

The Equal Rights Trust Advocacy

In the period since the publication of ERR Volume 10 (March 2013), ERT has continued with its work to expose patterns of discrimination globally and to combat inequalities and discrimination both nationally and internationally. ERT advocacy is based on the Declaration of Principles on Equality which is an instrument of best practice reflecting the modern consensus on the major substantive and procedural elements of laws and policies related to equality. Below is a brief summary of some of the most important ERT advocacy actions since March 2013.

Australia

In April 2013, ERT made a submission to the Australian Senate Committee on Legal and Constitutional Affairs on the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013. ERT expressed its disappointment that the government was no longer pursuing the enactment of comprehensive anti-discrimination legislation, but nevertheless welcomed the Bill as an attempt to introduce prohibition of discrimination on grounds of sexual orientation, gender identity and intersex status. ERT made a number of specific recommendations to the Committee to achieve conformity with international law and best practice. In particular, ERT called for: the inclusion of discrimination by association as a form of discrimination; the inclusion of a stand-alone prohibition of harassment in addition to the existing prohibition of sexual harassment; and for exceptions in relation to religious organisations and marriage law to be removed.

The Senate Committee's report, issued on 14 June 2013, referred frequently to the evidence and recommendations provided in ERT's submission, but the Committee ultimately

concluded that it could not consider broader changes to the Sex Discrimination Act than those contained in the Bill, given the need to ensure its adoption before the dissolution of Parliament on 27 June 2013. In so doing however, the Committee endorsed ERT's central recommendation that Australian anti-discrimination law should be harmonised and strengthened.

Bosnia and Herzegovina

At its 55th session (8 to 26 July 2013), the Committee on the Elimination of Discrimination against Women considered the combined fourth and fifth periodic reports of Bosnia and Herzegovina. ERT had submitted a parallel report to the Committee, focused on the country's obligations to respect, protect and fulfil the right to non-discrimination under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women.

The parallel report made recommendations in a number of areas, based on analysis of Bosnian legislation conducted by ERT as part of its project "Developing Civil Society Capacity to Combat Discrimination and Inequality in Bosnia and Herzegovina". The re-

port examined deficiencies and gaps within the existing legislative framework in Bosnia and Herzegovina and highlighted a number of areas where, despite the existence of legislation, there has been a failure to implement effectively certain provisions so as to ensure that the rights to equality and non-discrimination are realised in practice.

Disappointingly, the Committee failed to make any recommendations specifically addressing the weaknesses in existing legislation and the failure of Bosnia and Herzegovina fully to implement certain provisions. However, the Committee did call for greater awareness-raising and training for lawyers, judges and prosecutors on the legislation, as well as for increased efforts to raise awareness amongst women of their rights and the available remedies to enable them to seek redress in cases of gender-based discrimination.

Indonesia

At its 108th session (8 to 26 July 2013), the Human Rights Committee considered the first periodic reports of Indonesia. ERT had submitted a parallel report focused on the country's performance under two articles of the Covenant: Article 2(1), which requires that states parties respect and ensure the enjoyment of the rights provided in the Covenant without distinction on a number of grounds, and Article 26, which, as the Committee has stated, provides an "autonomous right" to non-discrimination.

ERT's parallel report was based on research conducted by ERT in the context of its project "Empowering Civil Society to Combat Religious Discrimination and Promote Religious Freedom". The report had three parts, the first of which focused on the protection of the rights to equality and

non-discrimination in the Constitutional and national law of Indonesia. The second part examined constitutional and legislative provisions which discriminate directly or indirectly on the basis of religion or belief, against religious minorities and heterodox communities within mainstream religions. The final part examined a number of cases of discrimination and discriminatory violence against religious minorities, highlighting serious problems with the ability of Indonesia to meet its obligations to protect these groups from discrimination and associated violence.

In its concluding observations, the Committee raised a number of concerns relating to the failure on the part of State authorities to protect victims of violent attacks motivated by religious hatred and the lenient penalties imposed on the perpetrators of such violent attacks, echoing concerns raised by ERT. The Committee also stated its regret that Law No. 1 of 1965 on Defamation of Religion, which prohibits the divergent interpretation of religious doctrines of the six protected and state-recognised religions, together with a number of other laws and regulations, unduly restricts the freedom of religion and expression of religious minorities such as the Ahmadiyya. The Committee expressed further concern at the persecution of other religious minorities such as Shia Muslims and Christians who are subjected to violence by other religious groups and by law enforcement personnel. The Committee's recommendations on these issues reflected the suggestions of ERT, notably that Indonesia take all measures to protect victims of religiously-motivated attacks, repeal Law No. 1 of 1965 on Defamation of Religion, and provide adequate protection against violence perpetrated against members of religious minorities.

Malaysia

In March 2013, ERT made a stakeholder submission to the Universal Periodic Review of Malaysia, based on the findings and recommendations of the report *Washing the Tigers: Addressing Discrimination and Inequality in Malaysia*. It urged states participating in the review of Malaysia to endorse and adopt the recommendations in the report. Given the particular focus of the second round of the UPR process on the implementation of recommendations from round one, the submission focused on how the adoption of these recommendations would ensure compliance with international instruments to which Malaysia is party, and increasing the country's participation in international human rights instruments. The review of Malaysia will take place in October and November 2013, at the 17th session of the Universal Periodic Review.

Russia

On 31 May, ERT submitted a legal opinion to the State Duma of Russia on Bill № 44554-6 which would have created an administrative offence of promoting homosexuality among minors. In the legal opinion, ERT demonstrated that the Bill violates a number of human rights provisions in treaties to which Russia is party, including the right to freedom of expression and the rights to equality and non-discrimination, as set out in the International Covenant on Civil and Political Rights and the European Convention on Human Rights. ERT also expressed its concern that the Law would cause significant harm to members of the lesbian, gay and bisexual (LGB) community in Russia, to those who work with and support them, and to children as well. The legal opinion was also sent to President Van Rompuy and Commissioner Füle of the European Union ahead of the EU-Russia Summit

in June. Commissioner Füle thanked ERT for providing the legal opinion and stressed that the European Union was discussing the Bill with the Russian authorities.

Unfortunately, the State Duma voted to adopt a slightly amended version of the Bill, which President Putin signed into law on 30 June.

Ukraine

In May 2013, ERT participated in a Conference hosted by the UN Office of the High Commissioner on Human Rights in Kiev, on the implementation and enforcement of the country's new anti-discrimination law. ERT was asked to provide the keynote presentation in the conference, and to provide training for staff from the office of the Ukrainian Parliamentary Commissioner for Human Rights and other governmental bodies. ERT used this opportunity to advocate improvement of the legal and policy frameworks related to equality and the Declaration of Principles on Equality in a country in which official denial of discrimination is endemic, equality law is in its infancy, and politicisation of some issues, notably homosexuality, has impeded progress.

At its 108th session (8 to 26 July 2013), the Human Rights Committee considered the seventh periodic reports of Ukraine. ERT had submitted a parallel report focused on the country's performance under Articles 2(1) and 26 of the International Covenant on Civil and Political Rights. The first part of ERT's report examined the protection of the rights to equality and non-discrimination in the Constitution and national law of Ukraine. The second part highlighted a number of weaknesses in the Law "On the principles of preventing and combating discrimination", the principal legislation providing protection from discrimination in Ukraine. The third

part assessed a specific draft piece of legislation, Draft Law 0945 (formerly Draft Law 8711) which would prohibit “propaganda of homosexuality”, for its compatibility with the Covenant. The fourth part highlighted other pieces of legislation in Ukraine which are incompatible with the right to equality.

In its concluding observations, the Committee repeated recommendations made by ERT on all above issues. The Committee raised concerns over certain weaknesses in Ukraine’s anti-discrimination legislation and recommended that the legislation be amended to ensure adequate protection against discrimination in line with the Covenant and other international human rights standards. The Committee also made a detailed and wide-ranging recommendation in respect of LGBT rights in Ukraine, in which it called on the state to provide effective protection to LGBT persons and ensure the investigation, prosecution and punishment of any act of violence motivated by the victim’s sexual orientation or gender identity, to take all necessary measures to guarantee the exercise in practice of the rights to freedom of expression and assembly of LGBT persons and defenders of their rights, to not to permit the Draft Law 0945 on “propaganda of homosexuality” to become law, and to amend and repeal other pieces of legislation which discriminate on grounds of sexual orientation or gender identity.

United Kingdom

In April 2013, ERT made a submission to the House of Lords in the United Kingdom in relation to provisions in the Enterprise and Regulatory Reform Bill which would have removed the general duty of the Equality and Human Rights Commission in section 3 of the Equality Act 2006. ERT’s submission called on mem-

bers of the House of Lords to insist on amendments to the Bill, in order to retain the “general duty” of the Equality and Human Rights Commission. ERT also called on the House of Lords to back amendments introducing protection from caste-based discrimination.

Section 3 of the Equality Act 2006 implemented a key recommendation of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation, co-chaired by ERT Chair Professor Sir Bob Hepple, namely that equality legislation should contain a “purposes” clause. ERT advocated the retention of section 3 for three reasons:

- Section 3 has a very precise legal function which is to assist those interpreting and enforcing the 2006 Act. Without section 3, the Commission would have no clear direction and would be left rudderless, risking increasing inconsistencies in the way in which the Act is applied.
- Section 3 allows the Commission to look more broadly at issues involving human rights than was the case before it came into force.
- Section 3 fulfils the obligations of the United Kingdom under the Paris Principles relating to the status of national institutions to ensure that national human rights institutions are “given as broad a mandate as possible”. ERT argued that removal of section 3 would put the UK’s ability to meet this criterion at risk, and thereby threaten the current “Status A” designation awarded to the Commission by the International Coordinating Committee of National Human Rights Institutions.

ERT’s letter also urged the House of Lords to insist on amendments which would prohibit caste-based discrimination, relying

inter alia on the interpretation of the International Convention on the Elimination of All Forms of Racial Discrimination by the relevant United Nations committee. ERT's letter argued that the introduction of protection from discrimination on grounds of caste would ensure both that the United Kingdom met its obligations under international human rights law and that the law provides the necessary protection for victims of caste discrimination. On 24 April 2013, the House of Lords voted to insist on its amendments in relation both to section 3 of the Equality Act 2010 and the introduction of protection from caste-based discrimination. The government then announced that it would no longer oppose these amendments. As a consequence, the Equalities and Human Rights Commission will remain guided by the general duty in section 3 and in July 2013 the government published its timetable for the introduction of provisions which will prohibit discrimination on grounds of caste.

At its 55th session (8 to 26 July 2013), the Committee on the Elimination of Discrimination against Women considered the seventh periodic report of the United Kingdom. ERT had submitted a parallel report

focused on the country's obligations to respect, protect and fulfil the right to non-discrimination under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. The parallel report examined the principal means by which the right to non-discrimination is enforced in the United Kingdom: the Equality Act 2010. In particular, it examined three provisions of the Act which ERT argued are crucial to ensuring the effectiveness of the United Kingdom's legislation to protect and fulfil the right of non-discrimination for women, but which the government has announced will not be brought into force. These provisions are: a new public sector duty regarding socio-economic inequalities (sections 1 to 3); provisions recognising multiple discrimination (section 14); and provisions on publicising information on gender pay gaps (section 78).

In its concluding observations, the Committee included a number of recommendations which replicated those made by ERT, expressing concern that the highlighted provisions of the Equality Act 2010 have not been brought into force, and urging the United Kingdom to enforce them.