

The Equal Rights Trust Advocacy

In the period since the publication of ERR Volume 9 (September 2012), 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 September 2012.

International

On 10 December 2012, ERT issued a statement to mark Human Rights Day 2012. The theme of Human Rights Day 2012 was inclusion and the right to participate in public life. Inclusion and participation – guaranteed in particular by the rights to freedom of expression and opinion, freedom of assembly and association and the right to take part in elections, in public life and decision-making – are key themes in ERT’s work.

ERT’s statement highlighted the relationship between equality and public participation in its work, and called on all those working to ensure inclusion and participation in public life to place the rights to equality and non-discrimination at the heart of their efforts. The statement highlighted ERT’s global work to combat statelessness, to ensure that those without a nationality are not deprived of a voice; its work to combat discrimination on grounds of political opinion in countries such as Azerbaijan, Belarus and Sudan; and its work to promote equal participation for LGBTI persons in countries such as Guyana, Jordan, Kenya and Malaysia.

Australia

On 20 December 2012, ERT made a submission to the Senate Committee on Legal and Constitutional Affairs of Australia on the Draft Anti-Discrimination and Human Rights Bill 2012. ERT’s submission, while welcoming the Draft Bill in principle, made a number of recommendations to ensure consistency with international law and best practice, as represented by the Declaration of Principles on Equality. ERT’s submission made a number of specific recommendations for amendment to the Bill, including:

- The addition of a number of grounds omitted from, or only partially protected in, the list of explicitly protected grounds, including maternity; civil, family or carer status; health status; language; birth; and economic status.
- The adoption of a conditionally open list of grounds reflecting the approach taken in Principle 5 of the Declaration of Principles on Equality.
- The adoption of the terms direct and indirect discrimination, and their definitions as

provided in the Declaration, rather than the alternative formulations provided.

- Amendments to the provisions on positive action, to ensure that positive action measures are understood as an integral element to the right to equality, and not an exception to it, and to replace the test of “objective necessity” with one of “reasonableness and proportionality”.
- The removal of a number of exceptions considered to be inconsistent with international law and best practice.
- Amendments to the provisions on reasonable accommodation to bring these into line with international standards, in particular by ensuring that the Bill retained a duty to make reasonable accommodation.

On 21 February 2013, the Australian Senate Committee on Legal and Constitutional Affairs published its report on the Draft Anti-Discrimination and Human Rights Bill 2012, marking an important step in Australia’s progress towards enacting comprehensive anti-discrimination law. In its report, the Committee adopted a key recommendation from ERT’s response to its consultation, which was submitted in December 2012.

The Draft Bill contains a significant exception for discrimination by religious bodies or educational institutions. In its report, the Committee acknowledged ERT’s argument that this exception was too broad and would be inconsistent with the right to non-discrimination. The Committee recommended that the exception be narrowed so as not to permit discrimination in the provision of services. While ERT argued for the removal of the exception from the Draft Bill, the Committee’s proposal would still improve the Bill, and ERT therefore urged the

Government of Australia to accept the Committee’s recommendation.

However, ERT retained serious concerns that in its current form, the Draft Bill still falls short of the standards required by international law, in respect to several important issues (related to grounds, positive action and reasonable accommodation). ERT urged the Government of Australia to take these recommendations into account when finalising the Draft Bill.

Bangladesh

On 9 October 2012, ERT made a stakeholder submission to the Universal Periodic Review of Bangladesh, commenting on the human rights of stateless Rohingya. In this submission, ERT highlighted some of the most significant concerns and challenges with regard to the human rights protection of Rohingya in Bangladesh relating to the populations of Rohingya that arrived since the recent violence in Myanmar in June 2012.

These concerns relate to the *refoulement* of Rohingya fleeing the recent violence in Myanmar since June 2012, and the treatment of Rohingya refugees inside Bangladesh, including lack of access to protection and humanitarian aid for Rohingya. ERT also raised concerns about the treatment of the Rohingya population in Bangladesh including their lack of access to a regularised status, security of the person and their susceptibility to arbitrary detention and labour exploitation.

Guyana

At its 52nd session (9-27 July 2012), the UN Committee on the Elimination of Discrimination against Women considered the state report of Guyana. ERT had submitted a parallel report focused on the country’s obliga-

tions 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 interviews with victims of gender discrimination and their representatives and analysis of Guyanese laws conducted by ERT and its partners at the Society for Sexual Orientation Discrimination (SASOD).

The Committee included a number of recommendations which replicated or echoed ERT's recommendations. Most significantly, the Committee recommended that Guyana enact "comprehensive anti-discrimination legislation that includes the prohibition of all forms of discrimination against [women]", as well as decriminalise same-sex relations. Given that the provisions in Guyanese law have been interpreted as relating to same-sex relations between men only, this is a particularly welcome recommendation, in that it recognises the stigmatising effect of criminalisation on the LGBTI population more generally, a point stressed in ERT's submission.

Other important areas where the Committee reflected ERT's recommendations included calling on Guyana to: harmonise the various provisions on equality and non-discrimination at the constitutional and legislative level; raise awareness of the rights to equality and non-discrimination among rights-holders and duty-bearers; ensure effective access to justice including through the provision of legal aid for this purpose; and ensure the full implementation of the Sexual Offences Act.

Indonesia

On 24-25 October 2012, ERT participated in the "EU-Indonesia Civil Society Human

Rights Seminar on Non-Discrimination: From Principles to Practice" in Jakarta, Indonesia. At the Seminar, which was attended by a large number of Indonesian stakeholders, including civil society organisations, members of the judiciary and others, and representatives of the EU Delegation to Indonesia, ERT Executive Director Dimitrina Petrova was a keynote speaker, addressing the topic of emerging trends in equality law, advocating for adopting comprehensive equality legislation, and participating in various discussions on improving protection from discrimination in Indonesia. The ERT positions were then reflected in the conference recommendations to the Indonesian government.

Jamaica

At its 52nd session (9-27 July 2012), the UN Committee on the Elimination of Discrimination against Women considered the state report of Jamaica. ERT had submitted a parallel report focused on gender equality commenting on the state's compliance with Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. The Committee incorporated all but one of ERT's principal recommendations in its Concluding Observations.

Most significantly, the Committee recommended that Jamaica enact "comprehensive national legislation to ensure the principle of equality between women and men". In its report, ERT had urged the Committee to recommend that Jamaica enact equality legislation in order to comply with the requirements of the Convention, as elaborated in the Committee's General Recommendation 28. ERT insisted that any such legislation should provide protection from direct and indirect discrimination, harassment, discrimination on the basis of perception and discrimination by association, on all usually protected

grounds and in all areas of life regulated by law. ERT also recommended that such legislation should provide measures necessary to ensure adequate access to justice for victims of discrimination; provide effective, proportionate and dissuasive sanctions and remedies; and require the state to take all necessary measures to eliminate discrimination and promote equality, including through the adoption of special measures.

The Committee included a number of other recommendations which replicate or echo recommendations from ERT's report, including: strengthening the national women's machinery within the executive branch of the Government and establishing a National Human Rights Institution; urging Jamaica to take measures to improve protection from gender-based violence; and urging Jamaica to take measures to improve enforcement and implementation of the *Employment (Equal Pay for Men and Women) Act*.

Kenya

At its 105th session (9-27 July 2012), the UN Human Rights Committee considered the state report of the Republic of Kenya. ERT had submitted information to the Committee which urged it to recommend a number of specific legislative and policy actions to increase protection of the rights to equality and non-discrimination. In its Concluding Observations published in late July, the Committee adopted a number of these recommendations.

ERT's submission was based on its 2011 report *In the Spirit of Harambee: Addressing Discrimination and Inequality in Kenya*. The report is the first ever comprehensive account of discrimination and inequalities on all grounds and in all areas of life in Kenya.

The Committee incorporated many of ERT's recommendations in its Concluding Observations, including those relating to repeal of family laws which discriminate against women, repeal of provisions of the Penal Code which have been widely interpreted as criminalising consensual sexual activity between persons of the same sex, and addressing discrimination against Kenyan-Nubians in relation to citizenship and identity cards. The Committee also made recommendations concerning legal aid and data collection, issues ERT had raised in its submission.

Despite these positive inclusions, however, the Committee did not recommend that Kenya enact comprehensive legislation to prohibit all forms of discrimination, an obligation under Article 26 ICCPR read together with Article 2. ERT and its partners in Kenya, including the Kenya Human Rights Commission, the Federation of Women Lawyers and the Gay and Lesbian Coalition of Kenya, have developed, and advocated for the adoption of, a comprehensive equality bill. This effort has been supported by dozens of other non-governmental organisations in Kenya, and there is currently a growing consensus that adoption of such legislation is necessary for Kenya to meet its obligations under international law and to give effect to the aspirations of its new Constitution.

Malaysia

On 12 November 2012, ERT published *Washing the Tigers: Addressing Discrimination and Inequality in Malaysia*. The report, in partnership with the Malaysian NGO Tenaganita, is the first ever comprehensive account of discrimination and inequalities on all protected grounds and in all areas of life in Malaysia. It is based on extensive field research and makes a set of detailed recommenda-

tions for reforms to law, policy and practice related to equality and non-discrimination.

The report was published at a moment of great importance for the Malaysian people. On 28 April 2012, thousands of people took to the streets of Kuala Lumpur in Bersih 3.0, the biggest mass opposition rally in Malaysia's history. The protesters demanded "cleansing" of Malaysia's electoral system, which favours the coalition that has been in power since Malaysia's independence in 1957. Although this rally was violently suppressed, as were previous ones in recent years, the desire for reform appears undiminished. *Washing the Tigers* finds that the problems which the Bersih movement identifies within the political system are symptomatic of deep-rooted inequalities which limit people's rights and aspirations in this Asian Tiger nation.

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

- Join international treaties and other instruments which are relevant to the rights to equality and non-discrimination, including the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights (1966).
- Review and repeal discriminatory provisions in current laws and policies, including affirmative action provisions in the Constitution which discriminate against members of non-Bumiputera groups. The report also recommends amendments to criminal law, employment law, education law and family law, among others.
- Amend the Federal Constitution to ensure that it complies fully with Malaysia's international human rights obligations on the rights to equality and non-discrimination.
- Enact comprehensive equality legislation which should: aim at eliminating direct and indirect discrimination and harassment in all areas of life regulated by law; cover all prohibited grounds listed in Principle 5 of the Declaration of Principles on Equality; and attribute obligations to public and private actors, including in relation to the promotion of substantive equality and the collection of data relevant to equality.

Myanmar

On 2 November 2012 ERT issued an Emergency Report on the violence in Rakhine State, Myanmar, and wrote to the President of Myanmar urging action to end the violence, provide protection and aid for the victims and ensure that perpetrators were brought to justice.

As of November 2012, the Rohingya of Myanmar had been subject to systematic, state sponsored attacks in Rakhine State, for a number of months, beginning in June 2012. ERT had been monitoring the situation and reporting on it since the outset of the violence. In October 2012, a new outbreak of more intense and widespread violence began. The nature and extent of this new violence, together with mass evictions and forced relocation of Muslims by security forces, resulted in claims of ethnic cleansing being made by many advocacy groups.

Consequently, on 2 November 2012, ERT wrote to President Thein Sein of Myanmar, urging him to take immediate action to end the violence, provide protection and aid to all

victims, allow full access to the international community and ensure that all perpetrators are brought to justice. ERT also issued an emergency report drawing attention to the situation and calling on both the government of Myanmar and the international community to respond immediately, to end the violence, protect victims and bring the perpetrators to justice. The report highlighted the role played by the government of Myanmar and state security forces in inciting hatred against Muslims, turning a blind eye to violence perpetrated against them and engaging in the violence. It also raised concern over the independence and effectiveness of the government-appointed commission of inquiry, and recommended that an independent, international inquiry be carried out. ERT appealed to key figures in the international community to act in accordance with the doctrine of responsibility to protect and address the crisis as a matter of urgency.

On 30 November 2012, ERT and the Centre for International Studies and Diplomacy co-hosted a panel discussion at the School of Oriental and African Studies in London on the topic of “Democratisation, Securitisation and Human Rights in Burma: Where do the Rohingya fit in?” The discussion focused on the crisis faced by Rohingya in Burma, and future prospects for this stateless community in the country.

The discussion was chaired by Stefanie Grant, Senior Advisor to ERT and a Founder and former Director of the Research Department at Amnesty International. Panellists included Phil Rees, Reporter and TV-producer – former foreign correspondent and senior producer at the BBC; Maung Zarni, Visiting Fellow at the London School of Economics; Tun Khin, President of Burmese Rohingya Organization UK; and Amal de Chickera, Head of Statelessness and Nationality

Projects at ERT. The panellists looked at the issue in the context of a Burma that is haltingly moving towards democracy but still unable to move beyond the long shadow of its authoritarian regime.

Solomon Islands

In June 2012, ERT submitted suggestions for questions relating to equality and non-discrimination to be included in the List of Issues for the Pre-session Working Group of the 54th session (February 2013) of the UN Committee on the Elimination of Discrimination against Women when it considered the state report of the Solomon Islands. On 3 August 2012, the Committee agreed the List of Issues for consideration at the 54th session.

The Committee included a number of questions suggested by ERT, including on the substance of the right to equality and non-discrimination in the draft Constitution, its scope, and the definitions of different forms of discrimination; the steps being taken to ensure all forms of gender-based violence are prohibited under the law; and whether the Solomon Islands was taking steps to establish a National Human Rights Institution in line with the Paris Principles.

Uganda

On 11 January 2013, ERT urged Ugandan President Yoweri Museveni to intervene to prevent the Anti-Homosexuality Bill – under debate in the Ugandan Parliament – becoming law. ERT was prompted to resubmit a 2009 legal brief outlining how the Bill contravenes both international and Ugandan law by reports that a vote on the Bill might take place in February 2013.

ERT’s letter urged President Museveni to call on Ugandan parliamentarians to reject

the Bill in its entirety, and, if they failed to do so and the Bill passed, to refuse Presidential assent. The letter reiterated conclusions, expressed in a 2009 ERT legal brief, that the Bill is both unconstitutional and in breach of Uganda's international obligations. ERT's brief argued that the right to equality and non-discrimination provided by the Constitution of Uganda provides protection on grounds of sexual orientation and gender identity. The brief provided evidence that the Bill violates Articles 21 (equality and non-discrimination) and 27 (privacy) of the Constitution. The brief also detailed the observations of UN treaty bodies which have concluded that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights provide protection from discrimination on grounds of sexual orientation and gender identity.

Ukraine

On 22 February, ERT called upon the Parliament of Ukraine to reject Draft Law 0945 "On the Introduction of Changes to Certain Legislative Acts of Ukraine (regarding protection of children's rights in the safe information sphere)", which, if passed, would discriminate against gays, lesbians and bisexual persons.

In December 2012, Draft Law 0945 (formerly Draft Law 8711) was submitted to the Verkhovna Rada (the Ukrainian parliament). The Draft Law would amend a number of existing laws, including the Criminal Code of Ukraine, with the effect of prohibiting the broadly construed "promotion of homosexuality" in different media, and would provide for punishment of up to five years' imprisonment.

ERT submitted to the Verkhovna Rada a legal opinion on the Draft Law assessing its compatibility with the rights to equality and

non-discrimination as protected under international law, and which establishes that adoption of the Draft Law would constitute a violation of: Articles 2(1), 19 and 26 of the International Covenant on Civil and Political Rights; Articles 2(1), 13, 17 and 24 of the Convention on the Rights of the Child; and Articles 10 and 14 of the European Convention on Human Rights. In its letter to the Chairman of the Verkhovna Rada and the parliamentary leaders of the five political parties represented therein accompanying the legal opinion, ERT called for the Draft Law to be rejected in its entirety.

ERT also wrote to Herman Van Rompuy, President of the European Council, and Jose Manuel Barroso, President of the European Commission, as well as to other European Commissioners, calling for the European Union to urge the government of Ukraine to comply with its obligations under international and European human rights law and to object to the adoption of Draft Law 0945.

United Kingdom

On 29 August 2012, ERT made a **submission to the European Committee on the Prevention of Torture (CPT)** on the issues of indefinite detention of stateless persons in the UK. The purpose of the submission was to draw the attention of the CPT to relevant issues, in advance to its visit to the UK in September 2012.

As a result of having made a formal submission, ERT was invited to attend a civil society briefing for the CPT in London on 25 September 2012. ERT Head of Statelessness and Nationality Projects, Amal De Chickera, spoke at the briefing on the phenomenon of indefinite detention and its impact on stateless persons in the UK. He also presented the delegates with copies of ERT's Guidelines to Protect Stateless Persons from Arbitrary Detention.

On 25 February 2013, ERT made a submission to the Parliamentary Committee considering the **Marriage (Same Sex Couples) Bill 2013** in the House of Commons in the United Kingdom. The Bill opens up access to the institution of marriage to same sex couples through civil ceremonies and allows religious organisations to “opt in” to conducting same sex marriage.

ERT’s submission to the Committee welcomed the Bill, arguing that it would, if adopted, provide the United Kingdom with some of the strongest and most progressive legislation protecting the rights of lesbian, gay and bisexual people. Notwithstanding that support however, ERT expressed its serious concerns that the Bill contains a number of provisions which would differentiate between different sex and same sex couples and which would amount to unjustifiable discrimination.

ERT’s analysis stressed that when religious organisations conduct marriages which are recognised and regulated by the state, they perform a public function and that international human rights law and the Equality Act 2010 require such functions to be carried out in a non-discriminatory manner. The submission recognised that respect for freedom of religion requires that religious organi-

sations should be free to conduct *religious ceremonies* in accordance with their beliefs and tenets. However, it noted also that when conducting state-recognised marriage, these institutions are carrying out a *public function* and therefore argued that those organisations should not be permitted to discriminate against couples based on their sexual orientation, but must carry out that function in a non-discriminatory manner.

In addition, ERT highlighted that the Bill:

- Leaves same sex couples in Northern Ireland unable to marry, solely based on their place of residence;
- Reserves concepts such as adultery and consummation as solely heterosexual, symbolising a segregation of different sex and same sex couples; and
- Makes no amendments to the Civil Partnership Act 2004 which discriminates against different sex couples in denying them access to civil partnerships.

ERT urged the Committee to remove these remaining areas of discrimination between different sex and same sex couples, thereby ensuring full equality, regardless of sexual orientation.