



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

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Consideration of reports submitted by States parties under article 9 of the Convention

Concluding observations of the Committee on the Elimination of Racial Discrimination

Ukraine

1. The Committee considered the nineteenth to twenty-first periodic reports of Ukraine (CERD/C/UKR/19-21), submitted in one document, at its 2104th and 2105th meetings (CERD/C/SR.2104 and CERD/C/SR.2105), held on 17 and 18 August 2011. At its 2120th meeting (CERD/C/SR.2120), held on 29 August 2011, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the timely submission of the consolidated report by Ukraine in general conformity with the Committee's reporting guidelines (CERD/C/2007/1). It also appreciates the wealth of detail in the report. The delegation's candid answers to the list of themes by the Country Rapporteur and to the questions by Committee members enabled a constructive dialogue attesting to a need for further legislative and administrative reforms to effectively integrate ethnic minorities and counter racial discrimination.

B. Positive aspects

3. The Committee notes with interest the State party's resolve during the period under review to strengthen the legal framework and remedy duplication and lack of clarity among various institutions and programmes aimed at the integration and protection of ethnic groups, including:

(a) Amendments to articles 115, 121, 127 and 161 of the Criminal Code concerning liability for offences motivated by racial, ethnic and religious intolerance, and the recognition of racial, ethnic and religious motives as aggravating circumstances for a range of criminal offences including murder and grievous bodily harm;

(b) The enactment of the Law on Refugees, Persons in Need of Complementary and Temporary Protection No. 7252, adopted by the Parliament on 8 July 2011, which strengthens the quality of refugee status determination procedures, the screening of asylum claims and temporary settlement, and medical services to refugees and asylum seekers, including the most unprotected applicants;

(c) The migration policy, adopted by presidential decree No. 622/2011 on 30 May 2011, which contains significant provisions that protect the human rights of migrants;

(d) The establishment of the new State Migration Service in December 2010 with a consolidated mandate aimed at enhancing the protection of migrants' rights, including those of unaccompanied minors, and streamlining decision-making on migration issues;

(e) The adoption of the Plan of Action to Combat Xenophobia and Racial and Ethnic Discrimination for the Period 2010-2012, which entered into force with Cabinet of Ministers' instruction No. 11273/110/1-08 of 24 February 2010 and the activities, albeit currently on hold, of the Interdepartmental Working Group on combating xenophobia and ethnic and racial intolerance;

(f) The establishment of the Unit within the Ministry of the Interior to combat cybercrime through enhancing cooperation to combat the operation of offshore internet sites spreading intolerance;

(g) Administrative reforms including the adoption of the Law on the Cabinet of Ministers and the consolidation of local bodies to improve the governance and coordination of responses to racial discrimination;

(h) Activities including discussions, exhibitions and production of information materials to raise awareness about the Roma Holocaust.

C. Concerns and recommendations

4. The Committee notes with concern the information that the State Committee on Ethnic and Religious Affairs, the Inter-Departmental Working Group against Xenophobia and Ethnic and Racial Intolerance as well as the separate departments of the Ministry of the Interior for investigating and combating ethnic crimes ceased to be operational during 2010 despite the fact that administrative reforms were still pending (art. 2 (1) (d)).

The Committee urges the State party to continue to consider racial discrimination as a priority regardless of the outcomes of pending administrative reforms. Given the importance of safeguarding the independence, visibility and effectiveness of institutional mechanisms to counter racial discrimination, such as the planned new Central Authority for National and Religious Affairs, the Committee recommends that they be established and their mandates defined in conjunction with the new framework anti-discrimination legislation. It also recommends that the State party reactivate the institutions which have ceased to be operational, particularly the Inter-Departmental Working Group against Xenophobia and Ethnic and Racial Intolerance as well as the mechanisms for investigating and combating ethnic crimes.

5. The Committee notes with concern that, despite its recommendation of 2006 that the State party adopt new framework anti-discrimination legislation, the draft Anti-Discrimination Act was prepared only in 2011 and its further development and adoption is contingent on the drafting and approval of the new Inter-Departmental Strategy against

Discrimination and Intolerance mandated by the President of Ukraine in May 2011 (arts. 1 (1) and 2 (1) (d)).

The Committee urges the State party to accelerate the adoption of a comprehensive anti-discrimination act to stipulate, inter alia, the definition of direct and indirect as well as de facto and de jure discrimination, together with structural discrimination, liability for natural and legal persons extending to both public authorities and private persons, remedies to victims of racial discrimination and the institutional mechanisms necessary to guarantee the implementation of the provisions of the Act in a holistic manner.

6. The Committee notes with regret the absence of information on the effectiveness of the Office of the Parliamentary Commissioner for Human Rights.

The Committee recommends that the State party include in its next periodic report detailed information on the effective functioning of the Parliamentary Commissioner for Human Rights, a national human rights institution set up in accordance with the Paris Principles, mandate it with specific competence in the field of racial discrimination, in particular to process complaints and take measures in response to the concerns of victims of racial discrimination, and ensure their effective access to the Commissioner's Office at the regional, district and municipal levels.

7. The Committee remains concerned also about the lack of updated statistical data disaggregated by ethnicity, gender and age on the victims of racial discrimination and of accurate data on the occurrence of hate speech and hate crimes, the number and nature of cases brought against perpetrators, convictions obtained, sentences imposed and compensation awarded (art. 2 (1)).

The Committee recommends that the State party develop and apply appropriate methodologies for the collection of relevant information about victims of racial discrimination including on mother tongues, languages commonly spoken, or other indicators of ethnic diversity on the basis of self-identification of persons and groups, together with the number and nature of cases brought against perpetrators of racial discrimination, convictions obtained and sentences imposed, in accordance with the specific guidelines (CERD/C/2007/1).

8. The Committee expresses its concern at the absence of information on the specific legal and policy measures to prohibit and condemn "racial segregation and apartheid" in accordance with article 3 of the Convention.

In light of general recommendation No. 19 (1995) on racial segregation, the Committee recommends that the State party address problems of ethnically related social exclusion and segregation through the adoption of necessary legislative and policy measures.

9. The Committee remains concerned that while in practice foreign nationals and stateless persons legally present in Ukraine enjoy the same rights and freedoms and have the same obligations as Ukrainian citizens, subject to restrictions provided by law, many legal provisions still do not guarantee the equal protection of rights and freedom from discrimination to non-citizens (art. 4 (a)).

The Committee recommends that the State party guarantee equal rights and freedom from discrimination, including under article 161 of the Criminal Code, to all persons subject to its jurisdiction with the aim of avoiding ambiguity in ensuring protection to all persons, in accordance with general recommendation No. 30 (2004) on non-citizens.

10. The Committee expresses its concern at the dismissive attitudes and reluctance to accept the racist or discriminatory nature of hate crimes by the law enforcement authorities as well as the repeated incidents of ethnic and racial profiling by the police, resulting in a majority of the reported hate crimes remaining unanswered (art. 4 (a)).

In light of its general recommendation No. 31 (2005), the Committee urges that the State party take immediate measures to effectively investigate reported hate crimes and ensure that the police do not engage in racial or ethnic profiling when conducting document checks on foreigners or members of “visible minorities”. To that end, the Committee recommends that the State party investigate and bring to justice perpetrators of such acts regardless of their official status, and continue to expand training on human rights issues for staff of the Ministry of the Interior, State Migration Service, State Border Guard Service and the police.

11. In light of the resurgence of activities by extremist organizations such as “Social National Assembly” and “Patriots of Ukraine”, the Committee notes with concern the repeated attacks against foreigners and members of “visible minorities” by young extremists and the information contained in paragraph 85 of the State party’s report to the effect that the extreme right-wing movements are “in some respects beyond the Ministry of the Interior’s legal competence” (art. (4) (b)).

The Committee strongly recommends that the State party closely monitor the activities of extremist organizations, and adopt legal and policy measures with the aim of preventing their registration and disbanding their activities, as necessary, and ensuring the protection of foreigners and members of “visible minorities” against all acts of violence.

12. The Committee is also concerned about the reported growth in outreach activities by extremist organizations expanding their propaganda and using electronic social networks to address the youth of the country (art. 4 (a)).

The Committee further recommends that the State party resolutely counter the activities of extremist organizations including on the internet and adopt educational and awareness-raising measures to prevent and discourage the involvement of young sympathizers in extremist organizations and movements.

13. The Committee observes that the effectiveness of article 161 of the Criminal Code is contingent on balancing protection from discrimination and violence with the right to freedom of opinion and expression under article 4 of the Convention.

In light of general recommendation No. 15 (1993) on the implementation of article 4 of the Convention, and drawing attention to general comment No. 34 (2011) of the Human Rights Committee on the right to freedom of opinion and expression, the Committee encourages the State party to modify article 161 of the Criminal Code in order to strike a balance between the protection of both the right to freedom from discrimination, according to article 4 of the Convention, including against hate speech and the right to freedom of expression.

14. The Committee is alarmed by the limited effectiveness of legislative and policy measures addressing the issues relating to education of Roma and notes with concern the limited availability of educational materials for education in, and on, Roma language and culture. The Committee is further concerned by reports of the enrolment of Roma children in special classes and the failure to consult their parents (art. 5 (e) (v)).

The Committee recommends that the State party revise its legislation, policies and programmes to provide education to Roma children, and on Roma language and culture, in consultation with parents and concerned Roma organizations, and employ mediators as necessary, ensuring that schools are sensitive to their needs while

preventing enrolment of Roma children in special classes where there are no objective grounds for assigning them thereto.

15. While noting the progress in issuing the necessary identification papers to Roma without relevant identification documents including birth certificates, the Committee remains concerned that, while over 2,000 Roma had been documented, approximately 1,700 persons still remain without such documents especially in light of the State party's argument that the lack of evidence of ethnicity on the part of the State party is a major factor in limiting the production of identification documents (art. 5 (a) and (e)).

The Committee urges that the State party issue as a matter of priority the necessary identification documents to all Roma in order to facilitate their access to the courts, legal aid, employment, housing, health care, social security, education and other public services.

16. The Committee notes with concern the absence of legislation on indigenous peoples implementing the guarantees to indigenous peoples and national minorities contained in articles 11 and 92 of the Constitution (art. 2 (2)).

The Committee urges the State party to adopt legislation to protect indigenous peoples and guarantee their economic, cultural and social development, and to consider ratifying International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989).

17. The Committee continues to be strongly concerned by information alleging difficulties experienced by Crimean Tatars who have returned to Ukraine, including lack of access to land, employment opportunities, insufficient possibilities for studying their mother tongue, hate speech against them, lack of political representation, and access to justice. The question of restitution and compensation for the loss of over 80,000 private dwellings and approximately 34,000 hectares of farmland upon deportation remains of serious concern, particularly as 86% of the Crimean Tatars living in rural areas did not have the right to participate in the process of agricultural land restitution as they had not worked for State enterprises. The Committee is also interested in following up the situation regarding the enjoyment of human rights by members of other ethnic groups deported in 1944 (art. 5 (b), (d) (v) and (e) (i), (iii) and (v)).

The Committee recommends that the State party ensure the restoration of political, social and economic rights of Tatars in the Crimea, in particular the restitution of property including land or the compensation for its loss under the Civil Code, or through a special law to be adopted to that end. The Committee further recommends that the State party provide updated information in its next periodic report on the enjoyment of human rights by members of other formerly deported ethnic groups.

18. The Committee also notes with concern various reports alleging that the communities of Krymchaks and Karaites are on the verge of extinction (art. 2 (2)).

The Committee urges that the State party adopt as a matter of priority special measures to enable the preservation of the language, culture, religious specificities and traditions of Krymchaks and Karaites, in accordance with the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures.

19. The Committee notes with concern that the status of a community of Ukrainian citizens, who consider themselves to be Ruthenians, is not clear and that there is a reported absence of dialogue between them and the State party.

The Committee recommends that the State party respect the right of persons and peoples to self-identification and consider the issue of their status in consultation with

representatives of Ruthenians in order to recognize all minorities which claim to exist in the State party.

20. Despite the formation of a new State Migration Service in December 2010 and the adoption of the new migration policy in May 2011 aimed at facilitation, inter alia, of processing of about 2,000 asylum claims per year, the Committee notes the need for well-founded decisions in the refugee status determination procedure, for asylum seekers to remain documented throughout the asylum procedure, and for children of asylum-seekers and stateless persons born in Ukraine to be registered and receive birth certificates (art. 5 (a) and (b)).

The Committee recommends that the State party: (a) ensure well-founded decisions in the refugee status determination procedure, and fully ensure procedural safeguards and a proper assessment of asylum claims for all persons in need of international protection; (b) ensure that all asylum-seekers remain documented throughout the asylum procedure, including the appeals stage, so that they do not face the risk of detention or refoulement while pursuing their asylum claims, and that adequate resources are available for the provision of interpretation to them, particularly in the courts and in places of detention so that they can enjoy meaningful access to justice; (c) adopt legislative measures to ensure birth registration and the issuance of birth certificates to children of asylum-seekers and stateless persons born in Ukraine; and (d) consider acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

21. The Committee notes with concern that, while a number of projects and studies were taken to provide housing to refugees and asylum seekers, including in Odessa Oblast, the number of refugee and asylum centres and the funding thereof remain inadequate (art. 5 e iii)).

The Committee recommends that the State party further improve conditions for the reception of refugees and asylum-seekers by opening new temporary accommodation centres, particularly in Kyiv and Kharkiv, ensuring transparent criteria for admission to centres, and providing assistance to those who cannot be accommodated therein.

22. While noting that the application of the Criminal Code remains central to combating racial discrimination, the Committee expresses concern at the lack of instruments of civil and administrative liability, including sanctions, which are also essential for enhancing the prevention of racial discrimination and effective recourse to justice by its victims (art. 6).

The Committee recommends that the State party amend its Civil Code and Code of Administrative Offences to establish civil and administrative liability for racial discrimination, including the hateful opinions spread by the media, as well as to guarantee remedies, including compensation to victims.

23. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

24. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that 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, when implementing the Convention in its domestic legal order. 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.

25. The Committee recommends that the State party undertake and publicize adequately an appropriate programme of activities to commemorate 2011 as the International Year for People of African Descent, as proclaimed by the General Assembly at its sixty-fourth session in its resolution 64/169 of 18 December 2009.

26. The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular in combating racial discrimination, in connection with the implementation of the present concluding observations and the preparation of the next periodic report.

27. The Committee encourages the State party to raise awareness about the communications procedure under article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

28. 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 observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

29. Noting that the State party submitted its core document (HRI/CORE/1/Add.63/Rev.1) in 1998, the Committee encourages the State party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth Inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and HRI/MC/2006/3/Corr.1).

30. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 5, 9 and 15 above.

31. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 7, 14, 16 and 17 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

32. The Committee recommends that the State party submit its twenty-second and twenty-third periodic reports in a single document by 6 April 2014, taking into account the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (HRI/GEN.2/Rev.6, chap. I, para. 19).