



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 combined eighteenth to nineteenth periodic reports of Belarus, adopted by the Committee at its eighty-third session (12-30 August 2013)

1. The Committee considered the eighteenth and nineteenth periodic reports of Belarus (CERD/C/BLR/18-19), submitted in one document, at its 2247th and 2248th meetings (CERD/C/SR.2247 and 2248), held on 20 and 21 August 2013. At its 2260th and 2261st meetings (CERD/C/SR.2260 and 2261), held on 29th August 2013, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined eighteenth and nineteenth periodic reports of the State party (due in 2008), in line with the Committee's reporting guidelines (CERD/C/2007/1). The Committee also welcomes the submission of the common core document (HRI/CORE/BLR/2011) by the State party.

3. The Committee commends the State party for its oral presentation and appreciates the open, constructive and focused dialogue with the high-level multisectoral delegation.

B. Positive aspects

4. The Committee notes the State party's ongoing efforts to revise its legislation in areas of relevance to the Convention, including:

- (a) Entry into force on 4 January 2007 of the Counteracting Extremism Act;
- (b) Entry into force on 3 July 2009 of the Act on the Granting of Refugee Status and Subsidiary or Temporary Protection to Foreign Nationals and Stateless Persons in Belarus;
- (c) Adoption on 4 January 2010 of the Act on the Legal Status of Foreign Nationals and Stateless Persons in Belarus;
- (d) Adoption in 2010 of the Law on External Labour Migration;
- (e) Amendment on 4 January 2010 of the Freedom of Conscience and Religious Organizations Act;
- (f) Entry into force on 12 July 2011 of the International Labour Migration Act of Belarus;

(g) Adoption in January 2012 of the Trafficking in Persons Act.

5. The Committee welcomes, since the consideration of the fifteenth to seventeenth periodic reports:

(a) The accession of the State party on 25 January 2006 to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

(b) The decision of the State party to withdraw its declaration under article 17, paragraph 1, of the Convention.

6. The Committee also welcomes a number of positive developments, activities as well as administrative measures taken by the State party to fight racial discrimination and promote diversity, including:

(a) Adoption of the National Policy and Action Plan on Trafficking and Illegal Migration 2011-2013;

(b) Establishment of the National Rapporteur on Human Trafficking under the Ministry of the Interior;

(c) International technical assistance project on combating human trafficking in Belarus carried out by the International Organization for Migration (IOM);

(d) Adoption of the Programme for Enhancement of Ethnic Relations 2011-2015;

(e) Adoption of the legal literacy plan 2001-2015.

7. The Committee takes note with satisfaction of the information received from the Government and other sources on measures to ensure the use, acceptance and teaching of minority languages as well as other initiatives to maintain the “tolerant core” of Belarusian society.

C. Concerns and recommendations

Definition of racial discrimination in national legislation

8. The Committee is concerned at the absence of a definition of racial discrimination in accordance with article 1 of the Convention in national legislation (art. 1).

Recalling its general recommendation 14 (1993) on article 1, paragraph 1, of the Convention, the Committee recommends that the State party consider enacting specific legislation containing a definition of racial discrimination according to the Convention.

Comprehensive legislation on racial discrimination

9. The Committee is concerned at the absence of comprehensive legislation specifically prohibiting incitement of racial discrimination, in conformity with article 4 of the Convention, including the criminalization of racist organizations. It is also concerned at the lack of legislation to combat hate speech, making racist motivation for acts of violence an aggravating circumstance in the determination of sanctions (arts. 1 and 4).

The Committee recalls its general recommendation 15 (1993) on article 4 of the Convention, and recommends that the State party adopt comprehensive legislation specifically prohibiting racial discrimination in its direct and indirect forms and criminalizing racist organizations, racist hate speech and incitement to racial violence, in accordance with the full scope of article 4 of the Convention, and making racist

hate speech an aggravating circumstance in the determination of sanctions for crimes of violence.

Implementation of the Counteracting Extremism Act

10. The Committee is concerned that the Counteracting Extremism Act could be interpreted and enforced in an excessively broad manner (art. 4).

The Committee recommends that the State party ensure strict adherence to the principles and provisions of the Convention in the interpretation and application of the Counteracting Extremism Act, and in its enforcement, so that it does not target or disadvantage human rights defenders promoting the elimination of racial discrimination. It also requests information on such specific examples of circumstances when the Act is enforced and on how it is used to protect human rights under the Convention.

Indirect discrimination under the Labour Code

11. The Committee notes the absence of information concerning the amendment of section 14 of the Labour Code to provide more explicit prohibition of indirect discrimination. It also notes the lack of information on cases of disputes based on direct or indirect discrimination in relation to ethnic and religious minorities and foreigners under the Labour Code (arts. 2, 4 and 6).

The Committee requests the State party to provide specific information on disputes concerning direct or indirect discrimination under the Labour Code and recommends that section 14 of the Labour Code be amended with a view to more explicitly prohibiting indirect discrimination.

Court cases on racial discrimination

12. While taking note of the information provided by the State party regarding the number of convictions under the Criminal Code for offences committed on racial grounds, the Committee remarks the absence of descriptive information about the nature of cases relating to the enforcement of rights enshrined in the Convention. It is also concerned that discrimination is not accepted as a basis for initiating judicial proceedings. The Committee regrets the absence of information on specific cases illustrating the direct application of the Convention by judicial and administrative bodies, given that international treaties and agreements to which Belarus is a party can be directly invoked in courts (arts. 2, 5 and 6).

Recalling its general recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee requests the State party:

(a) To provide comprehensive information on the number and type of offences prosecuted on racial grounds, as well as on convictions, sentences and redress provided to victims;

(b) To provide information on the enforcement of rights enshrined in the Convention, including any cases where discrimination has been taken as the basis for initiating judicial proceedings;

(c) To provide information on the number and type of cases in which judges have directly invoked the Convention;

(d) To provide information on any complaint mechanisms available to victims of racial discrimination, the number of complaints and access to legal aid.

Compensation for acts of racial discrimination

13. While noting that the Constitution provides for compensation for property damage and financial redress for moral injury, the Committee is concerned at the absence of a specific provision authorizing compensation for racial discrimination. It is also concerned that there are no recorded cases in which compensation has been sought for material or moral damage in connection with acts of discrimination.

The Committee recommends that the State party introduce provisions in its legislation which provide specifically for compensation in connection with acts of discrimination and ensure just and adequate reparation for moral injuries and damages to property incurred as a result of racial discrimination.

Independence of judges and lawyers

14. Taking into consideration that all individuals must enjoy effective protection and remedies through the competent national courts and other State institutions against any acts of racial discrimination and that the independence of the judiciary and the ability of lawyers to discharge their professional functions freely 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).

Recalling its general recommendation 20 (1996) on article 5 of the Convention and its general recommendation 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 consider taking the necessary measures in order to guarantee the full independence and impartiality of the judiciary in line with the United Nations Basic Principles on the Independence of the Judiciary (endorsed by General Assembly resolutions 40/32 and 40/146 and ensure that it is in a position to protect victims of racial discrimination. It also recommends that the State party ensure that lawyers are able to exercise their functions effectively.

Establishment of a national human rights institution

15. While the Committee takes note that the State party accepted the recommendation to establish a national human rights institution in the context of the universal periodic review and that its establishment is currently under consideration, it is concerned at the absence of progress in this regard (art. 2).

In light of its general recommendation 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee recommends that the State party expedite efforts to establish a single fully independent human rights institution with a broad mandate for the promotion and protection of human rights, including receiving and processing complaints from individuals, in line with the Principles relating to the status of national institutions (The Paris Principles) (General Assembly in resolution 48/134, annex).

Situation of Roma

16. While noting the steps taken by the State party to improve the situation of the Roma community, in particular in the field of education, the Committee is concerned that the general level of education, in particular secondary and higher, of members of the Roma community is insufficient and that they are employed almost exclusively in the private sector. It is also concerned at possible negative stereotyping of members of the Roma community in the media, and reports of police violence against the Roma for not having identity documents (arts. 2 and 5).

In light of its general recommendation 27 (2000) on discrimination against Roma, the Committee requests the State party to provide further information on measures taken to ensure that members of the Roma community are not discriminated against and that they have equal access to education at all levels, employment, including in the State sector, housing, identity documents, access to public places, social and other services, and that there is no negative stereotyping of Roma in the media. The Committee encourages the State party to continue the positive practice of working with Roma parents in order to encourage them to send their children to school as at the age of six. It invites the State party to consider taking special measures to improve the situation of the Roma community in accordance with article 2, paragraph 2, of the Convention.

Combatting human trafficking

17. While commending the efforts of the State party to combat trafficking in persons, including through the adoption of legislation, and the significant results achieved so far, the Committee is concerned that Belarus continues to be a source and transit country for human trafficking, both for purposes of sexual exploitation and forced labour (arts. 5, 6 and 7).

The Committee recommends that the State party:

- (a) Continue and enhance its efforts to combat human trafficking and take preventive measures to address its root causes, including the link to prostitution and sexual exploitation, in particular of women belonging to ethnic minorities;**
- (b) Provide assistance, protection, temporary residence permits, rehabilitation and shelter as well as medical, psychological and other services and assistance to victims of trafficking, and ensure that they are not prosecuted;**
- (c) Promptly and thoroughly investigate, prosecute and punish those responsible;**
- (d) Consider concluding bilateral agreements with other countries in order to strengthen prevention of and combat trafficking;**
- (e) Provide training to law enforcement officials, including police officers, border guards and immigration officials, in the identification of, assistance to and protection of victims of trafficking;**
- (f) Conduct public awareness-raising campaigns on human trafficking.**

Human rights training

18. While noting the training and retraining courses in human rights issues provided to judicial and law enforcement officials, in particular the courses organized by the International Training Centre on Migration and Human Trafficking, the Committee remarks the lack of mechanisms to evaluate the effectiveness of the training and the absence of information on the number and level of persons trained (arts. 2, 4 and 7).

Recalling its general recommendation 13 (1993) on training of law enforcement officials in protection of human rights, the Committee recommends that, in addition to general human rights training, law enforcement and judicial officials receive training specifically on the provisions of the Convention, and that mechanisms be established to evaluate the effectiveness of such training.

D. Other recommendations

Ratification of other treaties

19. 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 bearing on racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention on the Rights of Persons with Disabilities and its Optional Protocol, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights as well as the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Follow-up to the Durban Declaration and Programme of Action

20. 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, and take 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

21. 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.

Amendment to article 8 of the Convention

22. The Committee recommends that the State party ratify the amendments 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 refers to General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Declaration under article 14 of the Convention

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

Dissemination

24. 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 languages as well as in other commonly used languages, as appropriate.

Follow-up to concluding observations

25. 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 10, 15 and 17 above.

Paragraphs of particular importance

26. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 9, 11 and 16 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

27. The Committee recommends that the State party submit its twentieth to twenty-third periodic reports in a single document by 8 May 2016, taking into account the guidelines for the treaty-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1), and addressing 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 as per the harmonized guidelines on reporting (HRI/GEN.2/Rev.6, chap. I, para. 19).
