



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 eighth to eleventh periodic reports of Turkmenistan*

1. The Committee considered the combined eighth to eleventh periodic reports of Turkmenistan (CERD/C/TKM/8-11), submitted in one document, at its 2502nd and 2503rd meetings (see CERD/C/SR.2502 and 2503), held on 30 November and 1 December 2016. At its 2512th and 2513th meetings, held on 7 and 8 December 2016, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined eighth to eleventh periodic reports of the State party, which included responses to concerns raised by the Committee in its previous concluding observations. The Committee wishes to commend the State party for its timely reporting and welcomes the dialogue 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 Amended Constitution of Turkmenistan on 14 September 2016 to bring it further into line with international standards;
- (b) The National Human Rights Action Plan for 2016-2020 on 15 January 2016;
- (c) The establishment of an Ombudsman through the Law of Turkmenistan on the Ombudsman on 23 November 2016;
- (d) The National Action Plan on Gender Equality for 2015-2020 on 22 January 2015;
- (e) The National Action Plan to Counter Human Trafficking 2016-2020 on 18 March 2016.

* Adopted by the Committee at its ninety-first session (21 November-9 December 2016).



C. Concerns and recommendations

Statistical data

4. The Committee welcomes the statistics on the ethnic composition of its population and the ethnic composition of the parliament, provided by the State party during the dialogue. The Committee regrets the lack of comprehensive data on the enjoyment of economic and social rights by ethnic groups and the representation of ethnic minorities in public and political life. It further regrets the lack of data on the ethnic composition of the prison population, numbers of non-citizens in the State party, and the ethnic composition of numerically smaller groups categorized as other nationalities. The Committee also regrets the lack of data on the number of Luli/Roma people in the State party (art. 1).

5. **The Committee refers the State party to its general recommendation No. 4 (1973) concerning reporting by States parties under article 1 of the Convention, its general recommendation No. 8 (1990) concerning the interpretation and application of article 1 (1) and (4) of the Convention, its general recommendation No. 24 (1999) concerning article 1 of the Convention and the revised guidelines for reporting under the Convention (see CERD/C/2007/1, paras. 10-12), and recommends that the State party gather and provide updated statistical data in its next periodic report on the ethnic composition of its population on the basis of self-identification. The Committee further recommends that the State party provide statistical data on the enjoyment of economic and social rights by all ethnic groups, including numerically smaller groups, as well as their representation in public and political life, to provide the Committee with an empirical basis on which to measure the enjoyment of the rights enshrined in the Convention. The Committee further requests data on the composition of the prison population by age, sex, ethnicity and offence, and updated statistical data on the numbers of non-citizens, including stateless persons, migrants, refugees and asylum seekers, in the State party. The Committee further requests information on the ethnic composition of numerically smaller groups and on the number of Luli/Roma people in the State party.**

Definition of racial discrimination

6. The Committee notes with appreciation information provided by the State party on article 145 of the Criminal Code, the new Law on the Courts of 2014 and other examples of domestic legislation which prohibit racial discrimination based on certain grounds, including nationality, race and origin. However, it is concerned that the definition of racial discrimination does not include all grounds as stipulated in article 1 of the Convention, including colour and descent. The Committee regrets the lack of information on whether the recent constitutional reforms have also amended article 19, which previously established the equality of all citizens (art. 1).

7. **Bearing in mind its general recommendations No. 14 (1993) on article 1 (1) of the Convention and No. 29 (2002) on descent in the context of article 1 (1) of the Convention, the Committee recommends that the State party ensure that article 145 of the Criminal Code is brought into line with the new Constitution, in particular by incorporating the grounds of colour and descent in accordance with the definition of article 1 of the Convention.**

Hate speech

8. Recalling its previous concluding observations, the Committee regrets the lack of information on measures taken to bring article 177 of the Criminal Code and other domestic legislation criminalizing hate speech into line with article 4 of the Convention and ensuring that measures restricting hate speech do not overly restrict freedom of expression. The

Committee further regrets the lack of information on the implementation and impact of these measures on ethnic and ethno-religious groups (art. 4).

9. **Recalling its general recommendations No. 15 (1993) on article 4 of the Convention and No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party take the necessary measures to ensure that article 177 of the Criminal Code and other domestic legislation criminalizing hate speech are in accordance with the Convention as elaborated in the Committee's general recommendations. The Committee also recommends that the State party ensure that all instances of hate crime and hate speech are investigated and prosecuted and that the perpetrators are punished, regardless of their official status.**

Ombudsman for Human Rights

10. The Committee welcomes the adoption of the Law on the Ombudsman, which established an Ombudsman to protect and enforce human rights. The Committee expresses concern about whether the procedures for the appointment and dismissal of the Ombudsman will allow sufficiently for its independence and impartiality (art. 2).

11. **The Committee, recalling its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, encourages the State party to ensure that sufficient measures are taken to have an effective, independent and autonomous human rights Ombudsman, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including by ensuring a clear and transparent appointment and dismissal procedure. The Committee requests that the State party provide information in its next periodic report on the selection of the Ombudsman as well as detailed information on the mandate of the Ombudsman's functions and powers, sources of funding and lines of accountability.**

Freedom of religion of ethnic minorities

12. In the light of the intersectionality of religion and ethnicity, the Committee is alarmed by the difficulties faced by certain minorities in freely practising their right to freedom of thought, conscience and religion, which include reported cases of harassment, verbal abuse, arrests, detentions, fines and confiscation of religious literature (art. 5).

13. **The Committee recommends that the State party urgently take effective measures to protect the rights of minorities, including their right to freedom of thought, conscience and religion, without any discrimination on the grounds of race, colour, descent or national or ethnic origin, as specified in article 5 of the Convention.**

Cultural and linguistic rights of ethnic minorities

14. The Committee notes information from the State party that the right to participate in cultural life is guaranteed by law irrespective of the cultural, ethnic or religious background of citizens. However, it remains concerned at the lack of information on the involvement of minority groups in cultural activities and efforts to preserve and develop their culture in order to maintain their cultural identity, as guaranteed by law. The Committee expresses concern at reports that education is provided primarily in Turkmen, especially at institutions of higher education, and that student and government employees must wear the Turkmen national dress regardless of their ethnicity. The Committee is also concerned at reports that ethnic minorities face language barriers in obtaining State employment and in communicating with State and public institutions (art. 5).

15. The Committee welcomes the measures foreseen in the National Action Plan for Human Rights to create favourable conditions for children of ethnic minorities to learn their mother tongue, and recommends that the State party take the necessary measures to implement this plan, including through the establishment of schools and the provision of textbooks in minority languages. The Committee recommends that the State party ensure that proper status is given to the cultures of and languages spoken by the various groups of the population and that it eliminate language barriers to the enjoyment of economic and social rights, especially the rights to education, employment and communication with State and public institutions. Recalling its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee encourages the State party to take concrete measures to ensure that persons belonging to minority ethnic groups are represented in State bodies, the police and the judiciary, at all levels, and are not excluded on the basis of language.

Situation of non-citizens

16. The Committee regrets the lack of information on the current situation of non-citizens of the State party, including migrants, refugees and asylum seekers, and their capacity to access education, health care, employment and registration of births in the State party. The Committee also notes with concern that no new asylum seekers have been registered since 2005 in the State party. The Committee is also concerned about discrimination on the basis of nationality of citizens with dual citizenship and Turkmen citizens married to non-citizens, and their difficulties in obtaining entry visas and long-term family visas (arts. 5 and 7).

17. Recalling its general recommendations No. 30 (2004) on discrimination against non-citizens and No. 22 (1996) on refugees and displaced persons in the context of article 5 of the Convention and refugees and displaced persons, the Committee recommends that the State party:

(a) Ensure that non-citizens have access to education, housing, health care, employment and birth registration in the territory of Turkmenistan without discrimination;

(b) Prevent the refoulement of asylum seekers and take effective reception measures and ensure that they have access to equitable and effective asylum information and procedures without discrimination, and that it provide updated information on the number of asylum seekers in the State party that have been registered since 2005;

(c) Provide the Committee with information on residential and family visas requested and approved or rejected;

(d) Provide the Committee in its next periodic report with information on the implementation of the present recommendations.

Situation of stateless persons

18. The Committee welcomes the decision of the State party to grant citizenship to over 1,750 stateless persons between 2013 and 2015, as well as its adoption of the Law of 2013 on Citizenship, the Law of 2012 on Refugees and its accession to the Convention on the Reduction of Statelessness in 2012. The Committee continues to express concern, however, at the large number of stateless persons in the State party and the impact of statelessness on their ability to access basic rights and services (art. 5).

19. **The Committee recommends that the State party continue to take expeditious measures to reduce statelessness and to ensure that stateless persons in the State party have access to basic rights and services. The Committee requests that the State party provide in its next periodic report updated information about the number of stateless persons in the State party and their ability to access basic rights and services.**

Complaints of racial discrimination

20. Recalling its previous concluding observations, the Committee reiterates its concern at the continued lack of information on the domestic application of the Convention, including detailed examples of cases in which the provisions of the Convention have been applied by national courts, as well as statistical data on complaints of racial discrimination and investigations or prosecutions of perpetrators. The Committee further notes that the absence of complaints does not necessarily signify the absence of racial discrimination in the State party, but rather may signify barriers in invoking the rights in the Convention domestically, including lack of public awareness of the rights under the Convention and relevant domestic legislation, or a lack of access to, availability of or confidence in procedures to seek judicial redress for racial discrimination (art. 6).

21. **The Committee recommends that the State party provide in its next periodic report detailed information on cases where the Convention has been applied. The Committee further requests statistical data on numbers of complaints of racial discrimination and on investigations, prosecutions and convictions, disaggregated by the age, gender and ethnic or ethno-religious origin of the victims. The Committee also recommends that the State party ensure that lack of complaints of racial discrimination is not the result of victims' lack of awareness of their rights under the Convention or lack of confidence in judicial redress.**

Independence of the judiciary

22. Taking into consideration that all individuals must enjoy effective protection and remedies through competent national courts and other State institutions against any acts of racial discrimination and that the independence of the judiciary is essential, including in cases relating to racial discrimination, the Committee is concerned at allegations that such conditions are not always present in the State party (arts. 5 and 6).

23. **Recalling its general recommendations No. 20 (1996) on article 5 of the Convention and No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party take the necessary measures to guarantee the full independence and impartiality of the judiciary in line with the Basic Principles on the Independence of the Judiciary and ensure that it is in a position to protect victims of racial discrimination.**

Training for judges, lawyers and State officials

24. The Committee notes the information provided by the State party that human rights training programmes have been developed and delivered to law enforcement officers, and welcomes the plan to provide training on human rights mechanisms for lawyers as stated in the National Human Rights Action Plan. However, it regrets the lack of detailed and comprehensive information on any training on human rights and the rights in the Convention carried out for judges, lawyers and State officials and the impact of such trainings on the situation of ethnic minorities (art. 7).

25. **The Committee recommends that the State party conduct specialized training programmes for judges, lawyers, police officers, law enforcement officials, and**

representatives of State bodies, local government entities and associations on human rights, the prevention of racial discrimination and the rights enshrined in the Convention, as well as a general campaign on these topics for the public. The Committee requests detailed information in its next periodic report on the trainings and their impact on the situation of ethnic minorities.

D. Other recommendations

Ratification of other treaties

26. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties 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 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Follow-up to the Durban Declaration and Programme of Action

27. 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

28. 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 Assembly 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 periodic 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

29. The Committee recommends that the State party ensure an open space for civil society, which can facilitate in monitoring the progress and challenges of implementing the Convention, and that the State party consult with 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.

Amendment to article 8 of the Convention

30. The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

Declaration under article 14 of the Convention

31. The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

Common core document

32. The Committee encourages the State party to update its common core document, which dates to 2009, 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

33. 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 9, 11 and 13 above.

Paragraphs of particular importance

34. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 7, 15 and 17 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

35. 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 periodic report

36. The Committee recommends that the State party submit its combined twelfth and thirteenth periodic reports, as a single document, by 29 October 2019, 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.