

Joint intervention by the IHF and the Equal Rights Trust

Tuesday, 25 September 2007:

Working session 3, Specifically selected topic: Combating intolerance and discrimination and promoting mutual respect and understanding

Central Asian OSCE participating States fail in protection against discrimination

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 obligation, 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".¹

The Equal Rights Trust (ERT) is a new international non-governmental organisation which promotes equality and non-discrimination as a fundamental human right and a basic principle of social justice. ERT and IHF are concerned that cases of explicit discrimination inscribed in national laws persist in the Central Asia 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 bodies², mandated to review states' compliance with international human rights treaties. A thorough analysis of their reports uncovers a long list of concerns regarding discriminative practices and acts common to the five mentioned Central Asian states. UN treaty bodies invariably point out to 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. Discrimination 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 marginalized 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. Gravest violations in this field have been perpetrated in Uzbekistan where, among other things, criminal law has been enforced to penalize apparently peaceful exercise of religious freedom, resulting in the imprisonment of hundreds of people; and in Turkmenistan where policies of forced assimilation has 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, piece-meal 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.

The ERT and the IHF are 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.

Recommendations:

In order to effectively combat all forms of discrimination, ERT and IHF appeal 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**:

1. 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;
2. 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;
3. Anti-discrimination standards (legislative provisions) should be clear, consistent and easily intelligible;
4. The regulatory framework must be effective, efficient and equitable, aimed at encouraging individual responsibility and self-generated efforts to promote equality;
5. 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, the ERT and the IHF urge 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 which would be empowered to assist victims and to promote a culture of equal rights;
- provision of effective judicial remedies, including as necessary though criminal, civil or administrative processes, to victims of discrimination, ensuring that sanctions which are set into place are efficient, dissuasive and proportional;
- allowing the procedural possibility for proving discrimination, through appropriate rules and criteria of evidence and burdens of proof, deriving from 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.³
- The ERT and the IHF hereby urge the 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.

¹ Human Rights Committee General Comment no. 31 para 14

² 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.

³ *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.