Equal Rights Trust Advocacy

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The Equal Rights Trust, as one of its objectives, aims to expose and help eliminate violations of the fundamental right to non-discrimination. The Trust also works to ensure greater accountability of states and non-state actors in order to protect individuals against discrimination and promote equality. Since September 2007, ERT has undertaken the following advocacy actions.

**ERT Calling on OSCE to Promote Comprehensive Anti-discrimination Legislation in Central Asian States**

On 25 September 2007, the Equal Rights Trust and the International Helsinki Federation for Human Rights, in a joint statement presented in Warsaw at the OSCE 2007 Human Dimension Implementation Meeting, urged the Organisation for Security and Co-operation in Europe (OSCE) to offer expertise and technical assistance to governments and civil society organisations in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, to facilitate their efforts in developing comprehensive and effective national anti-discrimination legislation.

Although Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan have ratified human rights treaties that contain guarantees of equality before the law and prohibitions against discrimination, in practice these states have not fulfilled their obligations, as required by international law, to give unqualified and immediate effect to the right to non-discrimination in their domestic legal order. In the words of the UN Human Rights Committee, a failure to comply with this requirement “cannot be justified by reference to political, social, cultural or economic considerations within the state”.

ERT and IHF were concerned that cases of blatant, explicit discrimination inscribed in national laws persist in the Central Asian region of the OSCE. More commonly, discrimination persists in the deliberate, convenient silence of the law when there is ample evidence that society is permeated by xenophobic, racist, sexist and other discriminatory practices.

This observation is supported, inter alia, by the findings of the UN treaty bodies, mandated to review states’ compliance with international human rights treaties. A thorough analysis of their reports uncovers a long list of concerns regarding discriminatory practices and acts common to the five mentioned Central Asian states. UN treaty bodies invariably point out the low level of awareness of international anti-discrimination standards among civil servants, including judges and law-enforcement officials, and recommend appropriate and continuous training. They equally recommend public awareness raising measures about non-discrimination standards, particularly targeting the most disadvantaged groups such as women and girls, members of the national and ethnic minorities, migrant workers and other non-citizens or people with disabilities. Prominently featured among repeated recommendations is the adoption and implementation of a comprehensive anti-discrimination legislation as the most effective means of combating all forms of discrimination.

A brief overview of some of the observed discriminatory practices, with some variations in severity from state to state, highlights the urgency for the OSCE member states from Central Asia to adopt comprehensive anti-discrimination legislation.
based on race, ethnicity or religion includes: lack of or insufficient legislation regarding racial discrimination; inadequate participation of national and ethnic minorities in state institutions; inadequate provision of education in ethnic minority languages and their infrequent public use on radio and TV; lack of information about unequal treatment suffered by members of some pariah communities perceived as “Gypsies”; disparate treatment of foreigners, including their return to countries where they are exposed to torture and other ill-treatment; and no recognition of the right to conscientious objection to compulsory military service. The gravest violations in this field were perpetrated by Uzbekistan where, among other things, criminal law was enforced to penalise apparently peaceful exercise of religious freedom, resulting in the imprisonment of hundreds of people; and in Turkmenistan where policies of forced assimilation included internal displacement of populations to inhospitable parts of the country.

With regard to gender-based discrimination, concerns common to all states in the region include: the prevalence of violence against women and the paucity of effective measures, including adequate legislation, to effectively protect the victims and punish perpetrators of domestic violence; the revival of traditional stereotypes in relation to the role of women in society and the reappearance of phenomena such as polygamy and forced marriages even when such practices are illegal; gender inequalities in the fields of vocational training, employment and low representation of women in public life and managerial posts, both in the public and private sector; and on-going trafficking of women and children, particularly affecting non-citizens and ethnic minorities.

Prevailing disparities have also been observed in the enjoyment of the rights of children, in particular those belonging to the most vulnerable groups such as refugees, asylum-seekers, internally displaced children, children with disabilities, abandoned children and those living in institutions and in regions with socio-economic development problems.

Discrimination suffered by children and adults with disabilities ranges from the lack of appropriate and inclusive educational and vocational opportunities to the frequent use of confinement in psychiatric institutions as a means of treatment of mental health problems, without review bodies, including courts, systematically reassessing their confinement and involuntary treatment.

State efforts to comply with treaty body recommendations appear to be patchy, piecemeal and lacking in political will. It should be noted, however, that Kyrgyz authorities have invested more concerted efforts to address the noted patterns of discrimination with legislative and other policy measures.

ERT and IFH were also concerned that insufficiently independent and effective national human rights and ombudsman bodies as well as widespread corruption and nepotism in the states of the Central Asian region have a strong bearing on the realisation of the right to equality and non-discrimination.

In order to effectively combat all forms of discrimination, ERT and IHF appealed to Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan to work on adopting comprehensive anti-discrimination legislation. In their efforts the states should be guided by the following five principles:

- The goal of legislation and other measures should be to eliminate unlawful discrimination and to promote equality regardless of sex, race, colour, ethnic or national origin, religion or belief, disability, age, sexual orientation, or other status;
There should be opportunities for those directly affected by discriminatory practices and acts to participate, through information, consultation and engagement in the drafting of the legislation;

- Anti-discrimination standards (legislative provisions) should be clear, consistent and easily intelligible;

- The regulatory framework must be effective, efficient and equitable, aimed at encouraging individual responsibility and self-generated efforts to promote equality;

- Individuals should be free to seek redress for the harm they have suffered as a result of discrimination through procedures which are fair, inexpensive and expeditious, and the remedies should be effective.

With regard to the content of a comprehensive, consistent and enforceable anti-discriminative legislation, ERT and IHF urged the above five states to meet the following minimum requirements:

- provision of legal definitions of the concept of discrimination, including direct and indirect discrimination;

- setting out clear and detailed provisions as to what conduct, actions, measures, policies, or criteria would be considered discriminatory;

- provision of a substantive, asymmetric approach to non-discrimination, as opposed to a merely formal understanding of non-discrimination as “same treatment”;

- prohibition of discrimination in all spheres of public life whether by state or non-state actors;

- prohibition of incitement to discrimination, harassment, and segregation;

- establishment of specialised bodies empowered to assist victims and promote a culture of equal rights;

- provision of effective judicial remedies, including as necessary through criminal, civil or administrative processes, to victims of discrimination, ensuring that sanctions which are set into place are efficient, dissuasive and proportional;

- allowing for the procedural possibility of proving discrimination, through appropriate rules and criteria of evidence and burdens of proof, based on the understanding that the victims of discrimination are usually at a disadvantage and would not be able to defend their rights in the courts unless special care is taken as to their procedural rights;

- establishing clear obligations of the state related to the duty to promote equality in a proactive way through appropriate policies.4

The ERT submission to the OSCE on Central Asian states is available at: http://www.equalrightstrust.org/view-subdocument/index.htm?id=38.

ERT Urging Slovenian Government to Stop Discriminatory Treatment of the “Erased” Persons

On 8 November 2007, ERT wrote to Janez Janša, the Slovenian Prime Minister, to express concern that by adopting the Draft Constitutional Amendment and introducing it to Parliament on 30 October 2007, the Slovenian Government had yet again failed to comply with its international obligations to prevent and provide effective protection from discrimination to all people in Slovenia.

At least 18,305 people were unlawfully removed from the Slovenian registry of perma-
herent residents on 26 February 1992. They were mainly people from other former Yugoslav republics who had been living in Slovenia and had not acquired Slovenian citizenship after Slovenia became independent. As a result of their removal *ex lege* from the registry, an act also referred to as the “erasure”, they became foreigners or stateless persons. These “erased” persons remain to date among the most disadvantaged and marginalised groups in the country and in the region.

The discriminatory treatment of the “erased” and the failure of the Slovene authorities to remedy their situation in line with Slovenia’s international human rights commitments, as well as relevant decisions of the Slovenian Constitutional Court ((U-I-284/94 of 4 February 1999 and U-I-246/02 of 3 April 2003), has been of concern to the international and regional treaty monitoring bodies as well as other European human rights monitoring mechanisms.

In February 2004, the Committee on the Rights of the Child expressed concern to the Slovene authorities that many children had been negatively affected by the “erasure”, as they and their families lost their right to health care, social assistance and family benefits as a consequence of losing their permanent residence status.

The Committee was also concerned that children born in Slovenia after 1992 became stateless. It recommended that Slovenia “proceed with the full and prompt implementation of the decisions of the Constitutional Court, compensate the children affected by the negative consequences of the erasure and ensure that they enjoy all rights under the Convention in the same way as other children in the State party”.

In July 2005, the UN Human Rights Committee recommended that Slovenia “should seek to resolve the legal status of all the citizens of the successor States that formed part of the former Socialist Federal Republic of Yugoslavia who are presently living in Slovenia, and should facilitate the acquisition of Slovenian citizenship by all such persons who wish to become citizens of the Republic of Slovenia”.

In November 2005, the UN Committee on Economic, Social and Cultural Rights observed that the situation of the “erased” entailed violations of these persons’ economic and social rights, including the rights to work, social security, health care and education. The Committee urged Slovenia to “restore the status of permanent resident to all the individuals concerned, in accordance with the relevant decisions of the Constitutional Court. These measures should allow these individuals to reclaim their rights and regain access to health services, social security, education and employment”.

Considering the Second Opinion on Slovenia adopted in May 2005 by the Advisory Committee on the Framework Convention for the Protection of National Minorities, the Committee of Ministers of the Council of Europe, in June 2006, adopted a resolution calling *inter alia*, on Slovenia to “find without further delay solutions to the situation of non-Slovenes from former Yugoslavia (SPRY) whose legal status in Slovenia has still not been regularised and take specific measures to assist these persons on the social and economic front”. Similar recommendations were addressed to the Slovene authorities in May 2003 and March 2006 by the Human Rights Commissioner of the Council of Europe.

Presently, the European Court of Human Rights is considering a case addressing the discrimination against the “erased” persons in Slovenia. In this case, ERT has submitted a third party brief elaborating on the discrimination based on national origin and on statelessness with regard to the enjoyment of family and private life, intersectional or multiple
discrimination of the “erased” and indirect discrimination concerning the denial of pension benefits to which the “erased” should have been entitled.10

The draft Constitutional Law submitted to the Slovene Parliament on 30 October 2007 continues to violate the human rights of the “erased” and further aggravates their disadvantaged position. It maintains discriminatory treatment of the “erased”, provides new legal grounds for more discriminatory actions by the authorities, including the possibility of revising decisions on individual cases where permanent residency has been restored, and it fails to retroactively restore the status of permanent residents of all the “erased”. The draft also negates responsibility of state bodies for the “erasure” and explicitly excludes the possibility of compensation for the human rights violations suffered by the “erased”.

The discriminative treatment of the “erased” in the past 16 years and the response of the Slovene authorities to the Constitutional Court rulings and the recommendations of international and regional treaty monitoring bodies, appear to be part of a deliberate policy to deny an effective legal remedy to the victims of discrimination and to unnecessarily delay giving effect to Slovenia’s legal commitments under both domestic and international law. Such conduct of the Slovene authorities in and of itself could be considered to constitute discriminatory treatment.

ERT reminded the Slovene government that it is required to give unqualified and immediate effect in the domestic order to the right to equality and non-discrimination guaranteed by the provisions of Article 26 of the International Covenant on Civil and Political Rights and Article 14 of the European Convention on Human Rights and Fundamental Freedoms.11

Furthermore, Slovenia’s commitment to provide an effective remedy against violations of the right to equality and non-discrimination, obliges Slovene authorities to:

- Ensure that individuals have accessible and effective remedies in order to realise their right to equality and non-discrimination. Such remedies should be appropriately adapted so as to take into account the special vulnerability of certain categories of person, including in particular children. A failure by a state to investigate allegations of discrimination could in and of itself constitute discriminatory treatment. Cessation of ongoing discrimination is an essential element of the right to an effective remedy.

- Ensure that those responsible for discriminatory acts or practices, where this has been established through prompt, thorough and effective investigations by independent and impartial bodies, are made accountable. As with failure to investigate, failure to make accountable those responsible for discriminatory acts or practices could, in and of itself, give rise to a separate breach of international law. The right to an effective remedy may in certain circumstances require states to provide for and implement provisional or interim measures to avoid continuing discrimination and to endeavour to repair at the earliest possible opportunity any harm that may have been caused by such discrimination.

- Ensure that reparation is made to individuals whose right to equality and non-discrimination has been violated. Without reparation to individuals whose human rights have been violated, the obligation to provide an effective remedy is not discharged.

- Take measures to prevent a recurrence of a violation of the right to equality and non-discrimination.12

persons irrespective of racial or ethnic origin, commits Slovenia to “lay down the rules on sanctions applicable to infringements of the anti-discrimination legislation and ... take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive.”

Therefore, ERT urged the Slovenian government to recall the Draft Constitutional Law and propose legislation that would grant full reparation to all individuals affected by the “erasure” by explicitly and publicly recognising the discriminatory nature of the “erasure”; retroactively restore the status of permanent residents of all “erased” people (in accordance with the relevant Slovenian Constitutional Court decisions); provide financial compensation to all individuals affected by the “erasure”; and provide rehabilitation to those individuals whose physical and mental health was negatively affected by the “erasure”. The Slovenian authorities should also establish an independent commission of inquiry to investigate thoroughly the circumstances which led to the “erasure”, to collect data and information on the people affected by this measure and to examine and analyse its human rights consequences. As it prepared to assume the European Union (EU) Presidency in January 2008, Slovenia should clearly and unequivocally demonstrate its commitment to equality and non-discrimination as a fundamental principle of EU law.

On 6 December 2007, ERT was informed by the Office of the Prime Minister that its letter had been passed on to the Ministry of Interior responsible for this matter.

The amicus brief submitted by the ERT to the European Court of Human rights on the case of the “erased” is available at: http://www.equalrightstrust.org/view-subdocument/index.htm?id=52. The ERT letter to the Prime Minister of Slovenia sent on 8 November 2007 is available at: http://www.equalrightstrust.org/view-subdocument/index.htm?id=75.

**ERT Appealing on Malaysia to Release Anti-discrimination Activists and Cease Arresting Civil Society and Opposition Party Activists**

On 14 December 2007, ERT wrote to Abdullah bin Ahmad Badawi, the Prime Minister of Malaysia, expressing concern about the arrests and detention of ethnic Indian and other civil society groups and opposition party activists. ERT was concerned that their arrest, detention and prosecution were in violation of their rights to freedom of expression and assembly. Furthermore, they had also been denied their right to equal treatment and non-discrimination on grounds of their ethnic origin and political or other opinion.

In November and early December 2007, dozens of activists of civil society organisations and opposition parties in Malaysia have been prevented by the police from exercising their rights to freedom of expression and peaceful assembly. Many were arrested and charged with offences ranging from sedition to organising illegal protests or obstructing police officers in carrying out their duties. The vast majority of the reported incidents took place in Kuala Lumpur, although police searches and arrests have also been carried out in a number of smaller towns.

These violations seem to have culminated on 13 December 2007 in a most serious breach of international human rights law. By the order of the Prime Minister, who is also Minister for Internal Security, five men of ethnic Indian origin were detained for two years under the Internal Security Act, without a warrant, trial and without access.
to legal counsel, apparently solely for engaging in non-violent exercise of their rights to freedom of expression and assembly.


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2 Human Rights Committee General Comment no. 31 para 14.
3 For the purpose of this intervention we have limited these bodies to include: the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child.
4 COMPLEMENTARY INTERNATIONAL STANDARDS, Study by the five experts on the content and scope of substantive gaps in the existing international instruments to combat racism, racial discrimination, xenophobia and related intolerance, HUMAN RIGHTS COUNCIL, Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action, A/HRC/4/WG.3/6, 1 August 2007. Page 17, point 38.
12 These legal obligations of states bound by the International Covenant on Civil and Political Rights result from the interpretation of the Human Rights Committee General Comment no. 31, paras. 15 – 19, with respect to the right to equality and non-discrimination.