



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the twenty-second and twenty-third periodic reports of Ukraine*

1. The Committee considered the combined twenty-second and twenty-third periodic reports of Ukraine (CERD/C/UKR/22-23), submitted in one document, at its 2464th and 2465th meetings (see CERD/C/SR.2464 and 2465), held on 11 and 12 August 2016. At its 2479th meeting, held on 23 August 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined twenty-second and twenty-third periodic reports of the State party, which included responses to the concerns raised by the Committee in its previous concluding observations. The Committee welcomes the open and constructive dialogue held with the State party's high-level delegation.

B. Positive aspects

3. The Committee welcomes the adoption of the following legislative and policy measures:

- (a) The Act on the principles of preventing and combating racial discrimination, in 2012;
- (b) Act No. 1251-VII amending the act on refugees and persons in need of subsidiary or temporary protection, in 2014;
- (c) The amendment to the act on advertising, in 2013;
- (d) The act on voluntary associations, in 2012;
- (e) The strategy for the protection and integration of the Roma national minority to 2020 and its action plan;
- (f) Ordinance No. 23/02-14, establishing the strategy for preventing and combating racial discrimination for the period 2014-2017.

* Adopted by the Committee at its ninetieth session (2-26 August 2016).



4. The Committee welcomes the accession of the State party to the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness, in 2013.

C. Concerns and recommendations

Demographic composition of the population

5. The Committee regrets that the State party has not provided recent, reliable and comprehensive data, either on economic and social indicators or indicators of ethnic origin, that would enable the Committee to better evaluate the enjoyment of economic, social and cultural rights by various groups living in its territory, including minorities and migrants, and the impact of the various programmes, strategies and plans adopted by the State party. The Committee notes that the census due to take place in 2016 has been postponed to 2020.

6. **The Committee recommends that the State party conduct its census and collect such disaggregated data in order to enhance its implementation of the Convention. It also recommends that the State party provide the Committee with any updated available, reliable and comprehensive economic and social indicators based on ethnicity, nationality or country of origin and drawn from academic or social surveys carried out in this field. This will enable the Committee to have an understanding of the enjoyment of economic, social and cultural rights by various groups living in its territory, including minorities, in particular Roma, migrants, refugees, asylum seekers and stateless persons, as well as information on the impact of programmes, plans and strategies that have been evaluated and measured.**

Absence of grounds for racial discrimination

7. While noting the explanations provided by the delegation of the State party, the Committee is concerned at the absence of national origin and descent as grounds for racial discrimination in article 1 (2) of the act on the principles of preventing and combating racial discrimination (art. 1).

8. **The Committee recommends that the State party include national origin and descent as grounds for racial discrimination in the act on the principles of preventing and combating racial discrimination and in other legislation relating to the prohibition of racial discrimination.**

National institution on minority issues

9. The Committee is concerned at reports according to which the institutional framework for dealing with minorities issues in the State party is underdeveloped, fragmented and ineffective. In particular, it is concerned that, since the departure of the government commissioner for ethnic and national policy, there is no specialized official institution mandated to deal with minority issues. The Committee is also concerned that the department for religions and nationalities of the Ministry of Culture, to which the mandate on minorities issues was transferred in 2016, lacks adequate human and financial resources to properly carry out its mandate. The Committee is further concerned at information that the council on inter-ethnic harmony is not functional (art. 2).

10. **The Committee recommends that the State party develop, in consultation with all minority representatives, a clear and coherent institutional framework on minority issues and establish a specialized institution mandated to deal with minority issues and provide it with all necessary human and financial resources.**

Racist hate speech and hate crimes

11. The Committee is concerned at reports of a rise in racist hate speech and discriminatory statements in the public discourse, including by public and political figures and in the media, in particular on the Internet and during rallies, directed mainly against minorities, such as Roma, asylum seekers and refugees, among others (art. 4).

12. **In the light of its general recommendations No. 7 (1985) and No. 15 (1993) relating to the implementation of article 4 of the Convention, and recalling its general recommendation No. 35 (2013) on combating racist hate speech, the Committee reminds the State party of the importance of safeguarding the rights of groups in need of protection against racist hate speech and incitement to hatred, including by the media. The Committee recommends that the State party take appropriate measures to strongly condemn and distance itself from racist hate speech and discriminatory statements in public discourse, including by public figures, and call upon those responsible to ensure that their public statements do not contribute to incitement of racial hatred. It recommends that the State party register, investigate and bring to justice cases of hate speech, and sanction those responsible.**

13. The Committee is concerned at reports of racially motivated incidents and hate crimes, including physical attacks targeting individuals on the basis of their ethnic origin, such as Roma, Jews, Africans and other minorities, that have taken place in some localities of the territory of the State party. The Committee is also concerned at information on denial to African and Indians, on the basis of colour, of entrance to some public places in Uzghorod, such as the local water park. It is further concerned that cases of hate crime or other racially motivated acts are not always adequately and effectively investigated and that those responsible are not prosecuted and punished. While noting that some cases have been addressed, the Committee remains concerned at the low number of cases of hate crime brought to domestic courts (arts. 2, 4 and 6).

14. **In the light of its general recommendations No. 7 and No. 15, the Committee recommends that the State party take appropriate measures to:**

(a) **Ensure that all reported hate crime cases are registered and effectively investigated under article 161 of the Criminal Code, and that those persons responsible are prosecuted where appropriate and, if found guilty, punished with appropriate penalties;**

(b) **Condemn the practice of denying certain groups access to public places and to investigate all reports of denial of access to public facilities;**

(c) **Collect and make available disaggregated statistics on the number of reported cases relating to hate speech and hate crimes, the number and the nature of hate-speech and hate crimes committed, the number of cases brought to court and the origin and outcome of those cases;**

(d) **Increase public awareness-raising campaigns and other measures to counter incitement to hatred and hate crimes, and continue to train law enforcement officials in this area.**

Organizations that promote racial hatred and propaganda

15. The Committee is concerned about reports that some organizations, such as the Right Sector, the Azov Civilian Corps and the Social National Assembly, promote activities that amount to incitement to racial hatred and racist propaganda. It is also concerned that such organizations are responsible for racially motivated violence against persons belonging to minority groups that has not been always punished (arts. 2 and 4).

16. **In the light of its general recommendation No. 7, the Committee recommends that the State party ensure that its legislation is applied effectively, in full compliance with the provisions of article 4 of the Convention with regard to organizations promoting racist hatred and propaganda.**

Application of article 161 of the Criminal Code

17. The Committee is concerned that requirements for the application of article 161 of the Criminal Code to acts of racial discrimination, such as the fact that the violation must take place during a public event and the necessity of an expert opinion, hamper the effectiveness of the article. The Committee is concerned that such requirements result in difficulties in proving racial motivation and that consequently hate offences are qualified as hooliganism (art. 2, 4, 6).

18. **The Committee recommends that the State party take measures to ensure an effective application of article 161 of the Criminal Code, by removing requirements that prevent its application. It recommends that the State party ensure that complaints of racial discrimination are properly registered by the police as such and duly investigated and that the final decision as to whether the crime has a discriminatory racial motive is left to the appreciation of the courts.**

Situation of Roma

19. The Committee notes the various measures taken by the State party to improve the situation of Roma, including the strategy for the protection and integration of the Roma national minority to 2020 and its action plan. However, it remains concerned at the persistence of discrimination, stereotypes and prejudices against Roma, including reports of physical attacks and killings, such as those which occurred in eastern Ukraine, in localities, such as Slovyansk and Shchotove village in Luhansk Oblast in 2014, under the control of either the non-governmental armed groups or the Government of the State party. The Committee is also concerned at reports that some Roma are unable to flee the conflict zones owing to a lack of identity documents and that some Roma who fled those zones face xenophobia and are denied assistance. The Committee is further concerned at the lack of funding and the low level of implementation of the above-mentioned strategy and action plan, including at the local level (art. 5).

20. **The Committee recommends that the State party firmly combat any discriminatory act against Roma and investigate incidents of attacks and killings of Roma, including in the areas of eastern Ukraine that are under the control of the Government of the State party. It also recommends that the State party find durable solutions for internally displaced Roma and take measures to ensure that they benefit from assistance. The Committee further recommends that the State party provide all resources necessary for the implementation of the strategy for the protection and integration of the Roma national minority to 2020 and its action plan, including at the local level.**

21. The Committee is concerned that: (a) Roma who suffer from the effects of poverty continue to face difficulties in accessing education, housing and employment; (b) there is low school attendance and a high illiteracy rate among Roma children, despite some improvements; (c) Roma, particularly Roma women, are disproportionately unemployed; and (d) many Roma still lack identity documents, which prevents them from fully benefiting from social services (arts. 2, 3 and 5).

22. **Recalling its general recommendations No. 27 (2000) on discrimination against Roma and No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party:**

- (a) **Strengthen its efforts to firmly combat racial discrimination and prejudices against Roma and address the challenges that Roma continue to face in many areas, such as access to employment, education and housing;**
- (b) **Firmly address employment challenges faced by Roma, in particular Roma women;**
- (c) **Consult with Roma communities when implementing such integration measures, including at the local level;**
- (d) **Provide adequate funding for all programmes, strategies and other policies relating to the integration of Roma;**
- (e) **Strengthen its efforts to provide all Roma with identity documents free of charge;**
- (f) **Strengthen its measures to improve access to education for Roma children, and reduce the illiteracy rate among and the school attendance drop-out rate of Roma children.**

Situation of Crimean Tatars

23. While noting measures taken by the State party to protect Crimean Tatars, in particular those who fled Crimea after 2014, the Committee is concerned at reports that Crimean Tatars who went to regions under the authority of the State party face difficulties with regard to access to employment, social services and education and lack support. The Committee is also concerned that Crimean Tatars who returned may face difficulties in preserving their language, culture and identity (arts. 2 and 5).

24. **The Committee recommends that the State party increase its efforts, in consultation with the Crimean Tatar community, to find durable solutions for an appropriate settlement of Crimean Tatars in Ukraine, including by providing or facilitating access to employment, social services and education and providing children with education in the Tatar language. It also recommends that the State party strengthen the measures aimed at ensuring favourable conditions for Crimean Tatars to preserve, develop and promote their identity, language and culture. The Committee further recommends that the State party, inter alia, provide adequate financial support to cultural organizations for their activities and create more opportunities for Crimean Tatars to promote and use their mother tongue in education and daily life.**

Refugees, asylum seekers and stateless persons

25. The Committee is concerned about reports of challenges that still restrict the fairness and effectiveness of the asylum procedure in the State party, in particular: (a) the restrictions on access to border entry points of the territory of the State party, including for a great number of Syrian citizens in 2013-2014; (b) a lack of professional language interpretation by the State Migration Service in relation to application for asylum; (c) that rejected asylum seekers do not receive well-reasoned decisions; and (d) the limited time provided for the appeal to asylum decisions. It is also concerned about the very limited reception conditions, in particular in cities with a significant number of asylum seekers, such as Kyiv and Kharkiv, a situation that compels asylum seekers to seek substandard private accommodation. The Committee is further concerned at reports that refugees and asylum seekers face many obstacles in accessing the labour market and do not receive adequate support for their integration. In addition, the Committee is concerned at reports of racially motivated incidents and xenophobia faced by refugees and asylum seekers (arts. 2 and 5).

26. **The Committee recommends that the State party improve its asylum procedure by: (a) enabling access to its territory for persons in need of international protection; (b) allocating adequate resources for professional interpretation at all stages of the refugee status determination procedure; and (c) providing training to the officers of the State Migration Service. The Committee also recommends that the State party improve the reception conditions of asylum seekers and provide alternative housing solutions and support for those who cannot be accommodated. The Committee further recommends that the State party prevent and protect refugees and asylum seekers from any hate crime and hate speech and facilitate the integration of refugees, including through access to the labour market, and improve their access to education, language training, vocational training and employment services.**

27. The Committee is concerned at information regarding the lack of a mechanism to legalize the stay of stateless persons who are irregularly present in the territory of the State party. It is also concerned at difficulties faced by undocumented stateless persons in being duly registered, obtaining resident permits or receiving valid documents. The Committee is further concerned about the risk of statelessness for an increased number of persons owing to internal displacement, the conflict and the reported reticence of the State party to recognize birth certificates issued outside the territories controlled by the Government of the State party (art. 5).

28. **The Committee recommends that the State party take measures to protect stateless persons, establish a mechanism to determine the status of persons in a situation of statelessness and facilitate their integration, including by providing them with valid documents and the necessary support.**

Internally displaced persons

29. The Committee is concerned at reports about difficulties faced by internally displaced persons in the territory of the State party, owing to the conflict, in particular regarding: (a) the linkage of social benefits, including pensions, to the status of internally displaced persons and residence in the areas controlled by the State party, which prevents some internally displaced persons from having access to such social benefits; (b) the hampering of the local integration of internally displaced persons by the legal and regulatory framework; (c) difficulties in accessing affordable housing and adequate employment; (d) restrictions on freedom of movement, which prevents access to social services, education and health-care services; (e) difficulties in crossing checkpoints; and (f) reports of persons injured by landmines or being targets of shelling. The Committee is also concerned that such a situation prevents persons belonging to minorities, such as Roma, from registering as internally displaced persons and having access to social assistance. The Committee is further concerned that most such persons are at risk of discrimination and stigmatization (arts. 2 and 5).

30. **The Committee recommends that the State party take measures: (a) to revise its regulations and ease freedom of movement for persons who would like to cross the administrative borders between non-government-controlled areas and Government-controlled areas; (b) to avoid linking social benefits to the status of internally displaced persons and the duty to register or live in the areas controlled by the State party; (c) to facilitate the registration of internally displaced persons and strengthen State efforts to assist such persons in obtaining documentation; (d) to facilitate access to housing for internally displaced persons or provide them with the assistance needed to find alternative housing; (e) to facilitate the integration of and durable solutions for internally displaced persons; (f) to adopt a national policy on internally displaced persons and establish a national mechanism mandated to prevent and protect against internal displacement.**

Access to effective remedies and provision of data relating to the application of article 6

31. The Committee is concerned about the low number of cases of racial discrimination registered, investigated and brought to domestic courts and other bodies. It is also concerned about the lack of information related to remedies afforded to victims. The Committee notes that the State party has not provided comprehensive information concerning sanctions or compensation in cases of racial discrimination, including discrimination in employment, handled by the courts or by the Parliamentary Human Rights Commissioner. While noting the State party's comments about equal access to justice for all and the measures put in place in that regard, including legal assistance, the Committee remains concerned about the limited extent to which minorities can effectively report instances of racial discrimination and enjoy equal access to justice (arts. 5 and 6).

32. **Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee again reminds the State party that the absence of complaints or legal proceedings brought by victims of racial discrimination can be indicative of legislation that is insufficiently specific, a lack of awareness of available remedies, fear of social disapproval or reprisals, or an unwillingness on the part of the authorities to initiate proceedings. The Committee therefore recommends that the State party increase its efforts to disseminate the Convention among the population and continue to train officials in the application of the law in line with the provisions of the Convention. The Committee also recommends that the State party take all steps necessary to facilitate the access of minorities to justice, to disseminate information on legislation relating to racial discrimination and to inform the population residing in its territory about all the legal remedies available to them and of the possibility of obtaining legal assistance.**

D. Other recommendations

Ratification of other treaties

33. **Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights instruments that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization.**

Follow-up to the Durban Declaration and Programme of Action

34. **In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.**

International Decade for People of African Descent

35. In the light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015-2024 the International Decade for People of African Descent, and resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies. The Committee requests that the State party include in its next report precise information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

36. The Committee recommends that the State party consult and increase its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.

Common core document

37. The Committee encourages the State party to update its common core document, which dates to 1998, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.6, chap. I). In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for such documents.

Follow-up to the present concluding observations

38. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 16 and 18 above.

Paragraphs of particular importance

39. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 14, 22, 26 and 30 above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

Dissemination of information

40. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next report

41. The Committee recommends that the State party submit its combined twenty-fourth to twenty-sixth periodic reports, as a single document, by 6 April 2020, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.