Act are being relied upon as an example in efforts to develop new equality legislation outside the UK.