



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures' Reports

- Universal Periodic Review:

UKRAINE

We would like to bring your attention to the following excerpts of Treaty Body Concluding Observations and Special Procedures' reports relating to issues of interest to UNHCR in Ukraine.

1. Treaty Body Concluding Observations

CERD/C/UKR/CO/19-21

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION, 79th Session

14 September 2011

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 migrant's 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 Inter-Departmental Working Group against 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 the discussions, exhibitions and production of information materials to raise awareness about the Roma Holocaust.

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 that the State party 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 envisaged 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 re-activate 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 a new framework anti-discrimination legislation, the draft Anti-Discrimination Act was elaborated only in 2011 and its further development and adoption is contingent on the elaboration and approval of the new Inter-Departmental Strategy against Discrimination and Intolerance mandated by the President of Ukraine in May 2011 (art. 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, as well as structural discrimination, liability for natural and legal persons extending to both public authorities and private persons, remedies to victims of racial discrimination as well as the institutional mechanisms necessary to guarantee the implementation of the provisions of the Act in a holistic manner.

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 guidelines for the CERD-specific document (CERD/C/2007/1 of 13 June 2007).

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 organisations 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 the 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 on the Implementation of Article 4 of the Convention, and drawing attention to the General Comment No. 34 by 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.

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 2000 Roma had been documented approximately 1700 persons still remain without such documents especially in light of the State party's argument that the lack of evidence of ethnicity on 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.

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 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 the 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.

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.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations adopted on the State party's initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/UKR/CO/1, 2011).

Data collection

19. The Committee appreciates ongoing efforts by the State party to establish an effective system of data collection for monitoring and evaluating its child protection policies, including through the establishment of the DevInfo System to oversee implementation of the National Plan of Action. The Committee nevertheless remains concerned at the continued lack of a national database with comprehensive and disaggregated data on children. In particular, the Committee is concerned at the lack of statistics on children at risk of torture, domestic violence and/or other forms of abuse and ill-treatment, child victims of sexual exploitation and abuse, children of minority groups and refugee and asylum-seeking children.

20. The Committee recommends that the State party take the necessary measures for the creation of a national database with comprehensive data, disaggregated by age, sex, and ethnic and socio-economic origin, on the observance of children's rights. In particular, the system should provide adequate attention to children in vulnerable situations who may require special protection measures.

Non-discrimination

27. The Committee is concerned at the reported increase in the number of racially motivated offences in the State party, in particular information on xenophobic and racist activities carried out by radical youth groups and skinheads. In this context, the Committee is concerned that "patriotic education" is commonly identified as a priority issue in the allocation of State funds in support of children's and youth organizations. The Committee is furthermore concerned that the principle of non-discrimination with respect to children with disabilities, children of minority groups (especially Roma children), children in street situations, children living with HIV/AIDS and asylum-seeking and refugee children, is not fully implemented in practice. In this respect, the Committee is concerned at the lack of an express reference to the principle of non-discrimination with respect to the protection of children's rights in domestic legislation.

28. The Committee urges the State party to ensure that all children in the State party enjoy their rights under the Convention without discrimination on any ground. It further urges the State:

(a) To take effective measures to combat racist and xenophobic activities among youth, including by identifying as priority programmes for State funding in support of children's and youth organizations those that promote intercultural dialogue, tolerance and respect for diversity;

(b) To strengthen monitoring of the situation of children belonging to the above-mentioned groups and, on this basis, develop a comprehensive strategy

containing specific and well-targeted actions aimed at eliminating all forms of discrimination against these and other vulnerable groups of children;

(c) To incorporate in domestic legislation the principle of nondiscrimination and the prohibition of discrimination against children on any of the grounds spelled out in article 2 of the Convention.

Best interests of the child

29. The Committee is concerned that there is no systematic analysis of State policies and programmes in terms of the best interests of the child. In particular, the Committee is concerned that the principle is poorly integrated in laws and policies relating to children deprived of parental care and children in contact with the law.

30. The Committee recommends that the State party establish systems and procedures for ensuring that the best interests of the child are adequately taken into account during State policy planning and programming. The Committee in particular recommends a review of legislation, policies and programmes relating to juvenile justice and the child care systems with a view to ensuring that the principle of the best interest of the child is fully integrated therein.

Birth registration

35. While encouraged by amendments to the Family Code making child registration obligatory, the Committee is concerned that failure to register a child within one month is sanctioned with a fine of between one and three tax-exempt minimum wages. Further, while noting information from the State party that non-registration of Roma children is rare, the Committee reiterates the concern of the Committee on the Elimination of Racial Discrimination (CERD/C/UKR/CO/18, para. 11) at the number of Roma who lack personal documents, which are necessary to access education, health services and employment.

36. The Committee urges the State party to adopt positive incentives so as to ensure that free and compulsory birth registration is effectively made available to all children, regardless of ethnicity and social background. In this endeavour, the Committee recommends that the State party abolish any punitive fines for the failure of parents to register their children. The Committee further calls upon the State party to intensify its awareness-raising campaigns to encourage and ensure the registration of all Roma children.

Name and nationality

37. The Committee expresses concern that a child's citizenship may be renounced by the State party in the following circumstances, as referred to in paragraph 58 of the State party report (CRC/C/UKR/3-4): (a) if the child, and at least one parent, leave for permanent residence abroad and at least one parent gives up Ukrainian citizenship; and (b) when a child has acquired Ukrainian citizenship at birth and, at the time of birth, at least one of his or her parents was a foreigner or stateless person, such citizenship may be renounced at the request of either parent, regardless of the child's place of residence.

38. The Committee recommends that the State party:

- (a) Amend legislation so as to guarantee by law and in practice the right of the child to a nationality and not to be deprived of it on any ground and regardless of the status of his/her parents;**
- (b) Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

Torture or other cruel, inhuman or degrading treatment or punishment

41. The Committee is deeply concerned about the significant number of allegations of physical ill-treatment of detainees, including children, notably during initial questioning in district police stations. In particular, the Committee is gravely concerned at alleged cases of torture and ill-treatment of juveniles by Militsia officers to extract confessions and of migrant children while in the custody of the Ukraine State Border Guard Services. The Committee is further concerned at reports of widespread use of corporal punishment in the home, despite its prohibition in the home, in schools, the penal system and alternative care settings. In this context, the low level of awareness and understanding among children and among the public about children's rights and about the prohibition of such acts is of serious concern to the Committee.

42. The Committee urges the State party to take all necessary measures to prevent and eliminate torture and all forms of ill-treatment of children, and, in particular:

- (a) To initiate comprehensive trainings for members of the Militsia and the Ukraine State Border Guard Services on the prohibition of torture and ill-treatment and on international standards relating to juvenile justice;**
- (b) To strengthen independent monitoring of children deprived of their liberty, including by "mobile groups/teams" (see CCPR/C/UKR/CO/6/Add.1, para. 11 and CAT/C/UKR/CO/5, para. 12) or other mechanisms, until a national preventive mechanism is formally established by the State party under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;**
- (c) To ensure prompt, independent and effective investigation of all alleged cases of torture or ill-treatment of children and, as appropriate, prosecute offenders;**
- (d) To undertake a study on access to justice of children deprived of their liberty with a view to improving respect for legal safeguards against torture and ill treatment;**
- (e) To end all forms of corporal punishment in the home and other settings by ensuring effective implementation of the existing legislative prohibition, including through awareness-raising campaigns and public education promoting positive and non-violent child-rearing.**

Follow-up to the United Nations study on violence against children

43. With reference to the United Nations study on violence against children (see A/61/299), the Committee recommends that the State party:

- (a) Prioritize the elimination of all forms of violence against children, including by ensuring implementation of the recommendations of the United Nations study on violence against children, paying particular attention to gender;**

(b) Provide information concerning the implementation by the State party of the recommendations of the study in the next periodic report, particularly those highlighted by the Special Representative of the Secretary-General on violence against children, namely:

(i) The development in each State of a national comprehensive strategy to prevent and address all forms of violence against children;

(ii) The introduction of an explicit national legal ban on all forms of violence against children in all settings;

(iii) The consolidation of a national system of data collection, analysis and dissemination, and a research agenda on violence against children;

(c) Cooperate with and seek technical assistance from the Special Representative of the Secretary-General on violence against children, and also seek technical assistance from UNICEF, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the World Health Organization (WHO), and other relevant agencies, inter alia, the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Office on Drugs and Crime (UNODC), and NGO partners. Children deprived of a family environment.

Family environment

44. The Committee is concerned at the high rates of children deprived of their family environment at birth and in later stages of childhood. In this regard, the Committee notes with concern that the Family Code (art. 143, para. 3) condones the abandonment of children born with serious physical or mental disabilities and under other “circumstances of importance”. The Committee is further deeply concerned at the insufficient number and poor quality of State services aimed at protecting and assisting families with children, and at the absence of a monitoring and evaluation system of such services. While noting a decline in court rulings terminating parental rights during the past three years, the Committee is alarmed at the persistently high number of removal of parental rights, leaving the number of children deprived of their family environment unacceptably high.

45. The Committee urges the State party to amend article 143, paragraph 3, of the Family Code in order to bring it into line with article 9 of the Convention. It urges the State party to intensify its efforts to provide the necessary support and resources to strengthen the family, in particular by moving from punitive measures with respect to neglect of parental duties to strengthening support systems and social benefits for families with children in order to enhance their capacity for the performance of their child-rearing responsibilities. In this regard, the Committee reiterates its previous recommendation to place children in alternative care or institutions only as a measure of last resort and if in the best interests of the child (CRC/C/15/Add.191, para. 48 (d)). The Committee also recommends that the State party put in place a system to effectively monitor and evaluate State services and support to families, including single parents, in need.

Children deprived of a family environment

46. The Committee is deeply concerned at the drastic increase in the number of children deprived of their family environment due to poverty, unemployment, breakdown of families, and labour migration. While noting the approval of the State Programme for reforming the child protection system (Res. No. 1242, Cabinet of Ministers) and increased efforts to develop further a system of alternative care such as foster families and family type children's homes, the Committee is concerned that, in the absence of a clear reform strategy, focus has not yet shifted towards deinstitutionalization. In this respect, the Committee is concerned at the large number of children who remain in residential care and at the absence of services for family reintegration. The Committee is further concerned at the insufficient staffing levels of the Children's Affairs Offices which, inter alia, monitor placement of children in institutional care.

47. The Committee urges the State party to strengthen its deinstitutionalization policy in accordance with the State Programme for reforming the child protection system (Res. No. 1242, Cabinet of Ministers) and:

- (a) To expand the placement of children in extended and foster families and other types of family-type placements;**
- (b) To strengthen the legislative and regulatory framework in order to facilitate family reintegration;**
- (c) To effectively monitor all care arrangements for children, particularly the placement of children with disabilities or special needs in institutions, including by strengthening the technical, human and financial resources of the Children's Affairs Offices;**
- (d) To take into account the Guidelines for the Alternative Care of Children (General Assembly resolution 64/142, annex) and the Council of Europe Parliamentary Assembly resolution 1762 (2010) on children without parental care: urgent need for action in the implementation of the above recommendations.**

Standard of living

64. While welcoming that support to family, children and youth is among the social priorities of the State Programme for Economic and Social Development for 2010, the Committee is gravely concerned at the inadequate social protection system of the State party for the benefit of children. It notes with particular concern that the highest incidence of poverty is registered among families with many children or children under the age of 3. While noting with appreciation the draft act on combating corruption, the Committee is further seriously concerned at the high level of corruption in the State party.

65. In accordance with article 27 of the Convention, the Committee recommends that the State party designate the National Plan of Action for Children as a strategic policy tool for children in the implementation of the State Programme for Economic and Social Development and subsequent poverty reduction programmes. It further urges the State party to target its poverty reduction and protection strategies to the benefit of vulnerable families with children. With a view to effectively combating corruption, the Committee urges the State party to adopt without delay the law on principles of prevention and combating corruption in Ukraine. Education, including vocational training and guidance

Education, including vocational training and guidance

66. The Committee is concerned that the decreasing population of school-age children is leading to a reduction of educational facilities, in particular in the countryside, and limits access to education for children living in rural areas, Roma children and children with disabilities. The Committee further notes with particular concern the decrease in the number of preschools, leaving only 61 per cent of children enrolled in preschools. While recognizing that the State party retained a relatively high level of public spending on education (6.2 per cent of GDP), the Committee reiterates the concern of the Committee on Economic, Social and Cultural Rights about the inadequate funding of the public education system and the low salaries of teachers in the State party (E/C.12/UKR/CO/5, para. 30) as well as at the poor quality of educational infrastructure.

67. The Committee recommends that the State party:

- (a) Ensure adequate funding for the public education system by increasing the percentage of GDP allocated to the education sector;**
- (b) Undertake an analysis on causes of and possible solutions to the general decrease in the number of educational establishments and the number of children attending school and other educational institutions;**
- (c) Introduce inclusive education and promote social integration of children with special needs and ensure that vulnerable groups of children, including the abovementioned groups, are not discriminated against in the education system;**
- (d) Improve availability, accessibility and the quality of preschool and general education in rural areas;**
- (e) Seek assistance from, inter alia, UNICEF and UNESCO.**

Asylum-seeking and refugee children

72. While noting the draft act on refugees and persons deserving assistance or temporary protection and the draft instruction on cooperation between State authorities regarding unaccompanied asylum-seeking children, the Committee is concerned at legal and administrative shortcomings with respect to the access of asylum-seeking and refugee children to State assistance and services, such as medical and psychological treatment and interpretation. The Committee is particularly concerned at restrictions in access to the asylum procedure of unaccompanied and undocumented asylum-seeking children due to the failure of the State party to appoint legal representatives to them. Reports on the detention of unaccompanied asylum-seeking children, sometimes for several months, and deportations, are of particular concern to the Committee. The Committee is furthermore concerned at the lack of available official statistics on the number of refugee children aged 15-18. In this context, the Committee is also concerned that the State party's birth registration procedure may not guarantee to asylum-seeking children their rights under article 7 of the Convention.

73. The Committee recommends that the State party:

- (a) Adopt without undue delay the draft act on refugees and persons deserving assistance or temporary protection and ensure that the new act will guarantee that children of recognized refugees receive derivative refugee status;**

- (b) Ensure that unaccompanied asylum-seeking children are promptly appointed a legal representative in order to effectively access the asylum procedure, as well as assistance and protection, including access to free interpretation;**
- (c) Ensure that no asylum-seeking or refugee child is deprived of his or her liberty;**
- (d) Adopt the draft instruction on cooperation between State authorities regarding unaccompanied asylum-seeking children;**
- (e) Take prompt steps to put in place an effective data collection and information storage system with respect to the registration of refugees and asylum-seekers and ensure that official statistics on asylum-seeking children and refugees comprise all persons under the age of 18;**
- (f) Amend existing regulations to ensure the birth registration of and issuance of birth certificates to children of asylum-seekers born in the State party.**

Economic exploitation including child labour

74. While noting that the worst forms of child labour are prohibited in the State party, the Committee reiterates the concern of the Committee on Economic, Social and Cultural Rights (E/C.12/UKR/CO/5, para. 21) relating to the high number of children below the age of 15 working in the informal and illegal economy, in particular in illegal coal mines, in the sex industry and in street begging rings. The Committee remains deeply concerned at the number of children working in mines and at challenges in identifying child labour in the informal sector, as acknowledged by the State party delegation during the dialogue. The Committee is further concerned at the extent of violations of existing labour law regarding children, including the employment of children under difficult and hazardous conditions. While welcoming information in the written replies to its list of issues on labour inspections undertaken by the Gosnadzortruda (State Department for Supervision of the Observance of Labour Legislation), the Committee is concerned that it lacks authority to monitor the informal sector of the economy as well as child labour in the family.

75. The Committee urges the State party to take all appropriate steps to eliminate exploitative child labour, in particular in the informal sector. Specifically, the Committee urges the State party:

- (a) To provide the Gosnadzortruda with adequate human, technical and financial resources in order that it may undertake systematic and effective inspections that ensure strict compliance with legislation on child labour;**
- (b) To consider expanding the mandate of Gosnadzortruda to comprise also the informal sector of the economy and the family realm;**
- (c) To enhance monitoring of child labour in the informal sector through use of the Child Labour Monitoring System operated by the International Program on the Elimination of Child Labour;**
- (d) To ensure the effective enforcement of applicable sanctions against persons violating existing legislation on child labour, in particular through training on international standards relating to child labour for inspectors of the Gosnadzortruda and other law enforcement agencies;**

(e) To fully implement the recommendation contained in the 2010 Individual Observation concerning Minimum Age Convention, 1973 (No. 138) by the ILO Committee of Experts on the Applications of Conventions and Recommendations relating to the identification of children working in illegal mines and engaged in the grading and loading of coal on open surfaces, with a view to eradicating any such worst form of child labour in the State party.

Children in street situations

76. The Committee is deeply concerned at the high number of children in street situations, which the State party acknowledges as an “acute” problem (CRC/C/UKR/3-4, para. 12). It is seriously concerned at reports of their vulnerability to health-related risks, including in relation to substance and drug abuse, such as HIV/AIDS, sexual exploitation, forced labour and police violence. In this respect, the Committee is concerned at the limited availability and accessibility of social services for the protection and social reintegration of children in street situations, including the provision of clothing, accommodation, health care and education, and at information that no full-fledged network of rehabilitation centres for children abusing drugs exists. The Committee is furthermore concerned at the highly insufficient holding capacity of shelters for children in street situations. In addition, the Committee is concerned at the general lack of cooperation with non-governmental organizations in protecting the rights of children in street situations and in facilitating their reintegration into society.

77. The Committee recommends that the State party, in cooperation with national and international non-governmental organizations:

- (a) Develop a national strategy for the prevention of, support to and social reintegration of children in street situations;**
- (b) Increase the number and quality of available shelters and psychosocial rehabilitation centres for children in street situations;**
- (c) Ensure that children in street situations are provided with adequate nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full development.**

Sale, trafficking and abduction

80. While noting the amendments to article 149 of the Criminal Code on human trafficking including a special provision relating to “minors”, the Committee remains concerned that the Criminal Code is still not in full conformity with the Optional Protocol on the sale of children, child prostitution and child pornography. While further acknowledging numerous efforts in the area of trafficking, including the adoption of a national programme for countering human trafficking (2007–2010), the Committee remains concerned that Ukraine continues to be one of the largest source countries of trafficking in Europe. In this regard, it regrets the lack of information on prosecutions of persons engaged in trafficking of children and notes the need for targeted information and awareness-raising campaigns as an essential prevention tool.

81. The Committee recommends that the State party:

- (a) Take all necessary measures to implement the rules for the implementation of the Convention on the Civil Aspects of International Child Abduction and report on them in its next periodic report;**
- (b) Continue efforts to bring national legislation relating to trafficking in and sale of children in line with the Optional Protocol;**
- (c) Intensify public information and awareness campaigns on trafficking of children, focusing on the risks of being enticed through, inter alia, promises of work abroad, modelling, studies abroad and participation in beauty contests;**
- (d) Strengthen investigation into all cases of alleged trafficking in children, including by allocating necessary resources to the Department on Combating Cybercrime and Trafficking in Human Beings, under the Ministry of Internal Affairs, and ensure that those responsible are brought to justice;**
- (e) Seek technical assistance from UNICEF, the International Organization for Migration and other partners.**

Children belonging to minority or indigenous groups

89. In view of the large number of ethnic minorities in the State party, the Committee is concerned at the absence of measures taken by the State party to identify and solve problems faced by ethnic minorities and that no data collection system on their situation regarding education, employment, housing and access to social services is in place. The Committee further regrets the lack of information in the written replies to its list of issues on measures aimed at ending police violence against children belonging to ethnic minorities. While noting efforts to integrate Roma children into the general educational system, the Committee is concerned at persisting obstacles for Roma and Crimean Tatar children to gain access to education, health care and other social services.

90. The Committee urges the State party:

- (a) To adopt without delay the draft anti-discrimination bill, as recommended by the Committee on the Elimination of Racial Discrimination (CERD/C/UKR/CO/18, para. 7);**
- (b) To undertake a comprehensive study on the situation of and enjoyment of rights of ethnic minorities in the State party and, on the basis of the findings, develop interventions to ensure that its policies, measures and instruments apply without discrimination and aim to protect the rights of children belonging to all minorities, including their rights under the Convention;**
- (c) To intensify efforts to ensure the right to education for all children belonging to minorities, focusing on Roma and Crimean Tatar children, including by introducing inclusive education schemes in general and secondary education.**

CRC/C/OPAC/UKR/CO/1

COMMITTEE ON THE RIGHTS OF THE CHILD, 56th Session

11 April 2011

Data

13. The Committee is concerned at the lack of systematic data collection on aspects relating to children involved in armed conflict, and offences under the Optional Protocol, including official statistics of asylum-seeking and refugee children of 15 to 18 years of age. In this regard, the Committee is concerned that a majority of unaccompanied asylum-seeking children are from countries where children have or were known to have been involved in armed conflict.

14. The Committee recommends that the State party systematically collect data on all asylum-seeking and refugee children to ensure that data is available regarding such children who may have been recruited or used in hostilities.

Criminal legislation and regulations in force

19. The Committee welcomes that children are prohibited from taking part in military operations or armed conflict under article 30 of the Child Protection Act. While further welcoming amendments in 2006 to the Criminal Code, criminalizing the use of trafficked children in armed conflict (art. 149 of the Criminal Code) and providing for up to 12 years imprisonment, the Committee regrets that the recruitment and use in armed conflict of persons under the age of 18 years is not explicitly prohibited nor criminalized in domestic legislation.

20. The Committee recommends that the State party ensure that violation of the provisions of the Optional Protocol regarding the recruitment and involvement of children in hostilities be explicitly prohibited and criminalized in the Criminal Code. It further recommends that the State party ensure that military codes, manuals, standard operating procedures and other military directives are in accordance with the provisions and the spirit of the Optional Protocol.

Assistance for physical and psychological recovery

23. The Committee welcomes the provision of assistance to children involved in armed conflict, including health and social rehabilitation to Iraqi children living in a zone of armed conflict in 2004, and psychological and social assistance for refugee children who have participated in hostilities abroad, at Centres for Family Support or Centres of Social and Psychological Rehabilitation. The Committee nevertheless expresses concern at the:

- (a) Absence of a provision in domestic law making psychological and social assistance to refugee or asylum-seeking children who have been recruited in or used in hostilities abroad mandatory;
- (b) Absence of a mechanism to identify whether refugee or asylum-seeking children have, or may have been, recruited or used in hostilities abroad;
- (c) Absence of a standard methodology for age assessment of children, including refugee or asylum-seeking children, in the State party;
- (d) Absence of free interpretation services to asylum-seekers and refugees.

24. The Committee recommends that the State party:

- (a) Continue and strengthen the provision of physical, psychological and social assistance to all children who have, or may have been, recruited or used in hostilities, including refugee and asylum-seeking children, and ensure that such assistance is regulated by law;**
- (b) Establish a mechanism to identify children who may have been recruited or used in hostilities, including in the refugee status determination procedure,**

- (c) Consider including the recruitment and use of children in armed conflict as grounds for refugee status;
- (d) Introduce a standard procedure and methodology for assessing the age of children, including refugee and asylum-seeking children;
- (e) Amend the Law on Refugees to include a provision on the right of asylum-seekers and refugees of all ages to free interpretation and legal assistance.

CEDAW/C/UKR/CO/7

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, 45th Session

28 January 2010

Trafficking

30. Recognizing the efforts made by the State party to address the issue of trafficking in women and girls, including the creation of several advisory and consultative bodies, drafting of a bill on combating trafficking in persons and protecting victims and ratification of relevant international instruments, the Committee notes with concern that the root causes of trafficking are not sufficiently addressed, funding of shelters remains scarce and that, in general, resources allocated to combat trafficking are still inadequate. The Committee is furthermore concerned about insufficient international cooperation to bring perpetrators to justice.

31. The Committee calls upon the State party to address the root causes of trafficking, to accelerate adoption of legislation on trafficking, to provide sufficient funding for the effective implementation of the State Programme for the Prevention of Trafficking in Persons in Ukraine and of other measures aimed at combating human trafficking and to regularly monitor their impact. Furthermore, it urges the State party to take all appropriate measures, including allocating sufficient funding and establishing additional shelters for the rehabilitation and social integration of women and girl victims of trafficking. Likewise, the Committee calls upon the State party to ensure a systematic investigation, prosecution and punishment of traffickers, including through enhanced international cooperation, and to provide information about the number of victims as well as the number of investigations and their outcome.

Vulnerable groups of women

42. The Committee regrets the lack of detailed information in relation to vulnerable groups of women, such as migrant and refugee women, women belonging to ethnic minorities, in particular Roma women, as well as rural women, older women, disabled women and female sexual minorities, and notes with concern that these groups of women may be subjected to multiple forms of discrimination.

43. The State party is invited to provide comprehensive information and statistical data in its next periodic report on the situation of the vulnerable groups of women, such as migrant and refugee women, women belonging to ethnic minorities, in particular Roma women, as well as rural women, older women, disabled women and female sexual minorities, and on the measures taken for eliminating discrimination

against these women with regard to their access to health, education, employment, social benefits, etc.

**E/C.12/UKR/CO/5
COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 39th
Session
23 November 2007**

43. The Committee recommends that the State party continue and further intensify its efforts to combat trafficking in persons, by ensuring adequate access to victim assistance, rehabilitation and reintegration, and witness protection programmes, providing mandatory training for the police, prosecutors and judges on the strict application of criminal law provisions punishing the crime of trafficking, ensuring a restrictive licensing policy and effective inspections for tourist and marriage agencies, and allocating sufficient funds for the implementation of the State Programme to Combat Trafficking in Human Beings.

49. The Committee recommends that the State party take immediate measures to ensure adequate occupancy levels and access to safe water, sanitation, food, bedding, natural light, ventilation, and out of cell activities in prisons, detention centres and centres for refugees and asylum seekers, as well as adequate treatment and medication for prisoners and detainees suffering from tuberculosis and other diseases.

**CAT/C/UKR/CO/5
COMMITTEE AGAINST TORTURE, 38th session
3 August 2007**

20. The Committee is concerned about the discrimination that asylum-seekers face on grounds of nationality and the absence of proper asylum procedures, leading to the reported refoulement of asylum-seekers without appropriate consideration of their individual cases. It also notes with concern the poor and overcrowded conditions of detention for asylum-seekers.

The State party should adopt the draft laws “On Refugees, Persons Eligible for Complementary and Temporary Protection” and “On Introduction of Amendments to the Law of Ukraine on the Legal Status of Foreign and Stateless Persons”. The State party should also adopt asylum procedures in accordance with international standards as well as improve detention conditions, including by the use of alternative measures.

2. Special Procedures Reports

A/HRC/10/21/Add.4

HUMAN RIGHTS COUNCIL, 10th Session
Report of the Working Group on Arbitrary [Mission to Ukraine]
9 February 2009

72. The laws of Ukraine governing detention of irregular immigrants are scattered and complex. Pursuant to the various laws, a person suspected of having infringed the alien legislation may be detained for up to 72 hours by the State Border Guard Service (SBGS) or the Militia, provided that the public prosecutor has been notified within 24 hours after the arrest (article 263 of the Code of Administrative Offences). For persons who cannot produce an identity document the period of detention may be extended for up to 10 days with prior authorisation by the public prosecutor. Following an amendment, in 2003, of article 32 of the Law of Ukraine on the Legal Status of Foreigners and Stateless Persons, the maximum period allowed for the preparation of documentation for expulsion at a temporary holding facility is six months, whereas previously the period could have been indefinite. Upon expiry of the period of six months, the detainees must be released and are equipped with a temporary stay permit should their cases not have been processed by then.

73. The Working Group appreciates that a maximum time limit has been established. However, article 32 of the Law is silent regarding the authority sanctioning the detention. The Working Group has received varying accounts from Government representatives as to whether such detention must be ordered by a court as a clear requirement of the law.

74. According to the Law of Ukraine on Refugees decisions about the granting (loss and deprivation) of refugee status are taken by the specially authorised central executive agency for migration (the State Committee on Nationalities and Religion).

75. The Working Group took note with appreciation that a separate holding facility for families, women and minors in Mukachevo has been in operation. However, the Working Group, as a matter of principle, questions the appropriateness of detention of minors, especially unaccompanied minors, and its compliance with the provisions of the Convention on the Rights of the Child, notably article 37, lit. (b), clause 2, given the availability of alternatives to detention. It also met a few individuals at the Pavshino facility for men who claimed to be under age.

76. Moreover, there appears to be a lacuna in the laws which results in asylum seekers not being automatically released as soon as they have submitted their asylum application if a court sanctioned detention for a period of time exceeding this moment. Neither the asylum authority nor the administrative courts, in the event of a challenge to the granting of refugee status to an individual, have jurisdiction to order the release. Reports about difficulties to obtain access to lawyers and lack of awareness of detainees of their rights, also caused by insufficient interpretation, have been received. It was also reported that summary detention hearings are conducted or that a detainee is not presented before a court at all. At times the maximum periods of detention are exceeded, and the backlog of asylum cases before the administrative courts leads to unnecessary prolongation of detention. A legal aid system does not apply to irregular immigrants in detention. The Working Group would, however, expressly acknowledge the progress that has already been made by the Government of Ukraine with respect to the detention regime of irregular immigrants as was confirmed by several interlocutors, and encourages it to proceed on that path.

77. One major concern relates to information received independently from different sources from the civil society and from the international community about a so-called “Operation Migrants” that was supposed to have been carried out in Uzhhorod in summer 2008: At the instigation of higher authorities, foreigners were stopped randomly on the streets and detained invoking immigration powers to reduce the number foreigners visible in the street. At times their irregular status was fabricated by tearing apart their documents, which permitted their stay in Ukraine. The Working Group would like to receive information from the Government to clarify the situation, which would violate human rights on a number of levels.

Recommendations

Concerning access to a lawyer and legal aid

(n) Ensure that, in practice, all detainees have recourse to lawyers from the moment of arrest.

Concerning immigration detention

(s) Ensure that delays in the processing of asylum requests do not have a bearing on the length of detention and to prevent unnecessary detention of asylum seekers.

Concerning detention pending extradition

(t) Legally provide, save for exceptional circumstances, and unless Ukraine has criminal jurisdiction itself, for the mandatory release of a person subjected to an extradition request, who has been granted refugee status because of the situation prevailing in the country of origin, to which an extradition, if carried out, would amount to a violation of the principle of *non-refoulement* and can therefore not be effected.

A/HRC/7/14/Add.2

HUMAN RIGHTS COUNCIL, 7th Session

Report of the Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo

28 February 2008

The advocacy of racial and ethnic hatred, which is aggravated by beatings, physical assaults and murders perpetrated against foreigners residing in the country, including accredited diplomats and foreign students, ethnic groups and migrants, is a worrying trend in the country. In particular, the psychological or physical harm resulting from such violence could heighten domestic tensions and it taints irremediably the reputation of Ukraine as a tolerant and friendly society. All sides, particularly the Government, need to make more concerted efforts to protect and promote human rights of all individuals residing in the country.

24. In her meeting with the Special Rapporteur, the Ombudsperson underlined that one of **the major challenges faced by the Ukrainian society at present is the arrival of an**

increasing number of refugees, asylum-seekers and migrants. The tense political atmosphere does not help in dealing with this phenomenon, which needs clear policy strategies and respect for international engagements taken by Ukraine. After a time of optimism in the wake of the 2004 political dispute, media independence seems to be facing again the problems related to intimidation from political and economic lobbies. While incarceration of journalists is now very rare, media safety is still at stake, particularly for those media professionals inquiring on corruption cases. Regrettably, no ultimate solution was found in the Gongadze's case, a somber reminder of the dangers linked to media freedom. The Ombudsperson added that her office was treating the cases of a few journalists whose rights appeared to be violated.

58. The Special Rapporteur detected alarm among the international community living in Ukraine about violence against foreigners, including students, diplomats, businessmen and tourists, a phenomenon that has undoubtedly racist roots. For instance, a number of websites, popular among the young people, disseminate hate speech and very hostile considerations about foreigners in general, but especially non-Caucasian ethnic groups. Slogans like "Stop Zionist-African expansion", "One race, one nation, our motherland Ukraine" have become quite usual in youth's venues such as concerts, universities and coffee bars. It has been reported that attacks against African students are frequent and that, as a consequence, the foreign student population is dramatically diminishing.

Conclusions

69. The Special Rapporteur believes that some State institutions, particularly law enforcement agencies, have been downplaying the relevance of racist crimes in Ukraine. While noting that the ratification of the International Convention on Migrant Workers is under consideration, the Special Rapporteur remains convinced that the issue of racism is not adequately addressed by public institutions. The Special Rapporteur further underlines that many extremist groups, particularly neo-Nazi organizations, have used their prerogative of freedom of expression to convey messages of racism and racial hatred. International instruments, particularly the International Covenant on Civil and Political Rights, establish clear limitations on free speech when incitement to racial, ethnic or religious hatred is in question. The Special Rapporteur calls on public authorities to implement these provisions as an essential step to curb the spread of racism and intolerance in Ukraine.

Recommendations

74. The Special Rapporteur urges the Government of Ukraine and relevant national bodies to take immediate and effective action in order to thwart the wave of racist violence which is invading the country. If not addressed properly, this phenomenon could seriously hamper the freedom of expression and of movement of foreign residents and migrant workers.

**Human Rights Liaison Unit
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