



Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Concluding observations on the second periodic report of Turkmenistan*

1. The Committee on Economic, Social and Cultural Rights considered the second periodic report of Turkmenistan (E/C.12/TKM/2) at its 40th and 41st meetings (see E/C.12/2018/SR.40 and 41) held on 1 and 2 October 2018, and adopted the present concluding observations at its 58th meeting, held on 12 October 2018.

A. Introduction

2. The Committee welcomes the timely submission of the second periodic report of the State party and the submission of its written replies to the list of issues (E/C.12/TKM/Q/2/Add.1). The Committee appreciates the constructive dialogue that it had with the State party's high-level intersectoral delegation.

B. Positive aspects

3. The Committee welcomes the constitutional, legal and policy measures that have been taken to promote the enjoyment of economic, social and cultural rights in the State party: the new Constitution adopted in 2016, prohibiting discrimination based on sex; the Act on State Guarantees for Equal Rights and Equal Opportunities for Women and Men, in 2015; and policy measures such as the National Action Plan on Human Rights (2016–2020); the National Action Plan on Gender Equality (2015–2020); the National Action Plan on Achieving the Sustainable Development Goals; and the National Programme on Socioeconomic Development (2011–2030).

C. Principal subjects of concern and recommendations

Application of the Covenant

4. The Committee regrets the lack of information provided by the State party on the cases in which provisions of the Covenant have been invoked by national courts. It is concerned that the State party has not made sufficient effort to incorporate the provisions of the Covenant in relevant national laws and policies and raise awareness of the Covenant and the justiciability of the rights enshrined therein. It is also concerned by the absence of effective remedies in cases of violations of economic, social and cultural rights.

5. **The Committee recommends that the State party ensure that the provisions of the Covenant are incorporated into national law and enhance training for judges, prosecutors, lawyers and public officials on these provisions and the justiciability of**

* Adopted by the Committee at its sixty-fourth session (24 September–12 October 2018).



the rights enshrined in the Covenant. It recommends that the State party provide, in its next periodic report, information on the relevant case law. In that respect, the Committee draws the attention of the State party to its general comment No. 9 (1998) on the domestic application of the Covenant.

Data collection

6. The Committee regrets the insufficient provision of reliable and relevant statistical data relating to the progressive realization of the Covenant rights, in particular for persons with disabilities and persons living in poverty, and that data from the 2012 census were not made available to the public. The Committee further regrets the lack of data on persons with HIV/AIDS in the State party.

7. **The Committee recommends that the State party improve its data-collection system with a view to collecting and making public comprehensive and disaggregated data, which would make it possible to assess the level of enjoyment of Covenant rights, particularly by disadvantaged and marginalized individuals and groups, including persons with disabilities, persons living in poverty, the unemployed and those earning income in the informal sector, and persons with HIV/AIDS. The Committee recommends that the State party provide such data, including census data, in its next periodic report. Such data are necessary in order to track progress in the realization of those rights and to design effective and targeted measures to increase their enjoyment.**

Independence of the judiciary

8. The Committee is concerned that, despite the ongoing reforms, the judiciary's independence and impartiality are not guaranteed in the State party. In this regard, the Committee is concerned by the exclusive right of the President to nominate judges, as well as by his or her power to remove them.

9. **The Committee recommends that the State party ensure the full independence and impartiality of the judiciary as a means of safeguarding the enjoyment of human rights, including economic, social and cultural rights, including by introducing the principle of the security of tenure of judges and establishing an independent and transparent mechanism for the appointment, promotion, suspension and removal of judges.**

National human rights institution

10. While welcoming the adoption of the Act on the Ombudsman in 2016 and the appointment of the first Ombudsman in 2017, the Committee regrets that the Ombudsman has not yet been accredited by the Global Alliance of National Human Rights Institutions. The Committee regrets the lack of information on the cases handled and remedies provided by the Ombudsman on violations of rights under the Covenant, and the lack of information on the resources made available to ensure the effective implementation of the mandate. The Committee is also concerned about the limitations on the nomination of candidates for the post of Ombudsman.

11. **The Committee recommends that the State party seek accreditation of the Ombudsman from the Global Alliance of National Human Rights Institutions and ensure that the status of the Ombudsman is fully in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The Committee recommends that the State party ensure that the Ombudsman is provided with adequate resources to effectively and independently carry out the mandate, including the promotion and protection of economic, social and cultural rights, and provide information in its next periodic report on the cases handled, and the effective remedies provided, by the Ombudsman concerning violations of Covenant rights. The Committee recommends that the scope of nominations for candidates in elections for the post of Ombudsman be expanded.**

Civil society

12. The Committee is concerned at the information that non-governmental organizations in the State party, including those working for the protection and promotion of human rights, face difficulties in setting up and registering, due to excessive requirements and control.

13. The Committee recommends that the State party guarantee an enabling environment for the activities of non-governmental organizations, including easier registration, to protect and promote human rights, including in the areas of economic, social and cultural rights. The Committee encourages the State party to consult with non-governmental organizations working for the protection and promotion of human rights in the preparation of its next report.

Corruption

14. The Committee notes information about the adoption of anti-corruption legislation and the establishment of an anti-corruption body. However, it is concerned about the persistence of high levels of corruption in the State party, particularly regarding access to health care and education, which hinders the effective use of the State party's resources for the implementation of the Covenant. The Committee regrets the lack of detailed information on the cases of corruption that were registered, investigated and prosecuted and the number of perpetrators convicted (art. 2 (1)).

15. The Committee recommends that the State party ensure the effective implementation and monitoring of current anti-corruption laws and policies, including in the areas of health care and education. The Committee recommends that the State party ensure safe, accessible and visible channels for reporting corruption, conduct adequate investigations of alleged corruption, and ensure prompt punishment of the perpetrators and commensurate sanctions and that reprisals are not taken against those who report corruption.

Non-discrimination

16. The Committee is concerned that:

(a) There is no comprehensive anti-discrimination legislation in the State party and that the existing legal provisions are partial and fragmented;

(b) There is a strong stigmatization of lesbian, gay, bisexual, transgender and intersex persons and discrimination against them is not prohibited. Furthermore, under section 135 of the Criminal Code, homosexual acts between adult men is punished by a prison sentence of up to two years;

(c) Persons with HIV/AIDS continue to face discrimination in the areas of marriage and travel;

(d) The "third-generation test" discriminates against ethnic minorities, in particular in the areas of employment, registration and housing (art. 2 (2)).

17. The Committee recommends that the State party:

(a) **Adopt comprehensive anti-discrimination legislation that provides a definition of direct and indirect discrimination and includes all the grounds for discrimination set out in article 2 (2) of the Covenant, taking also into account the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights;**

(b) **Repeal section 135 of the Criminal Code;**

(c) **Step up efforts to eliminate discriminatory provisions against persons with HIV/AIDS, and effectively enforce the relevant legal provisions and promote awareness-raising campaigns;**

(d) End the practice of third-generation tests and ensure that ethnic minorities have access to employment, registration and housing without discrimination.

Persons with disabilities

18. While welcoming the measures taken to improve the situation of persons with disabilities, the Committee regrets the lack of information on the impact of these measures. The Committee is also concerned that persons with disabilities face discrimination in employment, both in the public and private sectors, and that the employment rate among persons with disabilities is very low, despite the measures taken to stimulate their employment.

19. The Committee recommends that the State party enhance its efforts to ensure that persons with disabilities enjoy unhindered access to all social services, including education and employment, by, inter alia, providing reasonable accommodation at school and in the workplace and improving the accessibility of facilities and services open or provided to the public. It requests that the State party provide information, in its next periodic report, on the employment of persons with disabilities, disaggregated by sex and age, including the outcome of the implementation of the action plan (2017–2020) to achieve the full realization of the right of people with disabilities to labour and employment.

Gender equality

20. Despite the legal and policy measures for gender equality, there is still pervasive and long-standing discrimination against women in law and in practice in the State party. The Committee is concerned at the:

- (a) Lack of information on the implementation and impact of the National Action Plan on Gender Equality;
- (b) Underrepresentation of women in the public and private sectors, in particular at decision-making levels;
- (c) Continuation of entrenched stereotypes against women;
- (d) Harmful practice of “virginity tests” on women;
- (e) Low participation of women in the labour market and the continuation of restrictions on women’s access to certain jobs;
- (f) Absence of legislation on sexual harassment in the workplace;
- (g) Persistence of a wage gap between men and women.

21. So as to guarantee equality for women in the enjoyment of economic, social and cultural rights, the Committee recommends that the State party:

- (a) Ensure the full implementation of the measures outlined in the National Action Plan on Gender Equality and provide information on their impact in the next report;**
- (b) Increase women’s representation, in particular in decision-making positions in the public sector, and encourage greater representation of women in senior positions in the private sector;**
- (c) Take measures to change society’s perception of stereotypes and gender roles, including through awareness-raising campaigns;**
- (d) Eliminate the practice of “virginity tests”;**
- (e) Eliminate any restrictions on women’s employment based on gender stereotypes;**
- (f) Enact legislation against sexual harassment in the workplace and ensure effective enforcement and recourse for victims of harassment;**

(g) **Take effective measures to close the wage gap between men and women.**

22. **The Committee draws the attention of the State party to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights.**

Forced labour

23. While noting that article 49 of the new Constitution of 2016 introduced a rule on the prevention of forced labour and the worst forms of child labour, the Committee is concerned about the reported continued widespread use of forced labour among workers and students under threat of penalties during the cotton harvest.

24. **The Committee recommends that the State party further strengthen its measures to stop forced labour, including by enforcing existing laws and policies prohibiting forced labour and increasing the monitoring of compliance, in particular in the cotton sector. It should also ensure that those employers violating labour rights are prosecuted and that, if convicted, commensurate sanctions are imposed and effectively implemented, and that full reparations are provided to victims.**

Trade unions

25. The Committee is concerned that there is no right to establish an independent trade union and that there is no legislation on the right to strike in the State party. It also expresses concern that workers abstain from engaging in trade union activities out of fear of reprisals.

26. **The Committee recommends that the State party introduce a legal right to establish an independent trade union and a right to strike and bring its legislation on trade unions into conformity with the provisions of article 8 of the Covenant, including by guaranteeing the right of workers to freely form and join the trade union of their choice and the free registration of trade unions, and by not interfering with union activities. The Committee also recommends that workers be allowed to freely exercise trade union rights and be effectively protected against reprisals.**

Domestic violence

27. While noting recent efforts to conduct a survey on domestic violence, the Committee is concerned that such violence remains prevalent in the State party and is not yet criminalized. The Committee is also concerned that domestic violence is underreported and not adequately investigated, and that the perpetrators often avoid punishment.

28. **The Committee recommends that the State party criminalize domestic violence under its penal law and take measures to ensure the prompt investigation and prosecution of offenders, as well as the effective protection, rehabilitation and compensation of victims. The Committee also recommends that the State party enhance preventive measures, including nationwide awareness-raising of the general public and law enforcement officials on domestic violence.**

Poverty

29. The Committee regrets the lack of information provided by the State party, including data on persons living in poverty and extreme poverty, and on any progress made on reducing poverty.

30. **The Committee recommends that the State party establish a national poverty line and include, in its next periodic report, information and comparative data, disaggregated by sex, age group, urban/rural areas and other relevant factors, on the proportion of the population living in poverty and extreme poverty, and on concrete progress made in reducing poverty.**

Access to water

31. The Committee, while noting the reported overall increase in the percentage of households with improved drinking water between 2006 and 2016, remains concerned that access to safe drinking water and sanitation is much lower in rural areas than urban areas (art. 11).

32. The Committee recommends that the State party improve access to safe drinking water and sanitation, and take all measures necessary to reduce the current disparities between urban and rural areas in this regard.

Registration system (*propiska*)

33. The Committee remains concerned about the implications of the registration system (*propiska*) on access to employment, housing, health care and social benefits. In particular, it is concerned at the vulnerable situation of individuals living in places other than the ones in which they are registered, such as individuals seeking employment in the capital who are unable to register their residency there.

34. The Committee recommends that the State party take effective measures to ensure that *propiska* does not limit access to economic, social and cultural rights, in particular as regards employment, housing, health care and social benefits, and to facilitate the ability to obtain *propiska* outside the place of origin. The Committee also recommends that the State party consider replacing *propiska* with a system that ensures freedom of movement and the full enjoyment of all economic, social and cultural rights.

Housing and forced evictions

35. The Committee is concerned that urban renewal and efforts at beautification in the State party have resulted in the expropriation of property, demolition of houses and eviction of residents without proper prior notice of eviction, adequate consultations, compensation for loss of property and adequate alternative housing for residents. While noting information on the existence of a framework for financial compensation, it regrets the lack of information on the payment of adequate compensation to those affected by the expropriation of property and demolition of homes.

36. The Committee recommends that the State party urgently put in place an independent and impartial adjudicatory process in which aggrieved parties can bring complaints relating to both monetary compensation for demolished property and the adequacy of the alternative accommodation to which they and their families have been relocated. The Committee also recommends that the State party bring all relevant laws and practices relating to the expropriation of property, as well as forced evictions and the demolition of people's homes, into line with the Committee's general comment No. 7 (1997) on forced evictions. It also draws the State party's attention in this context to the basic principles and guidelines on development-based evictions and displacement drawn up by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (A/HRC/4/18, annex).

Persons in prisons

37. While recognizing the efforts made by the State party to improve living conditions in prisons, the Committee is concerned about the persistence of high levels of overcrowding and the very poor conditions that exist in places of detention.

38. The Committee recommends that the State party make every effort to improve the living conditions in prisons, in accordance with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

Right to education

39. The Committee is concerned that various practices in the State party limit the right to education and related benefits, in particular in higher education, including but not limited to the following areas:

(a) Some students are reportedly prevented from leaving the country to study abroad;

(b) Since 2015, there are restrictions in place on the recognition of diplomas from foreign universities;

(c) Graduates with foreign diplomas face difficulties in obtaining employment in the public sector;

(d) Despite its illegality, unofficial fees are charged for access to higher education, and there is lack of information on whether adequate sanctions have been imposed on those found guilty.

40. **The Committee recommends that the State party respect and fulfil the right to education by:**

(a) **Stopping the arbitrary prohibition of students studying abroad;**

(b) **Eliminating unreasonable restrictions on the recognition of foreign diplomas;**

(c) **Removing discrimination against graduates with foreign diplomas in their access to employment in the public sector;**

(d) **Enforcing laws to prevent the illegal charging of fees for access to higher education, investigating such cases and imposing adequate sanctions on those found guilty.**

41. **The Committee refers the State party to its general comment No. 13 (1999) on the right to education.**

Linguistic rights of ethnic minorities

42. The Committee is concerned at the obstacles faced by ethnic minorities in receiving education in their mother tongues owing to the insufficient number of teachers and the shortage of teaching materials in minority languages (arts. 13 and 15).

43. **The Committee recommends that the State party take the necessary steps to promote education in ethnic languages, and consider adopting multilingual education programmes in its education system.**

Access to the Internet

44. The Committee is concerned at the limited access to the Internet in the State party, particularly in rural areas in which the Internet is either unavailable or very slow (art. 15).

45. **The Committee recommends that the State party continue working to expand Internet access, particularly in rural areas. The Committee also recommends that the State party extend assistance to the most disadvantaged and marginalized individuals and groups so as to enable them to have access to the Internet and to other scientific and technological advances, in order to enhance their enjoyment of economic, social and cultural rights.**

D. Other recommendations

46. **The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**

47. **The Committee encourages the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of**

Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

48. The Committee recommends that the State party take fully into account its obligations under the Covenant and ensure the full enjoyment of the rights enshrined therein in the implementation of the 2030 Agenda for Sustainable Development at the national level, with international assistance and cooperation when needed. Achievement of the Sustainable Development Goals would be significantly facilitated by the State party establishing independent mechanisms to monitor progress and treating beneficiaries of public programmes as rights holders who can claim entitlements. Implementing the Goals on the basis of the principles of participation, accountability and non-discrimination would ensure that no one is left behind.

49. The Committee recommends that the State party take steps to progressively develop and apply appropriate indicators on the implementation of economic, social and cultural rights in order to facilitate the assessment of progress achieved by the State party in complying with its obligations under the Covenant for various segments of the population. In that context, the Committee refers the State party to, inter alia, the conceptual and methodological framework on human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (HRI/MC/2008/3).

50. The Committee requests that the State party disseminate the present concluding observations widely among all sectors of society and among public officials, judicial authorities, legislators, lawyers, the Ombudsman's Office and civil society organizations, and inform the Committee in its next periodic report about the measures taken to implement them. The Committee encourages the State party to engage with civil society organizations in any discussions at the national level in the follow-up to the present concluding observations prior to the submission of its next periodic report.

51. In accordance with the procedure on follow-up to concluding observations adopted by the Committee, the State party is requested to provide, within 24 months of the adoption of the present concluding observations, information on the implementation of the recommendations contained in paragraphs 21 (d)–(f) (gender equality), 24 (forced labour) and 36 (housing and forced evictions) above.

52. The Committee requests the State party to submit its third periodic report, to be prepared in accordance with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 31 October 2023. In addition, it invites the State party to update its common core document, as necessary, in accordance with the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6, chap. I).