



# 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 sixth to eighth periodic report of Tajikistan, adopted by the Committee on the Elimination of Racial Discrimination at its eighty-first session (6–31 August 2012)

1. The Committee considered the sixth to eighth periodic report of Tajikistan (CERD/C/TJK/6-8), submitted in one document, at its 2171st and 2172nd meetings (CERD/C/SR.2171 and CERD/C/SR.2172), held on 8 and 9 August 2012. At its 2185th meeting (CERD/C/SR.2185), held on 17 August 2012, it adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the combined sixth to eighth periodic report submitted by the State party albeit with a delay. It appreciates the presence of a high-level delegation, the frank and constructive responses provided to the questions and comments raised by Committee members.

3. The Committee notes with satisfaction that the State party's report generally complies with the reporting guidelines.

#### B. Positive aspects

4. The Committee welcomes a number of positive developments and activities undertaken by the State party in fighting racial discrimination, and promoting diversity, including:

(a) The amendment of the Criminal Code in May 2004 establishing aggravated circumstances for racial discrimination;

(b) The new Criminal Procedure Code of April 2010 enshrining the principle of non-discrimination into criminal proceedings;

(c) The new Code of Administrative Offences of 1 April 2009 insofar as it prohibits the dissemination of racist products;

(d) The Act on the State language of 5 October 2009 enshrining the right of ethnic groups and peoples to use their own language without restriction.

5. The Committee notes the establishment on 20 March 2008 of the Office of the Ombudsman for Human Rights.
6. The Committee also notes a number of measures taken during the period under review to combat human trafficking, including a comprehensive programme for the period 2006–2010, approved by Government Decree No. 213 on 6 May 2006.
7. The Committee welcomes the Cultural Development Programme for the period 2008–2015, approved by Government Decision No. 85 of 3 March 2007.

## C. Concerns and recommendations

### Relevant data

8. The Committee notes that the State party has conducted a general census in 2010 and has included some statistical data in the periodic report. However, the Committee regrets the absence of disaggregated data on the ethnic composition of the population and on relevant socioeconomic indicators on the enjoyment of the rights under the Convention by members of various groups, in particular minorities and non-citizens (employment, education, health care), which data are necessary to assess progress and difficulties in implementing the provisions of the Convention (arts. 1 and 5).

**Recalling its revised reporting guidelines (CERD/C/2007/1), the Committee reiterates its view on the importance of compiling disaggregated data on the ethnic composition of the population, and recalls that accurate disaggregated data by ethnic or national origin, and incorporating a gender perspective, on the socioeconomic and cultural status and conditions of the various groups in the population are a useful tool for the State party to take necessary measures to secure the equal enjoyment of the rights under the Convention to all and to avoid discrimination on ethnic and national grounds.**

### Definition of racial discrimination

9. While noting that article 7 of the Labour Code on equal opportunities provides a definition of racial discrimination which is close to the one provided in article 1 of the Convention, the Committee reiterates its concern about the absence in the State party's legislation of similar provisions covering other social areas. It also regrets that, although the provisions of the Convention may be directly invoked before national courts, there is no instance of application of the Convention by the courts (arts. 1 and 2).

**The Committee recommends that State party review its position that a definition of racial discrimination in line with the Convention is not necessary on the assumption that judges may directly apply the provisions of the Convention. It urges the State party to include in its legislation a definition of racial discrimination in line with the Convention, covering all fields of public and private life and further raise the awareness of judges on international norms applicable at the national level.**

### Criminalization of racial discrimination

10. The Committee notes the existence of a number of legal provisions prohibiting racial discrimination in the Penal, Labour and Administrative Codes. However, it regrets that the State party has yet to adopt comprehensive legislation on racial discrimination and notes that the existing provisions are not in full compliance with the article 4 of the Convention, including the absence of criminalization for incitement to racial discrimination and acts of racially motivated violence (art. 4).

The Committee reiterates its view that the enactment of comprehensive legislation on offences of racial discrimination would be a valuable tool for the State party to combat racial discrimination. Considering the mandatory character of the provisions of article 4 and in accordance with its general recommendation No. 15 (1993) on article 4 of the Convention, the Committee recommends that the State party review its legislation so as to cover all elements of article 4 of the Convention and ensure that it is effectively enforced.

#### **Absence of court cases on racial discrimination**

11. The Committee notes the information provided by the State party regarding the absence of complaints regarding acts of racial discrimination lodged with courts or the Office of the Ombudsman (arts. 2 and 6).

**Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee is of the view that the absence of complaints of acts of racial discrimination is not necessarily positive. The Committee reiterates its previous recommendation (CERD/C/65/CO/8, para. 20) that the State party undertake an in-depth analysis on the absence of complaints and assess whether it should take further measures to prevent and combat acts of racial discrimination, as well as to provide remedies to victims in accordance with the Convention, taking into account the above-mentioned general recommendation.**

#### **Participation in public and political life**

12. The Committee takes note of specific data provided by the State party on the representation of persons belonging to ethnic groups in public life, civil service, local assembly and the judiciary. However, the Committee remains concerned at the low level of representation of these persons within the Parliament (arts. 1, 2 and 5).

**The Committee encourages the State party to continue its efforts in increasing the participation of persons belonging to ethnic minority groups, including women, into public and political life. It recommends that the State party improve representation of these persons within the Parliament and other public institutions, including through the adoption of special measures.**

#### **Situation of Roma community**

13. The Committee notes the assessment made by the State party on the precarious situation of Roma community and their stigmatization. It expresses regret on the absence of a concrete plan or strategy to protect Roma against discrimination and stigmatization and to promote their economic, social and cultural rights (art. 5).

**The Committee, recalling its general recommendation No. 27 (2000) on discrimination against Roma, recommends that the State party adopt a strategy with a view to improving the situation of Roma, ensuring their protection against discrimination and stigmatization and promoting their rights to education, employment, housing and health care. The Committee encourages the State party to organize awareness-raising campaigns to promote tolerance, understanding and solidarity within its population towards Roma community.**

#### **Situation of refugees, asylum seekers and stateless persons, including access to citizenship**

14. The Committee is concerned about restrictions on refugees' freedom of movement and right to choose their place of residence. It remains concerned about challenges faced by

refugees and asylum seekers in terms of employment, access to public services, education and citizenship and about the number of long-time stateless persons (art. 5).

**The Committee recommends that the State party:**

- (a) Lift the regulation forbidding refugees to live in specific areas, in particular in Dushanbe and Kjujand;**
- (b) Take all the necessary measures to ensure that refugees enjoy the rights to work, health care and education;**
- (c) Ensure the appropriate protection to refugee children;**
- (d) Resolve the problem of the stateless persons and consider ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;**
- (e) Speedily conclude ongoing legislative efforts, with the assistance of the United Nations High Commissioner for Refugees, to adopt a new Law on Citizenship and revise the Refugee Law.**

#### **Combatting human trafficking**

15. The Committee notes that Tajikistan continues to be a source of trafficking in women and children, in particular those from vulnerable groups, including minorities, refugees and asylum seekers (art. 5).

**The Committee encourages the State party to continue its efforts in combating this scourge by prosecuting perpetrators, providing reparation to victims of trafficking and cooperating with neighbouring States.**

#### **Discriminatory law against non-citizens**

16. The Committee expresses its concern regarding the amendment of the Family Code in 2011 which restricts the right of foreigners and stateless persons, including migrants, to marry Tajik women by requiring legal residence in the country for at least one year and a mandatory prenuptial agreement providing the Tajik spouse with a dwelling. The Committee regrets this provision which has a discriminatory effect, in violation of the Convention (arts. 2 and 5).

**In the light of its general recommendation No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State party review its legislation to bring it into full compliance with its international obligations and the Convention, in particular the State party should ensure that non-citizens are afforded effective enjoyment of the rights mentioned in article 5 of the Convention without discrimination. The Committee recalls that State parties have the duty to ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens. The Committee recommends that the State party take this into account in the new law on citizenship in order to find other ways and means to protect Tajik women while avoiding discrimination on ethnic or national ground.**

#### **Mandate of the Ombudsman**

17. The Committee is concerned by the fact that the Ombudsman has yet to efficiently contribute to the implementation of the Convention and does not seem to work independently from the Government (art. 2).

**The Committee encourages the State party to guarantee the independence of the Office of the Ombudsman by providing it with adequate human and financial resources to carry out its mandate, including promoting and monitoring the rights under the Convention. The Committee further encourages the State party to take necessary measures to raise the level of the Ombudsman Office or to establish a national human rights institution in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), recommendations accepted during the universal periodic review by the Human Rights Council.**

#### **Promotion of minority languages**

18. The Committee reiterates its concern regarding the lack of textbooks for children belonging to minority groups and the lack of qualified teachers for minority languages. While noting efforts to promote languages spoken at the universal level, such as Russian and English, the Committee is of the view that this should not be done at the expense of languages of minority groups (art. 5).

**The Committee encourages the State party to continue its efforts to ensure supplies of school textbooks in minority languages. Furthermore, the Committee recommends that the State party set up training programmes for teachers for minority students including mother-tongue vocational training. The Committee also encourages the State party to strengthen its efforts to provide education, particularly at the secondary and higher levels in or of minority languages, according to the needs and wishes of persons belonging to such groups.**

#### **Participation of civil society organizations**

19. Despite the information provided by the State party on the involvement of non-governmental organizations in the finalization of the report, the Committee regrets the lack of an alternative report and the absence of any information from such organizations (art. 2).

**The Committee recommends that the State party continue to seek the involvement of non-governmental organizations in the preparation of its next periodic report and facilitate their participation at the next reporting session.**

### **D. Other recommendations**

#### **Follow-up to Durban Declaration and Programme of Action**

20. In the 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.

#### **Amendment to article 8 of the Convention**

21. 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 cites General Assembly resolutions 61/148,

63/243 and 65/200, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

#### **Dissemination**

22. 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**

23. The Committee encourages the State party to regularly update its core document (HRI/CORE/1/Add.128) submitted in 2004 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**

24. 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 13 and 14 above.

#### **Paragraphs of particular importance**

25. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations in paragraphs 9, 16 and 17 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 report**

26. The Committee recommends that the State party submit its ninth to eleventh periodic reports in a single document by 10 February 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).

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