Equal Rights Trust Advocacy

Jim Fitzgerald

In the period since the publication of ERR Volume 3 (June 2009), ERT has been continuing 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 Submits Written Comments to Moldovan Government on Draft Anti-discrimination Law

On 10 July 2009, ERT submitted written comments to Vitalie Pârlog, Minister of Justice of the Republic of Moldova on the Draft Law on Preventing and Combating Discrimination. The Draft Law aims to ensure the enjoyment by all persons in the territory of Moldova to equal rights and equal treatment in political, economic, social and other spheres of life.

While there are numerous non-discrimination provisions currently in force in Moldova, as well as some judicial interventions to protect from discrimination, the lack of comprehensive anti-discrimination law has been holding back the fight against discrimination. The Draft Law is an attempt to fill this gap.

In its submission ERT assessed the Draft Law and set out its concerns on several crucial issues that should be addressed properly. ERT provided recommendations on the basis of the Declaration of Principles on Equality as an international instrument of best practice to guide legislators and policy makers in strengthening national equality regimes.

ERT’s most important recommendations related to:

■ The definitions of direct and indirect discrimination and harassment;
■ The absence of a reasonable accommodation provision;
■ The unjustifiably broad exceptions to the prohibition of discrimination in access to goods and services;
■ The creation of a Government Committee to monitor the compliance with the Law.

In spite of its concerns ERT commended the Draft Law for its unified approach which covers all grounds of discrimination and for including sexual orientation as a specifically prohibited ground of discrimination.

Moldova is just one of approximately 160 countries in the world that currently have no comprehensive anti-discrimination law to protect the most vulnerable and disadvantaged individuals and groups in society.
ERT Urges the Sudanese Parliament to Repeal Indecency Law

On 17 September 2009, ERT wrote to the Parliament of Sudan expressing concern about the discriminatory application of Article 152 of the Criminal Act 1991, which has been used to discriminatorily target women and non-Muslims. The letter also echoed broader concerns that whipping, the prescribed punishment for breaching Article 152, constitutes cruel, degrading and inhuman treatment.

ERT urged the authorities to repeal Article 152 of the 1991 Criminal Act. It further urged the authorities to review the country’s criminal justice and other legislation in order to ensure it complies with the principle of non-discrimination, which is central to international treaties to which Sudan is a party.

Article 152 of the Sudanese penal code states:

“(1) Whoever commits, in a public place, an act, or conducts himself in an indecent manner, or a manner contrary to public morality, or wears an indecent or immoral dress, which causes annoyance to public feelings, shall be punished, with whipping not exceeding forty lashes, or a fine or both.

(2) The act shall be deemed contrary to public morality, if it is so considered in the religion of the doer, or the custom of the country where the act occurs.”

ERT’s letter followed the imprisonment and subsequent release of Sudanese journalist Lubna Hussein for breaching Article 152 by wearing trousers. On Monday 8 September 2009, Ms Hussein was sentenced to one month’s imprisonment after refusing to pay a fine for breaking the law. Ms Hussein was released on Tuesday 9 September 2009 after the Sudan Journalists Union paid the fine on her behalf.

Ms Hussein’s case highlights the need to repeal a law which raises a number of serious human rights concerns, particularly with regard to the right to non-discrimination. Whilst it is gender neutral on its face, Article 152 of the Criminal Act has reportedly been applied in a manner that discriminates against women. According to reports by national and international human rights organisations, Article 152 has often been used to prosecute women for conduct – such as the wearing of trousers – deemed inappropriate by individual law enforcement officers and judges. Women have been routinely arrested, detained, tried and then, on conviction, whipped simply because a police officer disapproves of their attire. Furthermore, it appears that many women sentenced by the Public Order Courts are non-Muslims who have been displaced to the North by the conflict in the South of Sudan.

ERT Submits Expert Opinion on Proposed Amendments to Latvia’s State Pensions Act

On 30 September 2009, ERT submitted an expert opinion on the proposed amendments to the State Pensions Act to Latvia’s Saeima (Parliament). The amendments in question are a response to the European Court of Human Rights judgment in the case of Andrejeva v. Latvia (application no. 55707/00, judgment of 18 February 2009).

In the Andrejeva decision the Strasbourg court found that Latvia had discriminated against non-citizens as compared to citizens, in not recognising their employment before 1991 by organisations which had been legally registered in former Soviet republics other than Latvia, as counting towards pensions.
In its submission ERT argued that the proposed amendments, which aim to end discrimination against non-citizens with respect to pension entitlements by reducing or “levelling down” the pension entitlements for both citizens and non-citizens, are contrary to Latvia’s international legal obligations, and to the object and purpose of domestic equality legislation.

ERT’s submission emphasised that:

-■ The levelling down of entitlements is contrary to Latvia’s obligations under international and European law;
-■ Comments and guidance issued by the UN Committee on Economic, Social and Cultural Rights and the European Commission indicate that regressive measures are not justifiable in order to meet non-discrimination obligations;
-■ The European Court of Justice has ruled out the possibility of “levelling down” in order to end practices of discrimination on grounds of sex, and this principle should apply in respect to other types of discrimination.

ERT appealed to the Latvian parliament to reconsider, in the second reading stage, the amendments to the State Pensions Act and vote for the adoption of amendments which would harmonise upwards the pension entitlement of the non-citizens to those of citizens of similar employment history.

ERT Urges Malian Parliament to Improve and Pass New Family Code

On 19 October 2009, ERT wrote to the President of the National Assembly of Mali, Dioncounda Traoré, calling on members of the National Assembly to ensure that the draft Persons and Family Code is not regrettably amended in response to concerns about the extension of equal rights for women.5

The letter stated that there was much to be welcomed in the Code and expressed ERT’s concern that progressive articles would be amended or removed in response to hostile pressure in recent months over the enactment of the Code. ERT also identified three articles in the Code which undermined the principles of equal participation and non-discrimination, and called for these provisions to be amended before the Code is adopted to avoid putting Mali in breach of its international obligations.

The letter was sent as Mali’s parliament debated the bill at second reading, after President Amadou Touré refused to sign the new Code into law amid protests led by Islamic leaders in late August. Citing the need to “ensure calm and a peaceful society”, President Touré asked parliamentarians to look again at a small number of provisions which had drawn criticism.

In its letter, ERT urged members of the National Assembly not to amend or remove articles from the draft which extend rights for women, including:

-■ Article 3, which states that no one can be discriminated against due to their genetic attributes.
-■ Article 282, which sets the minimum age for marriage to 18 for girls. The current law sets a minimum age of 18 for males and 15 for females.
-■ Article 284, which sets out that marriages will be considered void in the absence of consent by both parties.
-■ Article 313, which states that spouses have joint responsibility for the wellbeing of the
family. The current law in force states that a woman should obey her husband.

- Article 320, which provides a right to divorce by mutual agreement.

- Articles 559-605, which replace the term “paternal power” used in Article 86 of the current Marriage and Guardianship Code with the “parental authority” and provide for both parents to share parental rights and responsibility.

- Article 769, which sets out the rights to inheritance of children, descendants, parents and siblings on an equal basis.

- Articles 793, 794 and 795, which ensure that both male and female spouses can inherit equally in cases of intestate succession.

In the letter ERT also urged the members of the National Assembly to consider removing or amending three provisions in the draft Code which undermine the right to equality. These were:

- Article 290 which included same sex marriages in a list of prohibited forms of marriage. ERT submitted that this prohibition put same sex partners at a disadvantage in respect to their right to found a family and urged the Malian parliament to be guided by recent interpretations by the UN Human Rights Committee.

- Article 302 which authorised and legitimised the practice of polygamy, which violates the equal rights of women in relation to men. Mali should be guided on this issue by the UN Committee on the Elimination of Discrimination Against Women, which has expressed concern that Malian family law does not outlaw polygamy and recommended that Mali “put in effect measures to discourage polygamy and to ensure that spouses have the same rights and responsibilities both during marriage and in the event of its dissolution.”

- Article 314 which stated that the husband is the head of the family, has the right to choose the family’s residence and has responsibility for the family’s finances. ERT put forward that Article 314 was both in breach of the Convention on the Elimination of Discrimination against Women and the Protocol on the Rights of Women in Africa, and that it is inconsistent with other Articles in the draft Code, which seek to put men and women on an equal footing.

ERT also used the opportunity to urge Malian authorities to take comprehensive and effective measures, including public awareness-raising campaigns, aimed at eliminating practices of polygamy.

ERT Calls on Commonwealth Heads of Government to Condemn the Ugandan Anti-homosexuality Bill and Urges Ugandan President and Parliament to Reject the Bill

On 26 November 2009, ERT wrote to the Commonwealth Secretary General, Kamalesh Sharma, calling on the Heads of Government to condemn an Anti-homosexuality Bill recently introduced in the Parliament of Uganda and to take urgent action to repeal existing homophobic laws across the Commonwealth. The letter was sent in advance of the Commonwealth Heads of Government meeting later that week.

Homosexual conduct is currently illegal in the majority of Commonwealth nations, despite the commitment in the 1971 Commonwealth Declaration of Principles to “foster human equality and dignity everywhere”.

6 The letter was sent in advance of the Commonwealth Heads of Government meeting later that week.
In the letter ERT urged Heads of Government to:

- Establish a Ministerial Action Group to address the issue of laws criminalising homosexual conduct and advise member states of the Commonwealth on the legal implications of retaining such laws.

- Condemn in the strongest terms the Anti-homosexuality Bill which was tabled in the Parliament of Uganda and consider sanctions which would follow from adoption of the Bill.

- Include a political commitment to tackling homophobic laws in the final communiqué of its meeting.

ERT argued that current international law prohibits discrimination on the basis of sexual orientation and gender identity. Relying on interpretation by UN human rights bodies and broadly recognised legal principles to support its case, ERT highlighted that in recent years, the UN Human Rights Committee, the Committee on Economic, Social and Cultural Right and the Committee on the Rights of the Child have all concluded that the right to non-discrimination includes protection on grounds of sexual orientation or gender identity.

On 9 December 2009, following the letter to the Commonwealth Secretary General, ERT submitted a 25-page legal brief to Ugandan President Yowere Museveni outlining how the adoption of the Anti-homosexuality Bill currently being debated in the Ugandan parliament would breach both Uganda’s Constitution and its international treaty obligations.7 ERT urged President Museveni and Ugandan parliamentarians to reject the Bill in its entirety, and to review the constitutionality of section 145 of the Ugandan Penal Code, which is currently used to prosecute homosexual conduct.

The submission focused on the rights to equality and non-discrimination and provided a detailed analysis of how the proposed Bill would affect the enjoyment of these rights. ERT argued that protection from discrimination provided by the Constitution of Uganda includes protection on grounds of sexual orientation and gender identity. It further argued that the Bill does not comply with the Constitution’s own provisions for restricting fundamental rights and is in breach of the international human rights obligations by which Uganda is bound.

ERT Action on International Human Rights Day


ERT has also addressed specific recommendations related to the rights to non-discrimination and equality to the governments of nine countries on which it had focused its work earlier this year: Latvia, Malaysia, Mali, Moldova, Sudan, Thailand, Uganda, UK and the USA.

ERT addressed specific appeals to 9 governments from Europe, Africa, Asia and the Americas:

- Latvia – ERT urged the Latvian government and its lawmakers to uphold the equality of
all persons under its jurisdiction in respect to their pension rights and not roll back current levels of social security, as recommended in ERT’s expert opinion earlier in the year.

■ Malaysia – ERT called on the government of Malaysia to ensure equal rights for stateless Rohingya migrants under its jurisdiction, following previous advocacy and ahead of the publication of its special report on the situation of Rohingya held in detention in that country.

■ Mali – ERT reiterated its recommendations, the message of which is that Mali’s MPs and President should not give in to pressure from opponents of the draft Family Code which seeks to extend rights for women in respect of marriage, property and inheritance.

■ Moldova – ERT called on the government to ensure that the Draft Law on Preventing and Combating Discrimination reflects the highest international standards on equality as set out in its submission to the government’s consultation and to push for its adoption by the parliament.

■ Sri Lanka – ERT reiterated its call to President Rajapaksa to use the principles of equality enshrined in Sri Lanka’s constitution and in ERT’s Declaration of Principles on Equality as the basis for new policies ensuring equality between Sinhalese and Tamil communities.

■ Sudan – ERT addressed recommendations to the Sudanese parliament calling for the repeal of section 152 of the Criminal Code, which prohibits ‘indecent’ acts and conduct as it has been used discriminatively against women and non-Muslims.

■ Uganda – ERT called on authorities and parliamentarians to reject the proposed Anti-Homosexuality Bill which is currently being debated in Uganda, one of 80 countries in the world where homosexual conduct is illegal.

■ UK – ERT wrote to the leaders of the UK’s three major political parties urging them to ensure that adequate parliamentary time is made for the 2009 Equality Bill to be enacted before parliament rises.

■ USA – ERT called on President Obama to institute a review of immigration detention policies, ensure that all remaining stateless detainees at the Guantanamo Bay facility are resettled in safe countries and sign the 1954 Convention on the Status of Stateless Persons.

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The text of the ERT submission to the Latvian Parliament is available at: http://www.equalrightstrust.org/ert-

The text of the ERT letter to the National Assembly President Dioncounda Traoré is available at: http://www.
equalrightstrust.org/ertdocumentbank/091015%20Mali%20-%20Traore%20Final%20Fr.pdf.

The text of the ERT letter to Commonwealth General Secretary Kamalesh Sharma is available at: http://www.
pdf.

The text of the ERT submission to Ugandan President Museveni is available at: http://www.equalrightstrust.org/
ertdocumentbank/The%20Equal%20Rights%20Trust%20Uganda%20Anti%20Homosexuality%20Bill%20Opinion.
pdf. Excerpts of the submission are reprinted in this volume.