

The Equal Rights Trust Advocacy

In the period since the publication of ERR Volume 7 (August 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 has been advocating for the Declaration of Principles on Equality by using the Principles as a basis for assessing legislative and judicial developments. Below is a brief summary of some of the most important ERT advocacy actions.

ERT Supports Efforts to Adopt a Single Equality Act in Australia

In July 2011, ERT's Executive Director, Dimitrina Petrova undertook a week-long advocacy trip to Australia, sponsored by the office of the Attorney-General and hosted by the Human Rights Law Centre. The visit was organised in the context of the on-going legislative initiative (the Consolidation Project) to bring together the four existing federal equality Acts (the Racial Discrimination Act 1975, the Sex Discrimination Act 1984, the Disability Discrimination Act 1992, and the Age Discrimination Act 2004) and to simplify, clarify and improve the effectiveness of legislation to address discrimination and provide equality of opportunity. During her visit, Dr Petrova gave a keynote address on recent developments in equality law at a major national conference in Melbourne and further talks at several meetings in Melbourne and Sydney. She also met with, amongst others, the Human Rights Commission, the Attorney-General's office, government officials, Supreme Court judges, and civil society organisations.

As in other jurisdictions where anti-discrimination laws governing individual grounds have been developed over an extended period, and in isolation from each other, there are significant differences in the definitions, content and coverage of protections under the existing legislation. The current initiative is aimed at reducing the complexities and inconsistencies which exist under these different laws, as well as providing an opportunity to introduce new prohibitions on discrimination on the basis of sexual orientation and gender identity.

A discussion paper published in September by the Attorney-General's office as the basis for further consultation on new legislation reflects many of the main recommendations made by ERT. In January 2012, ERT submitted a response to the consultation on the discussion paper, basing its recommendations on the 2008 Declaration of Principles on Equality to ensure that the Consolidation Project results in the most comprehensive and effective equality law reform.

ERT Advocacy Influences the Creation of New Human Rights Institutions in Kenya

In late August 2011, the National Assembly of Kenya passed legislation to establish new national human rights institutions, as required by the Constitution of Kenya 2010. One of these new bodies, the National Gender and Equality Commission (NGEC) has a mandate to cover discrimination on all grounds specified in Article 27(4) of the Constitution of Kenya 2010 (i.e. "any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability,

religion, conscience, belief, culture, dress, language or birth”). The NGECE has a broad range of functions and powers related to the effective realisation of the rights to equality and non-discrimination, including promotion, monitoring, mainstreaming, policy development, investigation and the receiving of complaints.

Before the creation of the NGECE, Kenya did not have an independent national institution with a mandate focussed on prohibiting discrimination and providing for equality on all grounds. Its establishment is in part a consequence of advocacy by ERT, in partnership with the Kenya Human Rights Commission (KHRC) and the Federation of Women Lawyers (FIDA-Kenya) for legislative reform to improve protection from discrimination in Kenya.

Since 2009, ERT has been working in partnership with the KHRC and FIDA-Kenya to develop the capacity of civil society to participate in the reform towards a new anti-discrimination regime. Through a programme of research, training and support with legislative drafting and advocacy, 40 key civil society actors developed and endorsed a Legislative Map for a model equality law. The Legislative Map has been endorsed by a range of quasi-governmental commissions, political and governmental figures, practising lawyers and other civil society actors, and in mid-2011, it was developed into a draft Bill (“The Human Rights and Equality Bill 2011”) by the Kenya National Human Rights Commission and the Law Reform Commission. Since late 2010, KHRC, FIDA and other civil society actors, supported by ERT, have engaged in advocacy aimed at securing improved equality law through the adoption of legislation in line with the Legislative Map and through other legal reforms. ERT and its

partners see the establishment of the NGECE as an important step towards the realisation of their objective of comprehensive equality law for Kenya.

ERT Recommendations in Relation to Kenya Endorsed by Committee on the Elimination of Racial Discrimination

At its 79th Session (8 August - 2 September 2011), the UN Committee on the Elimination of Racial Discrimination considered the state report of the Republic of Kenya. ERT submitted information to the Committee in a parallel report which highlighted two types of problem needing to be addressed: (i) gaps, inconsistencies and exceptions in the legal and policy framework; and (ii) failures of implementation and enforcement of those laws which exist. It urged the Committee to recommend that Kenya adopts comprehensive anti-discrimination legislation which prohibits, *inter alia*, all forms of racial discrimination and which: a) includes a comprehensive legal definition of discrimination, including a non-exhaustive list of prohibited grounds 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 the Committee to recommend that Kenya:

- Review, remove or amend provisions of the National Cohesion and Integration Act which provide exceptions to the right to non-discrimination in respect of: (i) employment by non-state actors; (ii) the provision of goods and services by non-state actors; and

(iii) the administration and implementation of the immigration and nationality system;

- Investigate and take urgent steps to rectify the unfavourable treatment, in respect of conditions of acquiring citizenship documents, reportedly experienced by Kenyan Nubian and Somali populations;
- Ensure proper investigation and response to violations of the requirements of non-discrimination in the management of public property and distribution of public resources under the National Cohesion and Integration Act;
- Raise public awareness, through a programme of civic education, of the rights, obligations and the complaints mechanism available under the National Cohesion and Integration Act;
- Put in place measures to effectively prevent discrimination in access to positions of public power and in the allocation of public resources; and
- Ensure the full and effective implementation of those sections of the Constitution of Kenya 2010 which seek to address regional imbalances in income, services and resources.

The Committee incorporated many of ERT's recommendations in its Concluding Observations, including those on citizenship and public awareness-raising which were highlighted by the Committee as being of particular importance. Also, in line with ERT's submission, the Committee recommended that Kenya take action to ensure equitable racial and ethnic representation in government bodies and offices. The Committee also made strong recommendations on the implementation of constitutional provisions which seek to address ethno-regional imbalances – an important priority in view of the history of injustice in the distribution of pub-

lic resources that has disadvantaged certain ethnic communities in Kenya.

ERT Recommendations for Universal Periodic Review of Sierra Leone Echoed by State Delegations

At its 18th Session (12-30 September 2011), the UN Human Rights Council adopted Working Group Reports for states which had undergone review in the 11th Session of the Universal Periodic Review (UPR). ERT provided information for the UPR of Sierra Leone in a submission which noted that, despite significant progress by Sierra Leone in recent years, discriminatory laws remain in force, there is insufficient legislation to provide comprehensive protection from discrimination, and the enforcement of existing legislation remains weak. The submission highlighted discriminatory laws and practices affecting non-African residents, women, lesbian, gay, bisexual, transgender and intersex persons, and disabled persons. ERT's submission argued that Sierra Leone should conduct a comprehensive audit of discriminatory laws and take steps to introduce comprehensive equality legislation.

A number of states made recommendations to Sierra Leone which were based on the evidence and reflected the concerns expressed in ERT's submission. Highlights included:

- Take further steps aimed at protecting and promoting the rights of marginalised and vulnerable populations (Nepal);
- Urgently address the anomaly regarding citizenship status for residents of non-African descent (Ireland);
- Implement further policies to ensure gender equality and the promotion of the rights of women throughout society (South Africa);
- Specifically prohibit, sanction and effec-

tively prevent the practice of female genital mutilation (various states);

- Introduce reforms of domestic laws and regulations aimed at the elimination of all forms of discrimination against women (Ecuador and France);
- Bring legislation into conformity with its commitment to equality and non-discrimination for all by prohibiting discrimination based on sexual orientation or gender identity (Canada); and
- Repeal provisions which may be applied to criminalise sexual activity between consenting adults (Netherlands and Norway).

ERT Advocates Adoption of Comprehensive Equality Law in Jordan

In September, on invitation by the Mizan Law Centre, ERT Executive Director Dimitrina Petrova travelled to Jordan to deliver a lecture on the essential elements of national equality legislation for approximately 40 MPs, judges, governmental officials from relevant ministries, prosecutors, police, and academics in Amman. She also gave a lecture on the use of strategic litigation to promote equality to practising lawyers and NGOs.

The visit was organised as part of Mizan's campaign to promote non-discrimination and equality in Jordan, in the framework of a joint project in which ERT is a partner. The lecture on the essential elements of national equality legislation was the first meeting on equality law attended by representatives of the national authorities and was met with great interest. The lecture was followed by debate on the possibilities and challenges for the development of equality legislation in Jordan and clear expressions of interest to learn more from international good practice. The discussions were accepted with great enthusiasm by Mizan and other

NGO activists, as the most sensitive taboo issues in the Jordanian context were openly debated. These included the patrilineal transition of Jordanian nationality which is interlocked with the issue of the status of Palestinians in Jordan.

ERT Trains Governments, European Commission and World Bank Staff on International Trends in the Area of Equality

In October 2011, ERT served as expert at Workshop "Towards a Coherent National Policy to Prevent and Combat Racial Discrimination and Related Intolerance: Developing and Implementing National Action Plans", organised by the United Nations Office of the High Commissioner on Human Rights, and provided training on "Effective Legislation as a Part of National Action Plans" to governmental officials from the Commonwealth of Independent States, in St Petersburg, Russia. A number of governmental representatives expressed a willingness to engage ERT's expertise in future efforts to improve their countries' equality law systems.

Also in October, ERT delivered training for approximately 35 high-ranking World Bank officials in a seminar on human rights and development organised by the World Bank's Nordic Trust Fund in Helsinki. The topic was "International Trends in the Area of Equality" and the training also focused on the relationship between the Bank's official equity framework presented in the 2006 World Bank World Development Report entitled *Equity and Development*, and the unified human rights framework on equality. It appears that as the rights-based approach to development gains ground inside the World Bank community, the rights to non-discrimination and equality will play an increasingly important role in the World Bank's lending conditionality as well as in

its own hundreds of development projects, many of which are already closely connected with equality issues.

In November, ERT served as a trainer for European Commission Delegations staff at a seminar “Human Rights and Democratisation in EU External Relations: Non-discrimination” convened in Brussels. The purpose of this training was to update relevant staff on the current status of the field of non-discrimination and equality in order to ensure that European Union support in this area is up to date with modern perspectives on equality.

In all of the above activities, ERT based its training modules on the unified human rights perspective on equality as expressed in the 2008 Declaration of Principles on Equality.

ERT Continues Advocacy on Equality Legislation in Moldova

In October 2011, ERT continued its advocacy relating to the development of anti-discrimination legislation in Moldova. In response to a consultation announced by Moldova’s Minister of Justice, Mr Oleg Efrim, on 10 October 2011, ERT submitted extensive comments on the latest draft of the Law on Preventing and Combating Discrimination.

ERT has submitted comments on three previous drafts of this legislation, and was pleased to note that some of its recommendations have been incorporated into the latest draft. However, ERT continues to have significant concerns about the content of the latest draft law, and has urged the Minister of Justice to take these into account in due course. It is anticipated that the draft law will be before parliament in 2012.

ERT Urges Commonwealth Heads of Government to Repeal Legislation that Criminalises Same-Sex Sexual Conduct

In advance of the Commonwealth Heads of Government meeting in October 2011, ERT called on the Commonwealth Heads of Government to take immediate steps to repeal legislation that criminalises same-sex sexual conduct. ERT urged the Commonwealth Heads of Government to: (i) establish a Ministerial Action Group to address the issue of laws criminalising same-sex sexual conduct and advise states on the legal implications of retaining such laws; and (ii) include a commitment to tackling laws criminalising same-sex sexual conduct in the final communiqué of the October 2011 meeting.

Same-sex sexual conduct is currently prohibited in 42 of the 54 countries which are members of the Commonwealth of Nations. These laws allow for the discriminatory abuse of persons on account of their sexual orientation and have a broad impact on the enjoyment of all human rights by lesbian, gay and bisexual persons. ERT’s letter pointed out that the criminalisation of same-sex sexual conduct is contrary to international law and to the Commonwealth Values and Principles. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights both prohibit discrimination on the basis of sexual orientation. The Human Rights Committee has often expressed concern about laws criminalising same-sex sexual conduct. The existence of legislation prohibiting same-sex sexual conduct in so many Commonwealth nations also clearly runs contrary to stated Commonwealth values which include equality and respect for protection and promotion of civil, political, economic, social and cultural rights for all without discrimination on any grounds.

ERT Urges UK Not to Repeal or Amend the Human Rights Act 1998 and Calls for UK to Join Protocol 12 ECHR

In November 2011, ERT responded to the UK Commission on a Bill of Rights Discussion Paper entitled *Do we need a UK Bill of Rights?* The Commission was established to investigate the creation of a UK Bill of Rights and this Discussion Paper marked the beginning of the process of public consultation on this issue.

In its response, ERT endorsed the view that the UK does not need a new Bill of Rights as the Human Rights Act 1998 fulfils this function. ERT's submission reflected its view that the Human Rights Act provides an essential and non-negotiable minimum standard for the protection of human rights in the UK, both in terms of the rights specified and the mechanisms provided to make these rights effective through establishing judicial oversight and requiring public bodies to act in conformity.

ERT also urged the UK government to consider signing and ratifying Protocol 12 of European Convention on Human Rights, which provides an autonomous right to non-discrimination, and to take steps, in due course, to give effect to Protocol 12 in the domestic legal order, using the power provided under section 1(4) of the Human Rights Act.

ERT Calls on Tunisia to Ensure the Rights to Equality and Non-discrimination Are Guaranteed in New Constitution

In November 2011, ERT wrote to the new Prime Minister of the Republic of Tunisia, M. Hamadi Jebali, urging him to ensure that the rights to equality and non-discrimination are placed at the heart of national transition processes. ERT's letter expressed its belief

that the current process of national transition and renewal in Tunisia offers a great opportunity to strengthen equality, one of the central values which motivated the Tunisian people's movement for change. ERT urged Tunisia to seize this opportunity by placing the rights to equality and non-discrimination at the heart of any future bill of rights envisaged in the context of constitutional reform, and by including the drafting of comprehensive equality legislation in its future legislative agenda.

ERT's letter called on members of the Constituent Assembly to ensure that constitutional protection of the rights to equality and non-discrimination reflects international law and best practice. In this respect, ERT recommended that Tunisia adopts the accepted definition of discrimination provided in international law, such that it prohibits direct and indirect discrimination, multiple discrimination, discrimination by association and perception, segregation, victimisation and harassment, and defines as discrimination the failure to make reasonable accommodations. ERT also called on the Constituent Assembly to ensure that discrimination is explicitly prohibited on all grounds recognised under international law and defined in the Declaration of Principles on Equality. In addition, ERT recommended that the government develop and adopt comprehensive legislation prohibiting discrimination and providing for measures to achieve substantive equality.

Resolution and Recommendation on ERT's Declaration of Principles on Equality Adopted by PACE Committee

On 25 November 2011, the Standing Committee of the Parliamentary Assembly of the Council of Europe (PACE) adopted a Resolution and a Recommendation on "The Dec-

laration of Principles on Equality and the Activities of the Council of Europe” at its meeting in Edinburgh, UK, welcoming and endorsing the Declaration of Principles on Equality (the Declaration). The Resolution, for the adoption of which a simple majority was necessary, and the Recommendation, which required a qualified majority of two thirds, were voted on during the session of the Standing Committee under the UK Chairmanship of the Council of Europe in Edinburgh. The Standing Committee acts on behalf of PACE when the latter is not in session, and its Resolutions and Recommendations have identical legal status with those of the full assembly.

In the Resolution, PACE welcomes the Declaration and “calls on member states to take into account the principles contained in the Declaration when adopting equality and non-discrimination legislation and policies”. In the Recommendation, PACE recommends that the Committee of Ministers, the highest executive authority of the Council of Europe:

- Enhance efforts aimed at speeding up ratification of Protocol No. 12 to the European Convention on Human Rights (ETS No. 5) by the members states which have not yet done so;
- Disseminate information on good practices in the implementation of policies aimed at combating discrimination and inequalities;
- Ensure that the Declaration is taken into account in the work of the different Council of Europe bodies and expert groups dealing with the issues of equality and non-discrimination; and
- Promote the Declaration in its dealings with external actors, and in particular with policymakers from the Council of Europe member states.

The Recommendation also called on the Committee of Ministers to increase cooperation with the European Union on the consolidation of standards on non-discrimination and equality and cooperate with international organisations with a view to “achieving coherent interpretations of the principles of equality and non-discrimination and the implementation of common policies in the field of combating discrimination and inequalities”.

ERT Makes Stakeholder Submission for the Universal Periodic Review of India, Indonesia and the United Kingdom

In November 2011, ERT made Stakeholder Submissions for the Universal Periodic Review (UPR) of India, Indonesia and the United Kingdom, all of which will be under review for the second time at the 13th Session of the UPR held under the auspices of the UN Human Rights Council in May and June 2012.

ERT’s submission on India highlighted various problems of discrimination and inequality in the country, including the existence of laws which discriminate on various grounds, inadequate legal protection for some categories of persons, insufficient legal protection from discrimination in different areas of public and private life and the inadequate enforcement of existing legal provisions. The submission recommended that the government of India undertakes 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. It also recommended that the government should take steps to develop and adopt comprehensive equality legislation and policies, providing protection from discrimination on all relevant grounds and in all areas of life governed by law. Finally, it recommended the establishment of a national institution

to ensure effective implementation and enforcement of the law and develop guidance for good practice in the area of equality.

ERT's submission on Indonesia focussed on discrimination and discriminatory violence against religious minority communities, noting the strong connection between the continued existence of laws which restrict religious freedom and discriminate against religious minorities, and the rising influence of extremist factions which promote and engage in discrimination and violence against religious minorities. The recommendations made in the submission included: (i) to immediately repeal laws which discriminate on grounds of religion or belief; (ii) to take steps to effectively prevent incitement to discrimination or violence; to review police procedure and publish guidance to ensure that the police response to violence against religious minorities is adequate; and (iii) to take steps to ensure the better enforcement of existing legislation providing protection from discrimination on grounds of religion or belief.

ERT's submission on the United Kingdom focused on the most significant concerns and challenges with regard to the human rights of stateless persons. The submission discussed three areas of concern: (i) the lack of a statelessness determination procedure in the UK; (ii) immigration detention practices which do not take into consideration the unique context of statelessness; and (iii) other human rights concerns, including enjoyment of socio-economic rights by stateless persons. The submission concluded that failures in each of these areas amount to violations of the UK's international human rights obligations as well as its obligations under the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention). The

submission made a number of recommendations, including that the UK: (a) puts in place an effective, accessible and fair statelessness identification procedures, drawing from the ERT Guidelines on the Identification and Detention of Stateless Persons and the expertise of the UNHCR; (b) implements a maximum time limit for immigration detention of no more than six months and does not subject stateless persons to immigration detention for purposes of removal; (c) imposes an "alternatives to detention" regime, to ensure that detention is not arbitrary, and is only pursued as a necessary final resort that is proportionate to the administrative objective at hand; and (iv) respects, protects and fulfils the human rights of stateless persons subject to its jurisdiction, including specifically ensuring equal access to work, health-care and education.

ERT Submits a Contribution to the List of Issues on Turkey's Compliance with the International Covenant on Civil and Political Rights

In December 2011, ERT submitted a contribution to the List of Issues regarding Turkey's compliance with the International Covenant on Civil and Political Rights, in advance of the 104th Session of the Human Rights Committee. The submission motivated and then formulated questions to the Turkish government to be asked by the Human Rights Committee, including:

- What actions are being taken by the state party towards the introduction of comprehensive equality and anti-discrimination legislation, as recommended by treaty bodies?
- Will such legislation contain legal definitions of key concepts including direct and indirect discrimination, multiple discrimi-

nation, discrimination by association or perception, segregation and harassment conforming to current international norms of best practice?

- Is Turkey considering any steps in defining positive (affirmative) action, consistent with international human rights instruments?
- What measures is the state party undertaking to ensure consistency of protection across all grounds of discrimination?
- Is Turkey taking or envisaging any legislative or policy action to address the widespread discrimination suffered by members of sexual and gender minorities on grounds of sexual orientation and gender identity?

ERT Submits a Parallel Report to the Committee on the Elimination of Discrimination Against Women on the State Report of Jordan

In January 2012, ERT submitted a parallel report to the United Nations Committee on the Elimination of Discrimination Against Women commenting on the report by the Hashemite Kingdom of Jordan under Article 18 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The submission focused on Jordan's compliance with Article 2 of CEDAW and expressed ERT's concern that the Constitution of Jordan does not include sex or gender as a prohibited ground of discrimination. Failure to expressly prohibit discrimination on the basis of gender amounts to a significant failure to fulfil the obligation under Article 2(a) of CEDAW, which requires states to "embody the principle of the equality of men and women in their national constitutions". ERT also expressed its concern over the lack of protec-

tion in the Constitution of Jordan against discrimination on other grounds which are particularly important to eliminating all forms of discrimination against women, including "pregnancy or maternity" and "civil, family and carer status".

The submission noted that the absence of "sex" and "gender" from Article 6 of the Constitution of Jordan is further compounded by the lack of either comprehensive or specific anti-discrimination law prohibiting discrimination against women in the public and private spheres, in violation of Jordan's obligations under Article 2(b) of CEDAW to "adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women".

ERT Makes Submission to the UN Special Rapporteur on the Human Rights of Migrants on the Immigration Detention of Stateless Persons

In late January 2012, ERT wrote to the UN Special Rapporteur on the Human Rights of Migrants on the question of immigration detention of stateless persons. ERT welcomed the Special Rapporteur's decision to focus his first report on the immigration detention of migrants and offered information on the immigration detention of stateless persons. In its submission, ERT explained how the factual circumstances facing stateless persons make them particularly vulnerable to arbitrary immigration detention, and provided the Special Rapporteur with a number of ERT publications on the detention of stateless persons to inform his investigation.

ERT's submission pointed to the fact that the immigration laws, policies and practices of most states do not sufficiently take into

account the unique characteristics that set stateless persons apart from other migrants. The submission argued that the failure to recognise the particular circumstances of statelessness has created a protection gap; this is most evident in the context of immigration detention for the purpose of removal.

ERT recommended the use of its Guidelines on the Detention of Stateless Persons for the purpose of informing states of their international legal obligations pertaining to the protection of stateless persons from arbitrary detention, and providing guidance on how these obligations can be realised.