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Committee on the Elimination of Racial Discrimination**Eightieth session**

13 February - 9 March 2012

**Consideration of reports submitted by States parties under
article 9 of the Convention****Concluding observations of the Committee on the Elimination of Racial
Discrimination****Turkmenistan**

1. The Committee considered the sixth to seventh periodic reports of Turkmenistan (CERD/C/TKM/6-7), submitted in one document, at its 2143rd and 2144th meetings (CERD/C/SR.2143 and CERD/C/SR.2144), held on 23 and 24 February 2012. At its 2163rd meeting (CERD/C/SR.2163), held on 8 March 2012, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined sixth to seventh periodic reports by Turkmenistan in conformity with the Committee's reporting guidelines (CERD/C/2007/1) and appreciates the detailed presentation in the report of the legislative and policy reforms.

3. The Committee welcomes the open dialogue with the high-level delegation and expresses its appreciation for the oral presentation and replies provided by the delegation during the consideration of the report which attested to a need for further improvements as regards the implementation of the legislative safeguards and policy measures in order to achieve the effective economic and social integration of ethnic minorities and elimination of all forms of racial discrimination.

B. Positive aspects

4. The Committee notes with interest the State party's efforts during the period under review to strengthen the legal framework with the aim of enhancing the protection of human rights and give effect to the provisions of the Convention and other international conventions to which Turkmenistan is a party, including:

(a) The adoption of a new version of the Constitution on 26 September 2008; and

(b) The enactment of the Social Security Code (17 March 2007), the Labour Code (18 April 2009), the Code of Criminal Procedure (18 April 2009), the Criminal Code (new version) (10 May 2010), the Women's Equality (State Guarantees) Act (14 December 2007), the Human Trafficking Act (14 December 2007), the Parliamentary Elections Act (10 November 2008), the Education Act (15 August 2009), the Legal Profession and Legal Practice Act (10 May 2010) and the Presidential Elections Act and the People's Council and Local Council Member Elections Act (25 September 2010).

5. The Committee notes with appreciation that since the consideration of its initial to fifth periodic reports, the State party has acceded to or ratified international instruments, such as:

(a) The Convention on the Rights of Persons with Disabilities (4 September 2008);

(b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (18 April 2009);

(c) The Optional Protocol to the Convention on the Rights of Persons with Disabilities (25 September 2010);

(d) The International Labour Organization Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (25 September 2010); and

(e) The 1954 Convention relating to the Status of Stateless Persons (7 December 2011).

6. The Committee also welcomes the State party's efforts to amend its policies, programmes and administrative measures to further ensure the protection of human rights and implementation of the Convention, including:

(a) The establishment of the Interdepartmental Commission on compliance with Turkmenistan's international human rights obligations, pursuant to a presidential order of 24 August 2007;

(b) The measures to facilitate return of 7,309 ethnic Turkmens from abroad, between 2006 and 2011, to take up residence in their homeland; and

(c) Granting citizenship to more than 13,000 refugees and awarding permanent residence to more than 3,000 other refugees.

7. The Committee further appreciates the willingness expressed by the State party to respond to recommendations of the Committee and to engage in a dialogue on the implementation thereof.

C. Concerns and recommendations

8. While noting that article 19 of the Constitution establishes the equality of citizens with respect to their rights regardless of race, gender, ethnicity or language, and is binding on the State authorities and civil servants, the Committee remains concerned that national legislation does not contain a definition of racial discrimination in full conformity with article 1 of the Convention or a general norm prohibiting racial discrimination in line with the Convention (arts. 1(1) and 2(1)(d)).

The Committee recommends that the State party amend its legislation to include a definition of racial discrimination in full conformity with article 1 of the Convention or adopt a general prohibition of racial discrimination in line with the Convention that covers all fields of social life.

9. The Committee regrets that the State party's periodic report did not contain disaggregated data on the status of each of the minority groups living in Turkmenistan within the total population of the country and the situation of their members as citizens, with particular reference to the fields of employment, education and health care (art. 2).

Drawing attention to the revised guidelines for reporting under the Convention (CERD/C/2007/1 of 13 June 2007, paragraphs 10 – 12), the Committee recommends that the State party collect and publicize reliable and comprehensive statistical data on the ethnic composition of its population, using the indicators of ethnic diversity on the basis of self-identification of persons and groups, in order to enable the Committee to better evaluate the enjoyment of rights under the Convention in Turkmenistan. The Committee recommends that the Government avail itself of the 2012 general population and housing census to collect the disaggregated data and requests the State party to provide it with such information in its next report.

10. Drawing attention to the Committee's observation of a diminution of the proportion of ethnic and national minorities from 1995 to 2005, issued following the consideration of the previous report by Turkmenistan in 2005 (CERD/C/TKM/CO/5, para. 9), the Committee reiterates its concern about a lack of information about measures to respect and protect the cultural and ethnic identity of ethnic and national minorities and to avoid any kind of forced assimilation, in particular of the Baluchi minority group (art. 2 (2)).

The Committee recommends that the State party observe the principle of self-identification of members of ethnic and national minorities and consult their representatives on the issues of concern to them, and adopt as a matter of priority, wherever necessary, special measures to enable the preservation of the language, culture, religious specificities and traditions of such groups, including Baluchis, in accordance with the Committee's general recommendation 32 (2009) on the meaning and scope of special measures.

11. The Committee is concerned by the lack of information on the direct applicability of the Convention in the State party's domestic legal order, including cases illustrating its direct and indirect application by judicial and administrative bodies (arts. 1 and 2).

The Committee requests the State party to provide it with illustrative examples of the application of the Convention in courts and administrative acts in its next periodic report.

12. Recalling its previous concluding observations, the Committee expresses its concern that the State party applies its obligation under article 2 of the Convention not to sponsor, defend or support racial discrimination only to political parties and organisations and not to all officials of the State and any other person, which may explain the prevalence of hate speech by high-ranking governmental officials (arts. 2(1)(b) and 4 (a)(c)).

Recalling its general recommendation 7 (1985) on legislation to eradicate racial discrimination and general recommendation 15 (1993) on article 4, the Committee recommends that the State party take immediate measures to effectively investigate and bring to justice perpetrators of reported hate crimes regardless of their official status.

13. While noting that section 7, paragraph 1, of the Labour Code refers to some of the grounds of discrimination enumerated in article 1, paragraph 1a), of the Convention, particularly race, the Committee expresses its concern at the absence of prohibition of

discrimination based on colour and national and ethnic origin. The Committee further notes that while the Labour Code prohibits discrimination on the basis of “other factors unrelated to the abilities and performance of workers”, it is unclear whether its section 7, paragraph 1, covers indirect discrimination (arts. 1(1) and 5(e)(i)).

The Committee recommends that the Government consider amending the Labour Code in order to explicitly prohibit discrimination based on colour and national and ethnic origin, in line with article 1, paragraph 1, of the Convention, as well as indirect discrimination.

14. 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 (art. 3).

In light of general recommendation 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.

15. Taking into account past reported instances of hate speech against national and ethnic minorities by high-ranking officials, the Committee is concerned that the provisions of article 177 of the Criminal Code, as well as the relevant provisions of the Code of Administrative Offences, may not fully respond to the requirements of article 4 of the Convention (art. 4 (a),(b),(c)).

The Committee recommends that the State party review its legislation so as to cover all aspects of article 4 of the Convention and provide the legal basis for sanctioning all acts as provided therein.

16. In addition, the Committee expresses its concern at the overly broad provisions of article 177 of the Criminal Code, such as on “enmity” or “offending ethnic pride” which may lead to unnecessary or disproportionate interference with the freedom of expression (arts. 4 and 5 (d)(viii)).

In light of general recommendation 15 (1993) on the implementation of article 4 of the Convention, and drawing attention to the general comment 34 (2011) by the Human Rights Committee on the right to freedom of opinion and expression, the Committee recommends that the State party clearly define criminal offences, in particular article 177 of the Criminal Code, so as to ensure that they do not lead to unnecessary or disproportionate interference with the freedom of expression.

17. While noting that there are 20,000 stateless persons in Turkmenistan, the Committee remains concerned about the lack of information about measures to address statelessness and about the outcomes of the registrations in 2007 and 2011 of persons living in the country who lack valid identity/citizenship documents and who are stateless or at risk of statelessness (arts. 2 and 5).

The Committee recommends that the State party take urgent measures to address statelessness and provide statistics on the acquisition of Turkmen citizenship as well as information on the outcomes of the registrations of persons living in the country who lack valid identity/citizenship documents and who are stateless or at risk of statelessness in its next report. The Committee further encourages the State party to consider acceding to the 1961 Convention on the Reduction of Statelessness.

18. The Committee notes the State party’s information that it does not accept dual citizenship, and that the agreement with the Russian Federation regarding dual citizenship has been terminated. The Committee is concerned that non-recognition of dual citizenship may lead to statelessness, with all the adverse consequences (arts. 2 and 5).

The Committee recommends that the State party take measures to ensure that the solution of the issues related to citizenship does not increase the number of stateless persons who would thereby be deprived of human rights and freedoms in practice.

19. Taking due note of the Law on Employment, the Committee expresses concern about the lack of information on the steps taken by the State party to ensure equal opportunities and treatment of all individuals living in the country in all aspects of private and public employment, including election to Parliamentary posts, and recruitment to posts in the state administration or judicial bodies, without distinction on grounds of race and national origin (arts. 2 and 5).

The Committee recommends that the Government take measures to ensure in practice equal opportunities and treatment of all individuals living in the country in all aspects of private and public employment, including election to Parliamentary posts, and recruitment to posts in the state administration or judicial bodies, without distinction based on race and national origin, and provide the Committee with the information thereon in the next periodic report.

20. The Committee is concerned that children belonging to ethnic minorities continue to have limited possibilities to study and receive education in their mother tongue as there is a limited number of schools and textbooks in minority languages. In addition, the Committee is concerned that women and girls from such groups remain in a vulnerable position and face double discrimination as women and as members of minorities in education, health care and employment (arts. 2 and 5).

The Committee urges the State party to take the necessary measures to increase access for children belonging to ethnic and national minorities to instruction in and study of their mother tongue, including through the establishment of schools and provision of textbooks in minority languages. The State party should also take all measures to improve the situation of minority women and girls by enhancing their access to education, health care and employment.

21. The Committee reiterates its concern about 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 (arts. 5(e)(v) and 7).

The Committee urges the State party to take specific measures for the preservation and development of cultures of minority groups so that they may be enabled to maintain their cultural identity.

22. Taking note of the State party's information that no case of racial discrimination has been referred to the courts, the Committee is concerned at the practical lack of availability of legal remedies to victims of racial discrimination, including reparation or satisfaction (arts. 2, 4, 5, 6 and 7).

Recalling its general recommendation 26 (2000) on article 6, the Committee recommends that the State party ensure that victims of racial discrimination can avail themselves of legal remedies, including reparation or satisfaction and that the general public is informed about such remedies. Recalling its general recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee also recommends that the State party include in its next report information about the number and nature of acts of racial discrimination and prosecutions, convictions and sentences of their perpetrators.

23. 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 the prevention of racial discrimination as well as effective recourse to justice by victims of such acts (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 acts of racial discrimination as well as to guarantee remedies, including compensation to victims of such acts.

24. While noting the operation of the National Institute for Democracy and Human Rights under the President of Turkmenistan, the Committee is not clear regarding the current efforts to establish an independent national human rights institution, in conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (art. 2).

Recalling its general recommendation 17 (1993), the Committee recommends that the State party promptly establish an independent national human rights institution for the protection and promotion of human rights in conformity with the Paris Principles. The Committee also recommends that the State party establish a mechanism of consultation with representatives of minority groups on issues of concern to them.

25. The Committee is concerned at the reported limitations on access to internet for non-governmental organizations involved in the promotion of human rights, mainly concerning minority groups, as well as restrictions on the operation of websites, blogs or any other internet-based information in violation of the freedom of expression as provided for by international law (art. 5 d)(viii)).

The Committee recommends that the State party take the necessary measures to avoid arbitrary impediments to receiving and disseminating information through internet, in accordance with the provisions of the Convention and of other international human rights instruments; and refrain from restricting the operation of websites, blogs or any other internet-based information in violation of the freedom of expression as provided for by international law.

26. 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 and the Convention on the Protection of All Persons from Enforced Disappearance.

27. 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.

28. The Committee recommends that the State party consult and expand 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.

29. The Committee recommends that the State party consider making declaration in accordance with article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

30. 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.

31. The Committee encourages the State party to regularly update its core document (HRI/CORE/TKM/2009) submitted in 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 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).

32. 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 conclusions, on its follow-up to the recommendations contained in paragraphs 9, 15 and 17 above.

33. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 8, 10, 13 and 25 and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.

34. The Committee recommends that the State party submit its 8th to 11th periodic reports in a single document, due on 29 October 2015, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all 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 (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para. 19).
