Suggestions for questions relating to equality and non-discrimination to be included in the List of Issues for Country report task force Human Rights Committee, 104th Session

Turkey

Statement of Interest

1. The Equal Rights Trust (ERT) submits the following suggested questions for adoption by the Country Report Task Forces to the United Nations Human Rights Committee (the Committee) based upon the State reports submitted to the Committee by Turkey for consideration at the Committee’s 104th Session.

2. ERT is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. Established as an advocacy organisation, resource centre and a think tank, it focuses on the complex and complementary relationship between different types of discrimination, developing strategies for translating the principles of equality into practice.
3. ERT is implementing the project “Empowering civil society to challenge discrimination against LGBTI persons in the Aegean and Marmara regions of Turkey” in partnership with Siyah Pembe Üçgen İzmir Cinsel Yönelim Ve Cinsiyet Kimliği Araştırmaları İle Ayırımçılığa Karşı Dayanışma Derneği, a Turkish Non-Governmental Organisation advocating for LGBTI rights in Turkey. Through this project, ERT has developed a strong understanding of the patterns of discrimination prevalent in Turkey, including those based on sexual orientation and gender identity, as well as of the level and quality of protection from discrimination though legislation, policies and practices.

ERT Concerns regarding the Right to Non-discrimination

4. Citizens in Turkey enjoy general constitutional protection of their equal rights: the Constitution of Turkey provides for equality before the law and entitlement to equal protection without discrimination. Article 10 of the Constitution states:

(1) All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations.

(2) Men and women have equal rights. The State shall have the obligation to ensure that this equality exists in practice.

(3) No privilege shall be granted to any individual, family, group or class.

(4) State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.¹

5. The open list of protected characteristics in Article 10 (1) is among the strengths of the constitutional guarantee of the right to non-discrimination, allowing the inclusion of further protected characteristics. However, the lack of explicit reference to characteristics on which discrimination is widespread in practice is a cause of concern. These include in particular pregnancy and maternity, sexual orientation, gender identity, disability and age.

6. Constitutional protection is not enough. ERT is concerned that no comprehensive legislation prohibiting discrimination on all grounds exists in Turkey.

7. No one legislative instrument provides a legal definition of key concepts in equality and non-discrimination law, including direct and indirect discrimination, multiple discrimination, discrimination by association or perception, segregation and harassment, conforming to current international

¹ The Constitution of the Republic of Turkey, 10 May 2007, Article 10; see also Act No. 5982 dated 07 May 2010 to amend some provisions of the Constitution of the Republic of Turkey, 7 May 2010 (in Turkish).
norms of best practice, as reflected in the *Declaration of Principles on Equality*.²

8. Current legal protections are scattered across a range of different legislative instruments leading to inconsistency in both scope and application of non-discrimination laws and implementation. For example, Article 216 of the Penal Code contains a closed list of proscribed grounds of discrimination, making it impossible to extend protection through analogy to grounds not explicitly covered.

9. While the Constitution provides for positive discrimination as a means to reduce the disadvantage suffered by certain disadvantaged groups, issues of positive action are difficult and sensitive and should be properly addressed in future comprehensive equality legislation.

**ERT Suggestions for List of Issues**

10. What actions are being taken by the State Party towards the introduction of comprehensive equality and anti-discrimination legislation, as recommended by treaty bodies? Will such legislation contain legal definitions of key concepts including direct and indirect discrimination, multiple discrimination, discrimination by association or perception, segregation and harassment conforming to current international norms of best practice?

11. Is the State Party considering any steps in defining positive (affirmative) action, consistent with international human rights instruments?

12. What measures is the State Party undertaking to ensure consistency of protection across all grounds of discrimination?

13. Is State Party taking or envisaging any legislative or policy action to address the widespread discrimination suffered by members of sexual and gender minorities on grounds of sexual orientation and gender identity?