

# The Equal Rights Trust Advocacy

*In the period since the publication of ERR Volume 8 (March 2012), 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 using the Declaration of Principles on Equality as a basis for advocacy aimed at the improvement, amendment or introduction of equality laws and policies. Below is a brief summary of some of the most important ERT advocacy actions.*

## **ERT Publishes *In the Spirit of Harambee: Addressing Discrimination and Inequality in Kenya***

On 27 February 2012, ERT, in partnership with the Kenya Human Rights Commission (KHRC), published *In the Spirit of Harambee: Addressing Discrimination and Inequality in Kenya*. The country report, which was the result of ERT's three year long partnership with KHRC and was based on extensive field research, provided the first ever comprehensive account of discrimination and inequalities on all grounds and in all areas of life in Kenya. The report found that while Kenya has made great progress, discrimination exists across a range of grounds and areas of life, and that major substantive inequalities remain.

The report made a series of recommendations to the Government of Kenya. Some of the key recommendations include that Kenya:

1. Review all legislation and policy in order to (i) assess compatibility with the rights to equality and non-discrimination, as defined under the international instruments to which Kenya is party and the Constitution of Kenya 2010; and (ii) amend, and where necessary, abolish existing laws, regulations

and policies that conflict or are incompatible with the right to equality;

2. Adopt comprehensive anti-discrimination legislation which prohibits all forms of discrimination and which: a) includes a comprehensive legal definition of discrimination, including a non-exhaustive ("open") 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;

3. Introduce mechanisms for victims of discrimination to have effective access to judicial and/or administrative procedures, including through the provision of legal aid;

4. Make effective and accessible mechanisms for individuals to bring complaints about discrimination by state actors; and

5. Collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality.

ERT has used the report in its advocacy. It formed the basis of a parallel report to the UN Human Rights Committee's 105th session (9-27 July 2012) at which the state report of Kenya was considered. The Committee included a number of ERT's recommendations in its Concluding Observations.

### **UN Human Rights Council Makes Use of ERT Recommendations on Moldova as New Report on Discriminatory Ill-treatment is Published**

In March 2012, as a reflection of ERT's increasing impact on current debates about discrimination and discriminatory violence in Moldova, states participating in the Universal Periodic Review (UPR) endorsed a number of ERT's recommendations, while government representatives at an event in Chişinău responded positively to calls from ERT and Moldovan NGOs for improved protection from discriminatory violence.

On 16 March, the UN Human Rights Council adopted the Working Group Report from the UPR of Moldova. ERT had made a stakeholder submission to this UPR which raised concerns about Moldova fulfilling its obligation to prevent discrimination and discriminatory violence against women and recommended that the State should take steps to adopt comprehensive anti-discrimination legislation and policies, amend existing legislation in order to guarantee adequate means of legal redress, develop and support an information campaign on gender equality and ensure more effective enforcement of existing legislation intended to protect women from domestic violence.

A number of states involved in the review of Moldova made recommendations on matters

of concern highlighted in the ERT's submission, including notably those recommending that Moldova:

1. Strengthen efforts in the prevention, punishment and eradication of all forms of violence against women (Argentina, Brazil, Hungary, Sweden, Uruguay); and
2. Adopt the draft law on preventing and combating discrimination (Argentina, Canada, Estonia, France, Mexico, Norway, Romania, Slovakia, UK, USA).

In a separate development, on 19 March, ERT participated in an event to mark the launch of the report *Discriminatory Ill-treatment in Moldova*, published by the Moldovan organisation Promo-LEX in partnership with ERT, with support from the European Union Delegation to Moldova and the United Nations Development Programme. The report, which examined evidence of discriminatory ill-treatment on grounds of gender, disability, sexual orientation, ethnicity and religion, made 20 recommendations for the improvement of law, policy and enforcement on discriminatory ill-treatment and discrimination more widely.

In its presentation at the event, ERT discussed Moldova's international legal obligations in respect of discriminatory ill-treatment. Referring to the report's recommendations, ERT called for parliament to adopt comprehensive anti-discrimination legislation and for the authorities to take steps to effectively implement the domestic legal framework on discriminatory ill-treatment. Government officials at the event, including the Director of Public Prosecutions, responded positively to the report and its recommendations, though the extent to which this will translate into action remains unclear.

## ERT Recommendations on Thailand's Treatment of Rohingya Echoed by State Delegations

At its nineteenth session (27 February to 23 March 2012) the UN Human Rights Council adopted the Working Group Reports for states which had undergone review in the twelfth session of the UPR. In 2011, ERT made a stakeholder submission to the review of Thailand, raising concerns about its treatment of stateless Rohingya. The submission recommended that the state review its past actions of arbitrary arrest, detention and pushing back Rohingya into the sea in light of its human rights obligations, rectify past violations, amend its immigration policy, introduce comprehensive equality legislation and ratify relevant international treaties.

A number of states made recommendations on matters of concern highlighted in ERT's submission. These included recommendations that Thailand:

1. Accede to the 1954 Convention Relating to the Status of Stateless Persons (France);
2. Address, as a matter of priority, the conditions in Thai prisons and detention centres, including the expansion of the necessary infrastructure and prison personnel, as well as the improvement of inmates' access to medical care and legal counsel; repeal all relevant legal provisions with a view to eliminating excessive or unjustified detention; and reverse current practices regarding the rights of refugees, asylum-seekers and migrant workers (Slovakia);
3. Ensure migrants found at sea are afforded the full measures of protection they are entitled to under international law (New Zealand);

4. Facilitate access to asylum procedures in order to guarantee international protection to asylum-seekers (Switzerland);

5. Continue to strengthen cooperation with the High Commissioner for Refugees (UNHCR) as well as with donors and non-governmental organisations in order to provide necessary humanitarian aid and fundamental rights protection to displaced people (Qatar);

6. Take measures with a view to preventing and combating arbitrary arrest, violence, abuse and exploitation of migrants; and refrain from the *refoulement* of asylum-seekers (Brazil);

7. Continue to address remaining social inequalities and unequal access to opportunities and services by the poor and the marginalised (Bhutan); and

8. Consider withdrawing its reservations to various human rights instruments (South Africa).

## ERT Urges Moldova to Re-instate Sexual Orientation and Other Grounds in Draft Equality Law

In May 2012, ERT urged the government of the Republic of Moldova to call a halt to the process of adopting a draft Law on Equal Opportunities (the Draft Law). In a letter to Moldovan Prime Minister, Vlad Filat, of 17 May, ERT recommended critical amendments to the Draft Law in order to ensure that it is consistent with Moldova's obligations under international law.

In particular, ERT's letter expressed grave concerns over three changes made to the Draft Law since publication of the previous version, entitled the *Law on Preventing and*

*Combating Discrimination*, in October 2011. In particular, the letter explained that ERT's concerns related to:

1. The removal of four protected characteristics – sexual orientation, health status, wealth and social origin – from Article 1(1) of the Draft Law, thereby excluding them from the list of grounds on which discrimination is prohibited under Article 2. ERT's letter stated that, while none of these characteristics, except social origin, enjoys explicit mention under international instruments, each is a protected ground through authoritative interpretation and merits the same protection as other grounds in the Draft Law. Relying on the consistent practice of the UN Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the European Court of Human Rights, the letter stated that sexual orientation and health status are protected under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the European Convention on Human Rights;

2. The inclusion, in Article 1(2), of language stating that marriage is a union between a man and a woman. ERT argued that this provision was discriminatory on grounds of sexual orientation, in that it clearly disbars gay men, lesbians and bi-sexuals from entering into same-sex marriages. ERT noted that while there is no obligation on states to legislate to provide for same-sex marriage, Moldova is obligated to refrain from discriminating in law and action on grounds including sexual orientation; and

3. The inclusion, in Article 1(2), of a number of exceptions to the right to non-discrimination in respect of family life, adoption, and the activities of religious bodies and institutions.

ERT argued that these exceptions were too broad to be consistent with the Declaration of Principles on Equality, which states that the right to equality, and therefore the right to non-discrimination which is subsumed within the right to equality, "applies in all areas of activity regulated by law". The letter also noted that these exceptions were likely to be inconsistent with the interpretations of UN Treaty Bodies such as the Committee on the Elimination of Discrimination Against Women which had explicitly criticised laws which exclude areas of personal laws such as marriage and adoption from the prohibition on discrimination.

Based on these concerns, ERT's letter recommended that the government reverse these changes or withdraw the Draft Law completely, reverting instead to the previous draft. However, the letter also recommended that, should the government decide to revert to the previous draft, certain amendments based on ERT's recommendations on earlier drafts of the law be retained: the inclusion of a provision on reasonable accommodation, the inclusion of a provision on compensation for material and moral damage and the extension of standing in discrimination cases to associations, trade unions and non-governmental organisations. The letter also urged the government to consider further amendments based on previous ERT recommendations, in order that the final law reflected current international law and best practice on equality.

### **Joint Initiative to Address Statelessness in Europe Launched**

On 8 June 2012 the European Network on Statelessness (ENS) was launched. ERT is a founding member of ENS – a network of non-governmental organisations, academic

initiatives, and individual experts committed to address statelessness in Europe. The Network is open to non-governmental organisations, research centres, academics and other individuals. ERT's Head of Statelessness and Nationality Projects, Amal de Chickera, is a steering committee member and focal point for law and policy activities of the ENS.

### **ERT Calls on Myanmar and Bangladesh to Protect Stateless Rohingya**

In June 2012 ERT wrote to the President of Myanmar, Ambassador of Myanmar to the UK, Foreign Minister of Bangladesh, Foreign Secretary of Bangladesh, and High Commissioner of Bangladesh in the UK to express its deep concern about the on-going sectarian and ethnically motivated violence that resulted in an unknown number of deaths, serious injuries and extensive damage to property in the North Rakhine State in Western Myanmar. ERT also urged the governments of Myanmar and Bangladesh, along with the international community, to take action.

ERT urged the Government of Myanmar to:

1. Urgently take all necessary steps to end the violence and protect all individuals within their territory and subject to their jurisdiction;
2. Fully cooperate with UN agencies and the international community, to enable monitoring and documentation of the situation and the provision of humanitarian support to affected communities;
3. Bring martial law in the region to an end as soon as possible;
4. Conduct an impartial and transparent inquiry into the causes of the violence, with the

objective of identifying and bringing the perpetrators to justice, compensating the victims and restoring damaged property; and

5. Take all necessary steps to ensure equal access to justice, repealing discriminatory laws, restoring the rights of the Rohingya and establishing a clear path towards their citizenship and effective nationality.

ERT urged the Government of Bangladesh to prevent further escalation of this humanitarian disaster by opening its borders to Rohingya refugees fleeing violence and persecution in Myanmar and refraining from the involuntary repatriation of all refugees and persons of concern. It emphasised that it was essential that full cooperation be given to the international community in providing humanitarian support and protection to displaced communities.

ERT urged the UN, and in particular the UN-HCR to continue to engage with the governments of Myanmar and Bangladesh to ensure that their mandate to protect stateless persons and refugees is fulfilled. ERT stated that it hoped that they would resume their presence on the ground in affected areas of North Rakhine State as soon as possible to monitor and document the situation and enable their officers to function to their fullest potential in their mandate to protect during this time of crisis.

ERT also urged the international community to:

1. Engage with the Government of Myanmar to take immediate steps to end this unnecessary violence, and long-term steps towards the reduction of statelessness, building the rule of law and integrating equality and respect for human rights into their reform processes;

2. Engage with the Government of Myanmar to ensure that this conflict does not result in increased military control and extended periods of martial law during this period of reform;
3. Engage with the Government of Bangladesh to open its borders to refugees fleeing the violence; and
4. Consider concrete ways to support the Government of Bangladesh in providing protection to Rohingya refugees both in the short and long-term.

### **ERT Launches Situation Report on Rohingya Crisis in Myanmar and Bangladesh**

On 2 July 2012, ERT launched its report *Burning Homes, Sinking Lives: A Situation Report on Violence against Stateless Rohingya in Myanmar and their Refoulement from Bangladesh*. The report, which included testimony collected from over 50 interviews with Rohingya in the period 13-29 June 2012, presented the findings and observations of ERT researchers and painted an extremely bleak picture, which demanded urgent action to prevent further human rights violations including loss of life, suffering, forced displacement and damage to property. In addition to the testimony of victims, the report reviewed the legal obligations of the parties to this crisis and made recommendations to the governments of Myanmar and Bangladesh, the UNHCR and the international community. The report made a series of findings and recommendations:

#### Main Findings

1. In Myanmar, what began as sectarian violence, evolved into large-scale state sponsored violence against the Rohingya. The

violence, including killings, rape and burning of houses, began on 3 June 2012 and had mainly occurred in Sittwe and Maungdaw. On 10 June, a state of military emergency was declared, after which the UN pulled its staff out of the area, leaving no international observers on the ground. On 29 June, it was announced that UNHCR staff had returned to Rakhine State. From 16 June onwards, the military became more actively involved in committing acts of violence and other human rights abuses against the Rohingya including killings and mass scale arrests of Rohingya men and boys in North Rakhine State.

2. Bangladesh, in contravention of its international legal obligations, closed its border and pushed back (*refouled*) into dangerous waters many Rohingya fleeing the violence and persecution in Myanmar. The first boat with Rohingya refugees arrived in Bangladesh and was *refouled* on 11 June 2012. On 18 June, 139 persons in eight boats were *refouled* from Teknaf. However, more refugees continued to arrive. No visible steps had been taken by the Government of Bangladesh to provide humanitarian aid for the refugees, thus shifting this burden onto local residents.

3. The legal obligations of both Myanmar and Bangladesh require them to protect all persons within their territories or subject to their jurisdictions, regardless of whether they are citizens, stateless persons or refugees. In their treatment of the Rohingya, both countries appeared to have violated the right to life, the right to be free from torture or cruel, inhuman or degrading treatment or punishment, the right to liberty and freedom from arbitrary detention, the right to food and shelter including the fundamental right to be free from hunger and the right to the highest attainable standard of health. Bangladesh

had also acted in violation of the rights to seek and to enjoy asylum and not to be subjected to *refoulement*. The severity of the treatment of the Rohingya and the widespread, systematic nature of the violence additionally raised a concern that crimes against humanity were being committed by Myanmar.

### Key Recommendations

In addition to making recommendations to the UN member states and the international community, ERT's report made a series of recommendations to the governments of Myanmar and Bangladesh.

ERT's recommendations to the Government of Myanmar included that it:

1. Urgently take all necessary steps to end the violence and protect all individuals in Myanmar;
2. Fully cooperate with UN agencies to enable independent monitoring of the situation and the provision of humanitarian assistance and support to affected communities;
3. Bring martial law in the region to an end as soon as possible;
4. Conduct an impartial and transparent enquiry into the causes of the violence; and
5. Reduce statelessness in Myanmar by establishing clear paths towards the acquisition of citizenship and effective nationality for all stateless persons including the Rohingya.

ERT's recommendations to the Government of Bangladesh included that it:

1. Open its borders to Rohingya refugees fleeing violence and persecution in Myan-

mar and refrain from *refoulement* or forcible return of refugees, asylum-seekers and persons of concern;

2. Fully cooperate with UN agencies and international NGOs to enable the provision of humanitarian assistance and support to all refugees; and
3. Fully cooperate with the international community in providing humanitarian support and protection in a fair and non-discriminatory manner to all long-term Rohingya refugees and persons of concern within Bangladesh.

### **Civil Society Coalition Calls for Protection of Rohingya and End to Violence**

On 16 July 2012, a coalition of 58 civil society groups led by ERT, the Arakan Project (AP) and Refugees International (RI) condemned the abuse and violence carried out during the Rohingya Crisis.

This joint civil society action was initiated by ERT, AP and RI during the annual UNHCR NGO Consultations, 3-5 July 2012, at which the three organisations briefed a group of NGOs on the Rohingya Crisis.

The joint statement included a series of recommendations to both governments, which were delivered to the governments of Myanmar and Bangladesh and to their embassies in 28 countries. The statement also included recommendations to the international community.

Since the drafting of the statement, Thein Sein, president of Myanmar, declared to the UNHCR that the Rohingya are illegal immigrants who should be moved to refugee camps or resettled to third countries – a proposal rejected by the Refugee

Agency. This statement of the president is emblematic of the exclusion, discrimination and abuse that stateless Rohingya have faced for many decades at the hands of the state, and a dangerous indication of Myanmar's preferred solution to this human rights crisis.

### **Launch of ERT Guidelines to Protect Stateless Persons from Arbitrary Detention**

On 18 July ERT launched its Guidelines to Protect Stateless Persons from Arbitrary Detention (the Guidelines) at Garden Court Chambers, London. The launch event was chaired by Sir Bob Hepple (Chair of the ERT Board of Trustees). Speakers at the event were the Rt. Hon. Lord Justice Sedley (former Judge of the Court of Appeal of England and Wales and Trustee of ERT), Roland Schilling (UNHCR Representative to the UK), Stefanie Grant (Senior Advisor to ERT's statelessness work), and Amal de Chickera (ERT Head of Statelessness and Nationality Projects).

The Guidelines provide detailed guidance on how states should treat stateless persons in the context of immigration detention in order to comply with their obligations under international human rights law, in particular, the rights to equality and non-discrimination and the right to be free from arbitrary detention. They were drafted through a consultation process which sought to be comprehensive and inclusive and have been reviewed by experts in the complementary fields of human rights, equality, immigration, detention, refugees and statelessness.

Specific Guidelines address different aspects of the protection gap that exists in relation to stateless persons. For example:

1. Guideline 14 sets out the rights to equality and non-discrimination in relation to stateless persons;
2. Guidelines 19-22 focus on identification;
3. Guidelines 23-52 deal with arbitrary detention and related concerns around ongoing detention and vulnerable groups; and
4. Guidelines 55-60 address the stay rights that should be provided to stateless persons in order to respect, protect and fulfil their human rights.

Guidelines 23-52 form the very core of the Guidelines and articulate well-known and universally accepted standards which must be adhered to when depriving an individual of his or her liberty. Of particular importance, Guidelines 38-40 collectively articulate that there must be a reasonable and fair maximum time limit for all immigration detention and Guidelines 31-36 focus on alternatives to detention. International law clearly articulates that it is detention that should be the last resort and not alternatives.

The Guidelines have been welcomed by many key individuals and organisations. For example, Colm O'Conneide, Vice-President of the European Committee on Social Rights has said:

“These Guidelines fill a significant gap in international law standards, and reflect the weight of expert opinion of how some of the most vulnerable people on earth should be treated under international human rights law.”

ERT intends to use the Guidelines both as a practical protection tool to assist those representing stateless persons in detention and as an advocacy tool to influence policy and legislative change.