



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 fifth to the seventh periodic reports of Kyrgyzstan, adopted by the Committee at its eighty-second session (11 February–1 March 2013)

1. The Committee considered the fifth to seventh periodic reports of Kyrgyzstan (CERD/C/KGZ/5-7), submitted in one document, at its 2215th and 2216th meetings (CERD/C/SR. 2215 and 2216), held on 18 and 19 February 2013. At its 2227th meeting (CERD/C/SR. 2227), held on 26 February 2013, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission by the State party of its fifth to seventh periodic reports drafted in accordance with the Committee's revised guidelines for the preparation of reports. The Committee also welcomes the constructive dialogue with the State party as well as its efforts to provide comprehensive responses to issues raised by Committee members during the dialogue.

B. Positive aspects

3. The Committee welcomes the various legislative and policy developments which have taken place in the State party to combat racial discrimination, including:

(a) The adoption of the Constitution on 27 June 2010 which contains provisions on the protection of human rights, including on racial discrimination;

(b) The adoption of the Criminal Code which criminalizes the incitement to ethnic hatred, promoting exclusivity, superiority or inferiority on the basis of ethnic grounds, as well as genocide;

(c) The provision of equal opportunities for everyone to realize their labour rights and freedoms under article 9 of the Labour Code;

(d) The implementation of the Action Plan on Ethnic Policy and Social Consolidation until 2015;

(e) The initiation of the reform of the judicial system.

4. The Committee also welcomes the ratification by the State party, on 29 December 2008, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman

and Degrading Treatment or Punishment and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 6 December 2010.

C. Concerns and recommendations

Root causes of the ethnic conflicts

5. While noting the explanations provided by the State party, the Committee is deeply concerned at the repeated ethnic conflicts and clashes which occurred in the State party between the majority of the population and some ethnic groups, namely Uzbeks, Dungans, Kurds and Meskhetian Turks since 2007 and at their root causes of such conflicts. The Committee is particularly concerned at the June 2010 ethnic conflict which between Uzbeks and Kyrgyz populations in the Osh and Jalal-Abad regions and which resulted, inter alia, in a great number of killings, casualties and property destruction. The Committee is further concerned that the causes of such conflicts may continue to exist and may lead to other clashes. Moreover, the Committee is concerned that part of the weapons held by the population irrespective of their ethnic origins has not yet been collected.

The Committee recommends that the State party, as a matter of urgency, take effective measures to address the fundamental problems and the root causes that constitute an obstacle to the peaceful coexistence between different ethnic groups living in its territory. For that purpose, the Committee recommends that the State party:

- (a) Pursue its initiatives and reforms aimed at building a democratic society in which all ethnic groups will be involved, respected and enjoy full rights;**
- (b) Address socio-economic disparities between ethnic groups and between rural and urban areas;**
- (c) Take urgent measures to increase the participation of minorities in political and public affairs;**
- (d) Consider adopting a special law on the rights of persons belonging to minority groups and establishing an institution with a special mandate to address racial discrimination issues;**
- (e) Redouble its efforts to collect weapons still held by the population, in particular in the Osh and Jalal Abad regions, bearing in mind the need to build trust between the majority and other ethnic groups.**

Human rights violations during the June 2010 ethnic conflict

6. The Committee notes with concern that, according to the State party's report (CERD/C/KGZ/5-7, para. 12) and other reports, Uzbeks were the main victims of the June 2010 events but were also the most prosecuted and condemned. While noting that the State party itself has recognized this situation and is considering ways to correct it, the Committee remains deeply concerned about reports of biased attitudes based on ethnicity in investigations, prosecutions, condemnations and sanctions imposed on those charged and convicted in relation to the June 2010 events, who were mostly of Uzbek origin. The Committee is also concerned about information provided in the State party's report relating to "evidence of coercion to confess to crimes that the persons did not commit, pressure on relatives by representatives of law enforcement agencies, denial of procedural rights (...), violations of court procedures, threats and insults to the accused and their counsel, attempts to attack the accused and his relatives" which according to the State party resulted in a

violation of the right to a fair trial. While noting information provided by the State party, the Committee remains concerned at the case of Askharov, a human rights defender, who was condemned to life sentence following a trial during which he did not benefit from all necessary legal guarantees for a fair trial (art. 2, 5 and 6).

In line with its general recommendation 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 in the context of the reform of its judicial system:

(a) Initiate or set up a mechanism to review all cases of persons condemned in connection with the June 2010 events, from the point of view of respecting all necessary guarantees for a fair trial;

(b) Investigate, prosecute and condemn, as appropriate, all persons responsible for human rights violations during the June 2010 events, irrespective of their ethnic origin and their status;

(c) Provide compensation to those who were victims of miscarriage of justice, regardless of their ethnic origin;

(d) Pursue the reform of the judicial system and the security and police forces, having in mind the necessity to ensure the reconciliation between different ethnic groups and to build trust of the population in the judicial system;

(e) Review the case of Askharov, respecting all requirements for a fair trial and avoid any threats against human rights defenders, irrespective of their ethnic origin.

7. While noting information provided by the State party, the Committee remains concerned at reports that a great number of persons, mostly from minority groups, in particular Uzbeks, have been detained and have been subjected to torture and other forms of ill-treatment on the basis of their ethnicity following the June 2010 events. The Committee is also concerned at information that women from minority groups were victims of acts of violence, including rape, during, and in the aftermath of the June 2010 events. The Committee is particularly concerned that all such acts have not yet been investigated and those responsible have not been prosecuted and punished (arts. 5 and 6).

In line with its general recommendation No. 31 (2005), the Committee recommends that the State party, without any distinction based on the ethnic origin of the victims, take appropriate measures to:

(a) Register and document all cases of torture, ill-treatment and violence against women from minority groups, including rape;

(b) Conduct prompt, thorough and impartial investigations;

(c) Prosecute and punish those responsible, including police or security forces;

(d) Provide reparation to victims;

(e) Take all necessary measures to prevent the occurrence of such acts in the future.

With regard to violence against women from minority groups, the Committee, recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, recommends that the State party adopt and implement without further delay, the National Action Plan to combat violence against women to which its delegation referred during its dialogue with the Committee.

Other consequences of June 2010 ethnic conflict

8. The Committee is concerned at reports of cases of arbitrary dismissal of persons from minority ethnic groups, in particular Uzbeks, and forced abandon of their positions in the administration and local governments. The Committee is also concerned at reports that some Uzbeks closed their enterprises under threat following the June 2010 events. It is further concerned that persons belonging to minority ethnic groups have lost their business due to the conflict and have not all received assistance from the State party (arts. 2 and 5).

The Committee recommends that the State party take appropriate measures to:

(a) Investigate and review all cases of persons who were arbitrarily dismissed from their positions in the administration or local governments on ethnic grounds, and as appropriate, reinstate them;

(b) Investigate and review cases of forced evictions of minority groups of their enterprises and provide them, as appropriate, with restitution or compensation;

(c) Continue to provide assistance to those who have lost their income-related activities due to the June 2010 ethnic conflict, irrespective of their ethnic origin.

Representation of minorities in political bodies and political life

9. The Committee notes the efforts made by the State party to integrate minorities into political and public affairs, such as the security forces and the police, as well as efforts to implement the Decision 567/2011 of the Parliament asking for a balanced staffing policy. However, the Committee remains concerned at the very low representation of minority ethnic groups in political and public affairs including in local governments, as illustrated in the State party's report, and in particular in the Parliament, the executive bodies, the police and the judiciary, which has decreased since 2007 and following the June 2010 events (art. 2 and 5).

Recalling its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination and in line with its previous recommendation (CERD/C/KGZ/CO//4/, para. 11), the Committee encourages the State party to take concrete and comprehensive measures to ensure that persons belonging to minority ethnic groups are adequately represented in elected and executive bodies, in the police and in the judiciary, at all levels. The Committee recommends that the State party ensure that minority representation is as closely in line with their proportion in the population of the State party in accordance with article 5 of the Convention, bearing also in mind the necessity to build trust in the State for all parts of the population.

Socio-economic disparities

10. The Committee takes note of the information provided by the delegation of the State party during its dialogue with the Committee according to which the June 2010 events were rooted in socio-economic disparities that exist between the majority ethnic group and the minority and between rural and urban areas where some ethnic groups are concentrated, in particular the Kyrgyz. However, the Committee is concerned that if such socio-economic disparities continue to exist they may result in other inter-ethnic conflicts (arts. 2 and 5).

The Committee encourages the State party to take all measures aimed at addressing socio-economic disparities between different ethnic communities and between rural and urban areas, and at promoting equal enjoyment by all of economic, social and cultural rights in accordance with article 5(e) of the Convention. The Committee

requests that the State party provide it with information on specific measures taken for this purpose in its next periodic report.

Situation of internally displaced persons following the June 2010 conflict

11. While noting the efforts made by the State party to provide assistance to internally displaced persons, the Committee remains concerned that sustainable reintegration of internally displaced persons has not been yet achieved and that some of those who returned to Osh and Jalal Abad after the June 2010 events continue to face difficulties with regard to housing, properties and reintegration (arts. 2 and 5).

The Committee encourages the State party to pursue its efforts to provide full assistance to internally displaced persons who returned to their places of origin in Osh and Jalal Abad regions and to ensure their full reintegration, in particular with regard to access to housing and labour market.

Minority languages and culture in education

12. The Committee notes that the Constitution of the State party (art. 10) and the State Languages Act guarantee the right of persons belonging to minorities to be taught in their languages. However, the Committee is concerned at the lack of qualified teachers, translators, textbooks and teaching material in minority as well as in the State languages. The Committee is particularly concerned at reports that since the June 2010 events, many schools in Osh and Jalal-Abad have changed the language of education from minority languages into Kyrgyz, and that some of them do no longer benefit from State funding enabling them to ensure classes in minority languages. The Committee is also concerned at information on a decision of the State party according to which the high school testing will be conducted in Kyrgyz, thus creating a discrimination with regard to minority children who were educated partially in minority languages and do not have proficiency to be tested in Kyrgyz; such a situation may prevent their admission to universities or access to the labour market on equal footing with members of the majority. Moreover, the Committee remains concerned at reports that textbooks and curricula for primary and secondary schools do not adequately provide information on the history and culture of different ethnic groups living in the territory of the State party (arts. 2, 5 and 7).

The Committee encourages the State party to strengthen its efforts to promote education in minority languages for children belonging to minority ethnic groups in particular in the regions of Osh and Jalal-Abad. The Committee also recommends that the State party review its decision to introduce high school testing in Kyrgyz and take appropriate measures to ensure that children belonging to minorities be tested in languages in which they were mainly educated. The Committee reiterates its previous recommendation (CERD/C/KGZ/CO/4, para. 14) that the State party include in curricula and textbooks for primary and secondary schools information about the history and culture of different ethnic groups living in its territory. The Committee requests that the State party provide information on follow-up given to this recommendation in its next periodic report.

Minority languages in media following the June 2010 conflict

13. The Committee notes explanations provided by the delegation of the State party according to which some media incited ethnic hatred and that some media owners have left the country for security reasons. However, the Committee is concerned that “in general, the Uzbek-language media are in somewhat lamentable situation as almost none of them have functioned since the June 2010 events” and that the use of minority languages in media has decreased in particular in the Osh region. The Committee is particularly concerned that

Mezon TV has ceased to broadcast, Osh TV now broadcasts in Kyrgyz, that a number of newspapers which used to publish in Uzbek has stopped, a situation which impedes the right of persons belonging to the Uzbek minority to disseminate and receive information in their language (arts. 5 and 7).

The Committee encourages the State party to take appropriate measures to ensure that minority groups, in particular Uzbeks, can disseminate and have access to information in their own languages. In that vein, the Committee recommends that the State party take measures to establish favourable conditions aimed at encouraging private ownership of media by persons belonging to minority groups, including in the Osh region. The Committee also recommends that the State party provide training to journalists in human rights, including on the prohibition of incitement to racial discrimination.

Promotion of tolerance and understanding

14. The Committee is concerned that since the June 2010 events, a climate of discriminatory attitudes, racial stereotypes, suspicion between the majority ethnic group and the minorities, widespread nationalistic discourse and exclusion continue to exist. The Committee is also concerned at the absence of effective measures to create a peaceful and inclusive society and to fully promote tolerance, reconciliation and understanding between the Kyrgyz majority and the minority ethnic groups (art. 7).

The Committee recommends that the State party strengthen its efforts, including through education, culture, awareness-raising campaigns, to combat racial stereotypes, discriminatory attitudes, nationalistic discourse including in media, with a view to promoting reconciliation, tolerance and understanding, and to build a peaceful and inclusive society. The Committee requests that the State party provide it with information on the concrete results of such measures in its next periodic report.

General provision on racial discrimination in the State party's legislation

15. Despite its previous recommendation (CERD/C/KGZ/CO/4, para. 6), the Committee is concerned that the State party has not yet included in its legislation a general provision prohibiting racial discrimination in line with article 1 of the Convention (arts. 1 and 2).

The Committee recommends that the State party include in its legislation a general provision on the prohibition of racial discrimination which is in line with article 1 of the Convention.

Non-compliance with all requirements of article 4

16. The Committee is concerned that the criminal legislation of the State party, in particular the provisions of articles 229 and 229-1 of the Criminal Code, does not cover all the requirements of article 4 of the Convention (art. 4).

Recalling its general recommendations Nos. 1 (1972), 7 (1985) and 15 (1993), according to which the provisions of article 4 of the Convention are of a preventive and obligatory nature, the Committee recommends that the State party amend its legislation, so as to give full effect to article 4 of the Convention.

Situation of stateless persons and asylum seekers

17. The Committee notes the efforts made by the State party to solve the situation of stateless persons in its territory by granting citizenship to stateless persons, in particular those who were in possession of the Soviet Union passports, such as the 2007 Citizenship Law, the Presidential Decree no. 437 and the National Action Plan to Prevent and Reduce

Statelessness adopted in 2009 and updated in December 2012. However, the Committee remains concerned that a great number of persons (90,000), including stateless persons remain undocumented. The Committee is also concerned at reports that a discriminatory approach is applied regarding registration procedures and recognition of refugee status with respect to foreign Uighurs and Uzbeks, placing them in risk of harassment by the police and refoulement (arts. 2 and 5).

The Committee recommends that the State party continue its efforts to grant Kyrgyz citizenship to stateless persons including, through its National Action Plan to Prevent and Reduce Statelessness updated in December 2012. It also recommends that the State party take appropriate measures to grant access to its registration procedures and consider asylum requests regardless of the origin of applicants. The State party should also provide documents to all asylum seekers and take necessary measures to prevent them from risk of refoulement.

Hate speech

18. While noting that article 229 of the Criminal Code punishes “actions aimed at inciting, racial, religious or interregional hatred, offending ethnic pride, or promoting exclusivity or inferiority of citizens on the basis of religion, or their ethnic or racial background”, the Committee is concerned at reports according to which hate speech by some politicians and media as well as discriminatory statements with regard to some minority groups are widespread, remain unprosecuted and unpunished (art. 4, 6 and 7).

The Committee recommends that the State party strongly condemn the discriminatory statements and hate speech by politicians and media. The Committee particularly recommends that the State party take appropriate measures to investigate, prosecute and punish such acts and take appropriate measures to prevent them, including through education training of media.

Information on cases related to racial discrimination

19. While noting information provided by the State party, the Committee is concerned at the lack of comprehensive and precise information on cases related to racial discrimination brought before domestic courts and tribunals, in particular their nature, the sanctions and the reparation provided to victims. The Committee is also concerned at the absence of explanations on the effective remedies available to victims of racial discrimination and their effectiveness (arts. 5 and 6).

Referring to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recalls 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 censure or reprisals, or an unwillingness on the part of the authorities to initiate proceedings. The Committee recommends that the State party take all necessary steps to facilitate the access of the persons belonging to all ethnic groups to justice, to disseminate legislation relating to racial discrimination to inform the population of all the legal remedies available to them. It further recommends that the State party provide comprehensive information on this subject in its next periodic report.

Human rights education

20. While noting information provided by the State party on human rights training provided to security forces, the Committee remains concerned at the lack of comprehensive and precise information on effective measures taken by the State party relating to human

rights education and their concrete results, in particular with regard to law enforcement officials as well as in schools (art. 7).

The Committee recommends that the State party redouble its efforts to ensure that law enforcement officers receive training in human rights and in particular with regard to the provisions of the Convention. The State party should also include human rights education in school curricula and conduct awareness-raising campaigns on human rights, including on racial discrimination.

National human rights institution

21. The Committee is concerned about the selection and appointment process as well as the lack of guarantee of tenure for the members of the governing body of the Ombudsman which may not guarantee its independence. The Committee notes that the institution of the Ombudsman was accredited “B” status in 2012, which demonstrates that it is not in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (art. 2).

The Committee recommends that the State party bring the institution of the Ombudsman into compliance with the Paris principles or establish a national human rights institution in a manner that is fully consistent with the Paris Principles.

D. Other recommendations

Ratification of other treaties

22. 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, in particular treaties the provisions of which have a direct relevance to communities that may be the subject of racial discrimination, such as the ratification of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Follow-Up to Durban Declaration and Programme of Action

23. 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.

Consultation with organizations of civil society

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

Competence of the Committee on individual complaints

25. The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention.

Amendments to article 8

26. The Committee recommends that the State party ratify the amendment to article 8, paragraph 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. In this connection, the Committee cites paragraph 14 of General Assembly resolution 61/148, in which the Assembly strongly urged States parties to the Convention to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Dissemination

27. 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.

Common core document

28. Noting that the State party has submitted its core document in 2008 (HRI/CORE/KGZ/2008), the Committee, bearing in mind the adoption of a new Constitution in 2010 and the renewal of legislation following it, encourages the State party to submit an updated core document, 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/GEN.2/Rev.6, chap. I).

Follow-up to concluding observations

29. 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, 6 and 9 above.

Paragraphs of particular importance

30. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 7, 8, 12 and 13 above, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

31. The Committee recommends that the State party submit its combined eighth to tenth periodic reports by 4 October 2016, taking into account the specific 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. 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).