



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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Excellency,

I would like to inform you that during its 96th session, the Committee on the Elimination of Racial Discrimination considered information received related to the “zero tolerance policy” of migration adopted by your Government in April 2018, and its impact on migrants and asylum-seekers, especially those of indigenous origin, coming mostly from Guatemala, El Salvador, Mexico and Honduras and who have crossed the Southwest US border.

The Committee takes note that, by an executive order of 20 June 2018, the State party put an end to the practice of separating migrant and asylum-seeker children from their parents.

However, the Committee is concerned that, if the allegations below-mentioned are proved, the application of the “zero tolerance” policy would result in an indirect discrimination based ethnic or national origin, against migrants and asylum-seekers, especially of indigenous origin, who have crossed the Southwest US border or would have discriminatory effect on their rights protected under the International Convention on the Elimination of All Forms of Racial Discrimination, bearing in mind the Committee’s General recommendations No. 30 (2005) on discrimination against non-citizens, and No. 23 (1997) on the rights of indigenous peoples.

The Committee is concerned about allegations that the implementation of the “zero tolerance policy” has resulted in: a) the detention and the prosecution of a high number of migrants and asylum-seekers who crossed the Southwest US border with

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documents; b) the separation of more than 2,500 migrant children from their parents/families; c) children were considered by the immigration authorities as unaccompanied minors and were transferred to the custody of the Office of the Refugee Resettlement (ORR) of the Secretary of Health and Human Services, in charge of finding a tutor or a guardian for such children

According to information received, the Committee is also concerned about the alleged very inadequate conditions of “detention” of children separated from their parents.

It is further concerned about allegations on: a) the fact that no adequate information was provided to parents and children about the procedure, the length of the separation and the lack of opportunity to challenge the separation’s decision; b) no translation was provided to indigenous peoples concerned; c) no information on the whereabouts of children was provided to parents; d) the lack of appropriate training and expertise of the staff who made the separation.

Moreover, the Committee is concerned about claims that the State party has not yet implemented fully the injunction on the reunification of families ordered by a federal judge of the Southern District of California. Some parents reportedly waived their right to reunification without an informed consent/being adequately informed on the legal and practical consequences of signing some documents related to the reunification. It is also concerned about information that points that in the case of 343 (as 20 August 2018) children, their parents were deported while children were in custody in the State party, without previous plan of how they will be reunited.

Finally, the Committee is concerned about the reports on the detention of some migrant and asylum-seeker families that have not received no information on the possibility to appeal decisions concerning their removal.

It is alleged that migration policies have been accompanied by a negative narrative against undocumented migrants that can amount to racist hate speech.

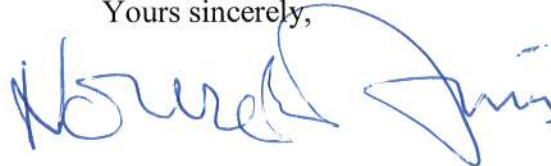
Therefore, in accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee would be grateful to receive a response to the following requests on measures taken to ensure that in that migration context, migrants and asylum-seekers crossing the Southwest US border are protected from any discrimination. The State party is requested to provide, by 30 October 2018, information on:

- (a) Steps taken to prevent the occurrence of the separation of migrant and asylum-seeker children from their parents/families without seeking their prior and informed consent;
- (b) The reunification process of families that have been separated due to the implementation of the “zero tolerance” policy;

- (c) Steps taken to respect the minimum human rights standards towards migrants and asylum-seekers who cross the Southwest US border, in particular by avoiding their systematic detention and criminalization and by proceeding with an assessment of each situation; and ensure their access to all legal remedies, including due process of law and the right to appeal decisions on their detention or on their asylum application;
- (d) Procedural guarantees offered to migrants and asylum-seekers who arrive at the Southwest US border without documents and who wish to fill an asylum application, as well as steps taken to provide them with adequate living conditions and access to education and to health care services, without discrimination based on ethnic or national origin;
- (e) Steps taken to prevent the detention of migrant and asylum-seeker families; to ensure that such families do not yield their rights to reunification without an informed consent and ensure that they understand all the legal consequences of such a process; and that parents are informed on the whereabouts of their children separated from them;
- (f) The prevention of racist hate speech against undocumented migrants and asylum-seekers by public figures, distance from it and firmly condemn it.

Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the United States of America, with a view to assisting it to implement the Convention effectively.

Yours sincerely,



Nouredine Amir
Chair

Committee on the Elimination of Racial Discrimination

