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## The Equal Rights Trust

Written submissions to the 57<sup>th</sup> session of the Committee on the Elimination of Discrimination against Women in relation to the combined third and fourth periodic reports submitted by:

### Kazakhstan

January 2014

### Statement of Interest

1. The Equal Rights Trust (ERT) submits these written comments to the United Nations Committee on the Elimination of Discrimination against Women (the Committee) on the combined third and fourth periodic reports by Kazakhstan.
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 think tank, it focuses on the complex relationship between different types of discrimination and inequality, developing strategies for translating the principles of equality into practice.
3. ERT has been actively involved in the promotion of improved protection from discrimination in Kazakhstan since 2012. In its project *Empowering human rights defenders in Central Asia to combat discrimination on the basis of ethnicity and religion*, ERT works in partnership with the Kazakhstan International Bureau for Human Rights and the Rule of Law (KIBHR). In the course of this project, ERT has undertaken research on patterns of discrimination and inequality in Kazakhstan and on the legal and policy framework in place to prevent discrimination and promote equality.

4. This submission focuses on the extent to which Kazakhstan has met its obligations to respect, protect and fulfil the right of women to non-discrimination. In particular, the submission is concerned with Kazakhstan's performance under Articles 2(a) and (b) of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention). In assessing Kazakhstan's adherence to its obligations under Articles 2(a) and (b), the submission relies on the interpretation of these provisions which has been provided by the Committee in its General Recommendation No. 28.<sup>1</sup>
5. The submission also relies upon the Declaration of Principles on Equality (the Declaration),<sup>2</sup> a document of international best practice on equality. The Declaration was drafted and adopted in 2008 by 128 prominent human rights and equality advocates and experts, and has been described as "the current international understanding of Principles on Equality".<sup>3</sup> It has also been endorsed by the Parliamentary Assembly of the Council of Europe.<sup>4</sup>
6. The submission examines deficiencies and gaps within the existing legislative framework in Kazakhstan such that it falls short of the standard required under Article 2 of the Convention in certain key areas.

### **Constitutional and Legislative Framework (Article 2)**

7. Under Article 2(a) of the Convention, States Parties undertake to "condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women" and to "embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle". Further, under Article 2(b), States Parties undertake to "adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women".
8. The Committee, in its General Recommendation No. 28 on the Core Obligations of State Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women (General Recommendation No. 28), has elaborated on the nature of states' obligation arising under Article 2, stating that:

*Article 2 is crucial to the full implementation of the Convention since it identifies the nature of the general legal obligations of States parties.*

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<sup>1</sup> Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 28 on the core obligations of States parties under article 2*, UN Doc. CEDAW/C/GC/28, 2010.

<sup>2</sup> *Declaration of Principles on Equality*, The Equal Rights Trust, London, 2008.

<sup>3</sup> *Naz Foundation v. Government of NCT of Delhi and Others* WP(C) No.7455/2001, Para 93.

<sup>4</sup> Parliamentary Assembly of the Council of Europe, *Resolution and Recommendation: The Declaration of Principles on Equality and activities of the Council of Europe*, REC 1986 (2011), 25 November 2011, available at: [http://assembly.coe.int/ASP/Doc/ATListingDetails\\_E.asp?ATID=11380](http://assembly.coe.int/ASP/Doc/ATListingDetails_E.asp?ATID=11380).

*The obligations enshrined in article 2 are inextricably linked with all other substantive provisions of the Convention, as States parties have the obligation to ensure that all the rights enshrined in the Convention are fully respected at the national level.*<sup>5</sup>

9. The Committee has further confirmed that the obligation on state parties under Article 2 has three elements. States are required to *respect* the right to non-discrimination by refraining from “making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights”;<sup>6</sup> to *protect* the right by “protect[ing] women from discrimination by private actors and tak[ing] steps directly aimed at eliminating customary and all other practices that prejudice and perpetuate the notion of inferiority or superiority of either of the sexes”;<sup>7</sup> and to *fulfil* the right by adopting a “wide variety of steps to ensure that women and men enjoy equal rights *de jure* and *de facto*, including, where appropriate, the adoption of temporary special measures”.<sup>8</sup>
10. Protection from discrimination on grounds of sex in Kazakhstan is provided by both the Constitution and Law No. 223-IV ZRK “on State guarantees of equal rights and opportunities for men and women”. In its concluding observations when Kazakhstan was last reviewed by the Committee in 2007, the Committee made reference to the draft version of the law and requested Kazakhstan:

*[T]o ensure that the draft law on equal rights and equal opportunities contains a definition of discrimination in line with article 1 of the Convention, encompassing both direct and indirect discrimination, and extending to acts of discrimination by public and private actors, and also calls on the State party to enact speedily the draft law.*<sup>9</sup>

11. ERT has born in mind the Committee’s request in the preparation of this written information.
12. The most important non-discrimination provision in the Constitution is Article 14 which states:

*1. All are equal before the law and courts.*

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<sup>5</sup> See above, note 1, Para 6.

<sup>6</sup> *Ibid.*, Para 9.

<sup>7</sup> *Ibid.*, Para 9.

<sup>8</sup> *Ibid.*, Para 9.

<sup>9</sup> Committee on the Elimination of Discrimination against Women, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Kazakhstan*, UN Doc. CEDAW/C/KAZ/CO/2, 2 February 2007, Para 12.

*2. No one may be subjected to any discrimination for reasons of origin, social status, occupation, property status, **gender**, race, ethnic affiliation, language, religious affiliation, opinions, place of residence or for any other circumstance. (emphasis added)*

13. In addition, Article 24(2) provides that “Everyone shall have the right to safe and hygienic working conditions, to just remuneration for labour without discrimination, as well as to social protection against unemployment.”
14. The primary means, however, by which women in Kazakhstan are able to enforce their right to non-discrimination is through Law No. 223-IV ZRK “on State guarantees of equal rights and opportunities for men and women” (the “Equal Opportunities Law”). Whilst this legislation provides a degree of protection from discrimination, it has a number of omissions, meaning that it falls short of the standard of protection required by the Convention in a number of respects.

#### ***Grounds of Discrimination / Multiple Discrimination***

15. The Equal Opportunities Law prohibits discrimination on grounds of sex. However, the Committee has stated that merely prohibiting discrimination on grounds of sex and gender is insufficient to ensure effective protection of women from all forms of discrimination given the prevalence of multiple, including intersectional, discrimination. As the Committee stated in its General Recommendation No. 28:

*The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.<sup>10</sup>*

16. In addition to the Equal Opportunities Law, Kazakhstan has a number of other pieces of legislation which prohibit discrimination on certain grounds, in addition to sex, in certain fields. The **Labour Code** prohibits discrimination in the exercise of labour rights on a number of grounds in addition to sex (age, physical disability race, nationality, language, material, social or official position, place of residence, attitude to religion, political convictions, tribe or social stratum or membership of public associations).<sup>11</sup> However, the scope of this Article is limited solely to the exercise of labour rights.
17. Article 141(1) of the **Criminal Code** prohibits discrimination in the following terms:

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<sup>10</sup> See above, note 1, Para 18.

<sup>11</sup> Labour Code of Kazakhstan, Code No. 251, Article 7(2).

*Direct or indirect restriction of the rights and freedoms of a man and a citizen based on motives of origin, social, official, or property status, sex, race, nationality, language, attitude towards religion, convictions, place of residence, or his belonging to public associations, or based on any other circumstances, - shall be punished by a fine in an amount from two hundred up to one thousand monthly assessment indices, or in an amount of wages of other income of a given convict for a period from two to five months, or by detention under arrest for a period up to three months, or by imprisonment for a period up to one year.<sup>12</sup>*

18. ERT believes, however, that prohibition of discrimination should be done through civil liability and not through the criminal law for a number of reasons. First, discrimination does not require intent and may, indeed, be entirely unintentional, whereas a key principle of criminal law is the presence of *mens rea*, i.e. that the person had an intention to commit the offence (or was at least negligent or reckless). In cases where the discrimination was entirely unintentional, criminal liability would not be appropriate. Secondly, a key evidential requirement in discrimination cases is the reversal of the burden of proof, described in paragraphs 46 to 49 below. In criminal law, however, the presumption of innocence is a well-established principle under international and European law<sup>13</sup> and the reversal of the burden of proof would be entirely incompatible with this principle. As a result, it is much harder to establish liability for discrimination in criminal proceedings than in civil proceedings. Thirdly, the focus of criminal proceedings is on punishment of the offender, whereas a key purpose of anti-discrimination law is to provide the victim with an effective remedy.
19. Both the **Criminal Procedure Code** and the **Civil Procedure Code** contain provisions prohibiting discrimination on the same grounds as in Article 14 in the Constitution in criminal and civil proceedings respectively.<sup>14</sup>
20. Together, these additional pieces of legislation fall far short of what is required under the Convention in that they fail to protect women from multiple, including intersectional discrimination, i.e. in all fields of women's lives under the Convention. Indeed, none of the pieces of legislation, including the Equal Opportunities Law, explicitly prohibits multiple, including intersectional, discrimination. ERT believes that these omissions limit the extent to which women can enjoy protection from all forms of discrimination, as required by the Convention.
21. ERT notes with concern that there are a number of grounds of discrimination which are of particular importance to women given their inextricable to sex and gender and which are

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<sup>12</sup> Criminal Code of Kazakhstan, Law No. 167 of 16 July 1997.

<sup>13</sup> See, for example, Article 14(2) of the International Covenant on Civil and Political Rights and Article 6(2) of the European Convention on Human Rights.

<sup>14</sup> Article 21(2) of the Criminal Procedure Code of Kazakhstan, Law No. 206 of 14 December 1997 and Article 13(2) of the Civil Procedure Code of Kazakhstan, Law No. 411-I of 13 July 1999.

not included within any legislation These include **descent; sexual orientation; gender identity; civil, family or carer status; disability; health status** and **economic status**.

22. ERT is also concerned that a number of further grounds which intersect with sex, resulting in a “compounded negative impact on women”, including **birth** and **national or social origin** are also omitted from legislation. Each of these omitted grounds is included in the list of explicitly protected grounds provided in Principle 5 of the Declaration of Principles on Equality, and each has been recognised either by other international human rights instruments, or by Treaty Bodies responsible for their interpretation and implementation.<sup>15</sup>
23. In light of the Committee’s concern that women enjoy protection from all forms of discrimination, not solely on the basis of their sex or gender, the absence of any provisions in the Equal Opportunities Law prohibiting multiple, including intersectional, discrimination which includes these grounds is a cause for concern.

### ***Discrimination on the Basis of Perception and Discrimination by Association***

24. The Equal Opportunities Law neither prohibits discrimination on the basis of perception nor discrimination by association.
25. The Declaration of Principles on Equality includes both discrimination on the basis of perception and discrimination by association in its definition of discrimination.<sup>16</sup> While the Convention does not explicitly prohibit either of these forms of discrimination, the Committee has stated in General Recommendation No. 28, in relation to Article 2 that:

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<sup>15</sup> **Health status; sexual orientation** and **gender identity** are all referred to by the Committee in its *General Recommendation No. 28 on the core obligations of States parties under article 2*, CEDAW/C/GC/28, 2010, Para 18. **Descent** is a prohibited ground under Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination (G.A. Res. 2106 (XX), Annex, 20 UN GAOR Supp. (No. 14) at 47, UN Doc. A/6014 (1966), 660 U.N.T.S. 195). The Human Rights Committee has stated that **marital status** is a protected ground under “other status” provided in Articles 2(1) and 26 of the International Covenant on Civil and Political Rights (*Danning v. the Netherlands* (Communication No. 180/1984), UN Doc. CCPR/C/OP/2 at 205 (1990); and *Sprenger v. the Netherlands* (Communication No. 395/1990), UN Doc. CCPR/C/44/D/395/1990 (1992)). Discrimination on grounds of **disability** is expressly prohibited under Article 4 of the Convention on the Rights of Persons with Disabilities (G.A. Res. 61/106, Annex I, UN GAOR, 61<sup>st</sup> Sess., Supp. No. 49, at 65, UN Doc. A/61/49 (2006)). The Committee on Economic, Social and Cultural Rights has also stated that disability is a prohibited ground which falls within “other status” in Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 28.). The Committee on Economic, Social and Cultural Rights has stated that the ground of **economic situation** falls under “other status” in Article 2(2) in the International Covenant on Economic, Social and Cultural Rights. (Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 35.) **Birth**; and **national or social origin**; are prohibited grounds under Articles 2(1) and 26 of the International Covenant on Civil and Political Rights (G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171) and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights. (G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), 993 U.N.T.S. 3.).

<sup>16</sup> See above, note 2, Principle 5, p. 6.

*The term “discrimination in all its forms” clearly obligates the State party to be vigilant in condemning all forms of discrimination, including forms that are not explicitly mentioned in the Convention or that may be emerging.*<sup>17</sup>

26. Both discrimination on the basis of perception and discrimination by association have been recognised as forms of discrimination by other treaty bodies. For example, the Committee on Economic, Social and Cultural Rights has said in its General Comment No. 20, in relation to Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (which prohibits discrimination in the enjoyment of Covenant rights) that:

*Membership [of a protected group] also includes association with a group characterized by one of the prohibited grounds (e.g. the parent of a child with a disability) or perception by others that an individual is part of such a group (e.g. a person has a similar skin colour or is a supporter of the rights of a particular group or a past member of a group).*<sup>18</sup>

27. ERT recalls the Committee’s belief that the Convention: “is part of a comprehensive international human rights legal framework directed at ensuring the enjoyment by all of all human rights and at eliminating all forms of discrimination against women on the basis of sex and gender.”<sup>19</sup> This view reflects the principle that the treaties which make up the international human rights framework are complementary and, wherever possible, should be interpreted consistently so as to provide the highest level of protection. As both discrimination on the basis of perception and discrimination by association have been recognised as forms of discrimination under other treaties, ERT believes that they should thus be recognised as forms of discrimination prohibited under the Convention. Consequently, the fact that the Equal Opportunities Law does not explicitly cover both of these forms of discrimination represents a failure of the state party to ensure that it effectively prohibits all forms of discrimination.

### ***Forms of Discrimination***

28. As noted above at paragraph 10, the Committee called on Kazakhstan in 2007 to ensure that the draft law on equal rights and opportunities “contains a definition of discrimination in line with article 1 of the Convention, encompassing both direct and indirect discrimination”.<sup>20</sup> Article 1 defines discrimination against women as:

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<sup>17</sup> See above, note 1, Para 15.

<sup>18</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 16.

<sup>19</sup> See above, note 1, Para 3.

<sup>20</sup> See above, note 9.

*[A]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*

29. The Committee has previously elaborated on what is meant by “direct discrimination” and “indirect discrimination” in its General Recommendation No. 28:

***Direct discrimination** against women constitutes different treatment explicitly based on grounds of sex and gender differences. **Indirect discrimination** against women occurs when a law, policy, programme or practice appears to be neutral in so far as it relates to men and women, but has a discriminatory effect in practice on women because pre-existing inequalities are not addressed by the apparently neutral measure. (emphasis added)*

30. Article 1(3) of the Equal Opportunities Law defines “discrimination against women” as “any limitation or violation of human rights and freedoms or humiliation on the basis of sex”.<sup>21</sup> It contains no reference to, or definition of, “direct discrimination” or “indirect discrimination”. ERT believes that the definition used in the Equal Opportunities Law fall short of what is required by the Convention in a number of respects.
31. First, the definition is such that only limitation or violation of human rights and freedoms is prohibited. The Committee has stated in its General Recommendation No. 28, however, that States Parties must “enact legislation that prohibits discrimination *in all fields of women’s lives under the Convention* and throughout their lifespan”.<sup>22</sup> (emphasis added) The definition in Article 1(3) is therefore too narrow in that it does not prohibit discrimination in fields which fall outside of human rights and freedoms, but which are nevertheless encompassed by the Convention, for example, family relations (Article 16),
32. Second, the term “restriction or denial” is far narrower than the term “different treatment” used by the Committee in its definition of “direct discrimination”. It is possible for men and women to be treated differently, without women necessarily being restricted or denied a particular right or freedom, but which nevertheless has a negative impact upon women. For example, less favourable treatment for female students than male students in schools may not necessarily restrict or deny the female students’ right to education, but nevertheless still amounts to discrimination under the Convention. Alternatively, measures which treat men and women equally but separately, for example by segregating men and women in situations where it cannot be justified, may reinforce

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<sup>21</sup> Committee on the Elimination of Discrimination against Women, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined third and fourth periodic reports: Kazakhstan*, UN Doc. CEDAW/C/KAZ/3-4, 22 March 2012, Para 134.

<sup>22</sup> See above, note 1, Para 31.



gender stereotypes and socially constructed gender differences without restricting or denying women any particular right or freedom.

33. Third, the term “restriction or denial” would appear, or could be interpreted, to exclude indirect discrimination from its scope. Indirect discrimination, which appears to be neutral at face value, may not necessarily be considered as a “restriction or denial” of women’s rights given that it will be neutral in its appearance and nominally treat men and women equally.
34. As such, ERT does not agree with the conclusions of Kazakhstan that the definition in Article 1(3) is “all-encompassing and is not contrary to the Constitution”<sup>23</sup> and that “the Act on State guarantees of equal rights and opportunities for men and women contains a definition of gender discrimination that is in line with article 1 of the Convention”.<sup>24</sup> ERT shares the concern expressed by the Committee in 2007 about the “apparent limited understanding in the State party of the concepts of formal and substantive equality and of the prohibition of direct and indirect discrimination against women contained in the Convention”.<sup>25</sup> These concerns appear to remain as valid as they were in 2007.
35. The terms “direct discrimination” and “indirect discrimination” should, as requested by the Committee, be explicitly included and defined in the Equal Opportunities Law so as to comply with international best practice and General Recommendation No. 28 and so as to ensure the fullest and clearest protection for women from discrimination.

### ***Harassment***

36. The Equal Opportunities Law contains no provisions defining or prohibiting harassment as a form of discrimination or as a separate form of prohibited conduct. While the Convention does not explicitly define or prohibit harassment as a form of discrimination, as noted above, the Committee has stated in General Recommendation No. 28, in relation to Article 2 that:

*The term “discrimination in all its forms” clearly obligates the State party to be vigilant in condemning all forms of discrimination, including forms that are not explicitly mentioned in the Convention or that may be emerging.*<sup>26</sup>

37. Harassment has been recognised as a form of discrimination by other treaty bodies. For example, the Committee on Economic, Social and Cultural Rights has said in its General

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<sup>23</sup> See above, note 21.

<sup>24</sup> *Ibid.*, Para 139.

<sup>25</sup> See above, note 9, Para 11.

<sup>26</sup> See above, note 1, Para 15.

Comment No. 20, in relation to Article 2(2) of the International Covenant on Economic, Social and Cultural Rights that “Discrimination also includes (...) harassment”.<sup>27</sup>

38. As noted above, the Committee has stated that the Convention: “is part of a comprehensive international human rights legal framework directed at ensuring the enjoyment by all of all human rights and at eliminating all forms of discrimination against women on the basis of sex and gender.”<sup>28</sup> This view reflects the principle that the treaties which make up the international human rights framework are complementary and, wherever possible, should be interpreted consistently so as to provide the highest level of protection. As harassment has been recognised as a form of discrimination under other treaties, ERT believes that it should be recognised as a form of discrimination prohibited under the Convention.
39. Indeed, the Committee itself, in the context of employment, has stated that equality “can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.”<sup>29</sup> ERT believes that harassment outside of the workplace, for example, in the provision of goods or services or in access to education or healthcare, can also seriously impair the right to equality.
40. Consequently, the fact that the Equal Opportunities Law does not explicitly prohibit harassment represents a failure of the state party to ensure that it effectively prohibits all forms of discrimination.

### ***Access to Justice***

41. The Equal Opportunities Law contains few provisions which govern how women who have suffered discrimination can obtain access to justice, including appropriate remedies. Those provisions which do exist are vague. Article 10(4) provides that “Persons who believe that have been discriminated against in employment may apply to agencies and organisations operating in the field of equal rights and equal opportunities for men and women” however it does not specify the agencies and organisations to which people may bring complaints, nor does it set out any procedure by which such complaints should be brought.
42. Although Article 4 states that “Laws and regulations which limit or infringe equal rights and equal opportunities for men and women, can be challenged in court in the manner provided by the civil procedural legislation of the Republic of Kazakhstan”, it is not clear exactly how individuals can challenge discrimination which does not consist of a law or regulation, but the action (or omission) of an individual or organisation, whether in the public or private sector.

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<sup>27</sup> See above, note 18, Para 7.

<sup>28</sup> See above, note 1, Para 3.

<sup>29</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19: Violence against women*, UN Doc. A/47/38 at 1, 1993, Para 17.

43. Article 15 provides that “Violation of the legislation of the Republic of Kazakhstan on state guarantees of equal rights and equal opportunities for men and women entails responsibility established by the laws of the Republic of Kazakhstan.” It is unclear, however, from the Law, exactly what the consequences are where responsibility for discrimination is found e.g. whether responsibility is criminal, civil or administrative; or what the possible remedies and sanctions available are.
44. ERT is concerned by this lack of clarity and the failure of the Law to set out clear procedures and remedies available where women have suffered discrimination. ERT believes that the Law, as it stands, falls far short of what is required under Article 2, particularly as interpreted by the Committee in its General Recommendation No. 28 where it stated that:
- States parties must ensure that women can invoke the principle of equality in support of complaints of acts of discrimination contrary to the Convention, committed by public officials or by private actors. States parties must further ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate;<sup>30</sup> and
  - States parties [must] provide reparation to women whose rights under the Convention have been violated. Without reparation the obligation to provide an appropriate remedy is not discharged. Such remedies should include different forms of reparation, such as monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women.<sup>31</sup>
45. ERT notes the State Party’s report which states that women filed nearly 154,000 actions and complaints in court in 2008, 174,000 in 2009 and 168,000 in 2010 but that “none of the actions filed involved any allegation of gender discrimination”.<sup>32</sup> ERT believes that this reflects a lack of awareness of the Equal Opportunities amongst women and lawyers, a lack of clarity in the Law as to how to bring complaints, and weaknesses in the Law in its ability to provide appropriate and effective remedies for women who have suffered discrimination.
46. ERT is also concerned by the failure of the Law to contain any provision reversing the burden of proof in discrimination proceedings. Principle 21 of the Declaration of Principles on Equality states that:

*Legal rules related to evidence and proof must be adapted to ensure that victims of discrimination are not unduly inhibited in obtaining*

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<sup>30</sup> See above, note 9, Para 34.

<sup>31</sup> *Ibid.*, Para 32.

<sup>32</sup> See above, note 20, Para 151.

*redress. In particular, the rules on proof in civil proceedings should be adapted to ensure that when persons who allege that they have been subjected to discrimination establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination (prima facie case), it shall be for the respondent to prove that there has been no breach of the right to equality.*<sup>33</sup>

47. Although the Committee has not yet stated that the Convention requires a reversed burden of proof in discrimination cases, other Treaty Bodies have stated that the proceedings aimed at enforcement of the right to non-discrimination requires such a shift. For example, the Committee on Economic, Social and Cultural Rights has stated in its General Comment No. 20 that:

*Where the facts and events at issue lie wholly, or in part, within the exclusive knowledge of the authorities or other respondent, the burden of proof should be regarded as resting on the authorities, or the other respondent, respectively.*<sup>34</sup>

48. As noted above, the Committee has stated that the Convention is part of a comprehensive international human rights legal framework, reflecting the complementarity of the treaties and the preference that they be interpreted consistently so as to provide the highest level of protection.<sup>35</sup>
49. ERT therefore believes that the failure to include a provision which reverses the burden of proof in discrimination proceedings represents a failure on the part of Kazakhstan to ensure its legislation is fully compliant with the right to non-discrimination under the Convention.
50. In conclusion, ERT is concerned that the scope and definition of the right to non-discrimination provided by the Equal Opportunities Law is inconsistent with the requirements placed on States Parties by Article 2 of the Convention, as elaborated by the Committee in its General Recommendation No. 28. ERT therefore calls on the Committee to urge the government of Kazakhstan to amend the law, in particular by ensuring that it:
- Prohibits multiple, including intersectional discrimination, against women where it occurs in combination with their race; ethnicity; descent; religion; sexual orientation; gender identity; age; civil, family or carer status; disability; health status; economic status; birth; language; political or other opinion; national or social origin; or nationality;

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<sup>33</sup> See above, note 2, Principle 21, p 13.

<sup>34</sup> See above, note 18, Para 40.

<sup>35</sup> See above, note 1, Para 3.

- Prohibits discrimination on the basis of perception and discrimination by association;
- Defines and prohibits direct and indirect discrimination;
- Defines and prohibits harassment as a form of discrimination;
- Contains clear procedures to ensure effective access to justice, provides for appropriate remedies, and contains provisions for a reverse burden of proof in discrimination proceedings.

51. ERT is also concerned that no cases involving gender discrimination have been filed in Kazakhstan. ERT therefore calls on the Committee to urge the government of Kazakhstan, in addition to amending the law as outlined above, to raise awareness of the law amongst women, lawyers and members of the judiciary.