



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination

### Concluding observations on the fifteenth to seventeenth periodic reports of Portugal\*

1. The Committee considered the combined fifteenth to seventeenth periodic reports of Portugal (CERD/C/PRT/15-17), submitted in one document, at its 2500th and 2501st meetings (see CERD/C/SR.2500 and 2501), held on 29 and 30 November 2016. At its 2511th and 2512th meetings, held on 7 December, it adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the combined fifteenth to seventeenth periodic reports of the State party, which included responses to the concerns the Committee had raised in its previous concluding observations. The Committee wishes to commend the regularity in reporting and welcomes the open and constructive dialogue with the State party's inter-departmental delegation, and the additional information provided in writing after the dialogue.

#### B. Positive aspects

3. The Committee welcomes the State party's accession in 2015 to the amendment to article 8 (6) of the Convention.

4. The Committee also welcomes the State party's accession to the following international human rights instruments:

(a) International Convention for the Protection of All Persons from Enforced Disappearance, in 2014;

(b) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, in 2013;

(c) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2013;

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\* Adopted by the Committee at its ninety-first session (21 November to 9 December 2016).



- (d) Optional Protocol to the Convention on the Rights of the Child on a communications procedure, in 2013.
5. The Committee notes with appreciation the adoption of the following policy measures:
- (a) The Migration Strategic Plan, 2015-2020;
  - (b) The National Roma Communities Integration Strategy, 2013-2020, and the establishment of the Consultative Group for the Integration of Roma Communities in 2013;
  - (c) The National Plan for Equality, Citizenship and Non-Discrimination, 2014-2017;
  - (d) The National Plan to Prevent and Combat Trafficking in Human Beings, 2014-2017;
  - (e) The launch of the fifth (2013-2015) and sixth (2016-2018) editions of the Choices (Escolhas) Programme.
6. The Committee congratulates the State party on its human rights-based migrant integration policies and the “one-stop-shop” model applied for migrants regardless of their legal status.
7. The Committee welcomes the delegation’s announcement that the State party is considering hosting the regional conference for Europe in the context of the International Decade for People of African Descent, and encourages it to pursue its intention.

## C. Concerns and recommendations

### Status of the Convention

8. Bearing in mind the direct applicability of the Convention in the State party’s legal order, the Committee regrets the lack of information on court cases in which the provisions of the Convention were invoked before or applied by domestic courts (art. 2).
9. **The Committee recommends that the State party take all measures necessary to ensure that judges, prosecutors and lawyers have knowledge of the provisions of the Convention to enable them to apply it in relevant cases. It requests the State party to include in its next periodic report specific examples of the application of the Convention by domestic courts and access by individuals to remedies provided for in legislation on violations of rights contained in the Convention.**

### Data collection

10. The Committee notes the measures taken by the State party to collect disaggregated data by specialized observatories, such as the Observatory on Roma Communities, the Migration Observatory and the Observatory on Human Trafficking. However, it notes that some of the data collected are neither comprehensive in scope nor cover the groups concerned in their entirety.
11. **Recalling its general recommendation No. 8 (1990) concerning the interpretation and application of article 1 (1) and (4) of the Convention, and the revised reporting guidelines (CERD/C/2007/1, paras. 10 and 12), The Committee recommends that the State party collect such disaggregated data in order to enhance its implementation of the Convention. It also recommends that the State party provide the Committee with any updated available, reliable and comprehensive economic and social indicators based on ethnicity, nationality or country of origin and drawn from academic or social surveys carried out in this field. This will enable the Committee to**

have an understanding of the enjoyment of economic, social and cultural rights by various groups living in its territory, including minorities, in particular Roma, Africans/people of African descent, migrants, refugees and asylum seekers, and information on the impact of programmes, plans and strategies that have been evaluated and measured.

#### **Implementation of anti-discrimination provisions**

12. The Committee is concerned about the limited number of complaints brought in relation to article 240 of the State party's Criminal Code dealing with racial discrimination and about the lack of information on outcomes of court cases applying article 240 of the Criminal Code (art. 2).

13. Considering that the absence of complaints does not signify a lack of racial discrimination, and recalling its general recommendations No. 7 (1985) relating to the implementation of article 4 of the Convention, No. 15 (1993) on article 4 of the Convention and No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party effectively implement its anti-discrimination legal provisions. To that end, the Committee recommends that the State party:

(a) Verify whether the small number of complaints is the result of victims' lack of awareness of their rights, fear of reprisals, limited access to the police including due to language barriers, lack of confidence in the police or judicial authorities or the authorities' lack of attention or sensitivity to cases of racial discrimination;

(b) Encourage prosecutors to initiate proceedings *ex officio* in cases of racial discrimination;

(c) Pursue its efforts to hold regular dialogue between the police and various communities, particularly those belonging to ethnic minorities, in order to reinforce their confidence in law enforcement authorities, with a view to increasing the reporting rate to the police;

(d) Intensify its efforts to improve access to justice and the functioning of the justice system, including by providing training to police, prosecutors, judges and professionals in the justice system on the application of laws on racist offences;

(e) Provide in its next report information on the number of complaints made to the police about acts of racial discrimination and their outcomes, including cases initiated by prosecutors, and on convictions and sentences against perpetrators and remedies provided to victims of such acts.

#### **Administrative complaints mechanisms**

14. The Committee notes the information provided by the delegation on existing administrative avenues through which racial discrimination complaints can be lodged. The Committee, however, expresses its concern about the underreporting of such complaints, as acknowledged by the delegation, and the lack of detailed information on complaints submitted through administrative proceedings and their outcomes. Moreover, the Committee is concerned about the ongoing shortcomings in the processing of discrimination complaints by the Commission for Equality and Combating Racial Discrimination, notably the backlog of complaints, lengthy and complicated procedures and the limited resources allocated for the Commission (arts. 2 and 4).

15. The Committee urges the State party to take the measures necessary in order to effectively address the underreporting of racial discrimination complaints. The

Committee recommends that the State party intensify its efforts to address the shortcomings in the administration of racial discrimination complaints by the Commission for Equality and Combating Racial Discrimination. The State party should, *inter alia*:

- (a) Accelerate the finalization and adoption of the new anti-discrimination draft law while ensuring that it includes discriminatory practices in its ambit, disseminate the new law widely once adopted and ensure its effective implementation;
- (b) Allocate sufficient human, technical and financial resources for the Commission for Equality and Combating Racial Discrimination;
- (c) Simplify and speed up complaint procedures and facilitate access to legal aid by victims of racial discrimination;
- (d) Raise awareness on avenues to lodge complaints within the society at large and in particular among those groups who are more likely to face discrimination;
- (e) Provide for a shift in the burden of proof in its legislation in civil and administrative proceedings once a *prima facie* case of racial discrimination has been made involving racial discrimination;
- (f) Provide in its next periodic report statistical data on all discrimination complaints submitted through existing administrative mechanisms and their outcomes, including, but not limited to, complaints related to education, employment, housing and health.

#### **Hate speech and behaviour**

16. The Committee welcomes Portugal's prohibition of xenophobic political parties and that such political parties are not represented in the Parliament. It also welcomes the many steps taken by the State party to foster an inclusive society and to combat racial discrimination. The Committee, however, remains concerned about the persistence of racist hate speech and behaviour, including in sports, in the media and on the Internet, particularly against persons belonging to minorities, notably Roma, Muslims, Africans/people of African descent and migrants. The Committee is also concerned about the limited information provided on measures taken to prosecute and punish such acts (arts. 2 and 4).

17. **Recalling its general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party:**

- (a) Effectively investigate and, as appropriate, prosecute and punish acts of hate speech, including those committed by politicians during political campaigns;
- (b) Ensure that regulatory bodies, in particular those relevant to the media and sports, investigate and control manifestations of racism, xenophobia and intolerance, including by imposing deterring fines and other administrative sanctions;
- (c) Intensify its efforts to raise the awareness of the public, civil servants and law enforcement officials of the importance of cultural diversity and inter-ethnic understanding in order to combat stereotypes, prejudices and discrimination against refugees, migrants, Roma, Muslims and Africans/people of African descent.

#### **Use of force by law enforcement officials**

18. The Committee is concerned about the limited information provided on measures taken to prosecute law enforcement officials or police officers for racial discrimination, despite its previous recommendation. The Committee is also concerned about reports of

abusive acts against ethnic minorities, notably Roma and Africans/people of African descent, by the police, and the insufficient measures to redress them (arts. 2, 5 and 7).

**19. The Committee recommends that the State party, with regard to persons belonging to groups protected under the Convention:**

(a) **Ensure that each allegation of excessive use of force by law enforcement officials is promptly and effectively investigated, that the alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions and that victims or their families are provided with adequate compensation;**

(b) **Take effective measures to prevent the abuse of force by law enforcement officials, including by ensuring that training on the use of force and human rights training for law enforcement officials are conducted throughout the country, in accordance with the Committee's general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights;**

(c) **Provide, in its next periodic report, detailed information concerning investigations undertaken into allegations of excessive use of force by law enforcement officials and their outcomes, including disciplinary or prosecutorial action taken against the perpetrators and remedies provided to victims.**

#### **Discrimination against Roma**

20. The Committee is concerned that, despite projects developed and implemented throughout the period under review, Roma continue to face discrimination in many walks of life, notably in access to housing and education. The Committee is also concerned about reports of insufficient efforts to consult Roma at all stages of the implementation and evaluation of the National Roma Communities Integration Strategy (arts. 2 and 5).

**21. Recalling its general recommendations No. 27 (2000) on discrimination against Roma, and No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee recommends that the State party:**

(a) **Continue implementing the National Roma Integration Strategy in close collaboration and strengthened consultation with the Roma community, including through the effective functioning of the Consultative Group for the Integration of Roma Communities, and with civil society organizations working on Roma issues;**

(b) **Ensure that the Strategy is adequately financed;**

(c) **Reinforce the capacity of and funding for Roma mediators and ensure their equal distribution throughout the country;**

(d) **Intensify its measures, including by adopting special measures, in order to continue to improve the housing conditions of Roma and facilitate their access to mainstream and quality education.**

#### **Discrimination against people of African descent**

22. The Committee is concerned that, despite the long presence of Africans/people of African descent in Portugal and their contribution to the development of the Portuguese society, they are still subjected to racism and there are no programmes specially directed at addressing their concerns. The Committee is also concerned that Africans/people of African descent remain invisible in the most important sectors of society (arts. 2 and 5).

**23. Recalling its general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee recommends that the State party:**

(a) **Take effective measures, including special measures, to address all forms of discrimination against people of African descent;**

(b) **Engage in open and constructive dialogue with Africans/people of African descent with a view to addressing their complaints of racial discrimination in the State party.**

#### **Situation of migrants**

24. The Committee is concerned that the extended and diverse mandate of the new High Commission for Migration — bearing in mind the previous budget cuts to the office of the High Commissioner for Immigration and Intercultural Dialogue, may have negative results. For example, the new tasks assigned to the Commission might be carried out at the expense of the original mandate, that is, equality for and the inclusion of migrants. The Committee is also concerned about reports of adverse living conditions and overcrowding in reception centres (arts. 2, 5 and 6).

25. **The Committee expresses the hope that the High Commission for Migration will follow its predecessor's human rights-based approach by focusing on migrants' equality and integration in the State party. The Committee recommends that the State party allocate sufficient resources to the Commission in order to enable it to discharge its extended mandate efficiently. Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee also recommends that the State party:**

(a) **Continue to implement the Migration Strategic Plan (2015-2020) in collaboration with civil society organizations;**

(b) **Provide information in its next report on the evolution of the socioeconomic indicators on access by migrants to health care, education, housing and employment;**

(c) **Increase the accommodation capacity of the reception system and ensure timely processing of refugee claims, also as a means to reduce the waiting time of asylum seekers in reception centres.**

#### **School curricula**

26. The Committee notes with appreciation the efforts to portray aspects of the history of Portugal on its landscape. The Committee is also aware of efforts to reform the school curriculum. The Committee is however concerned that school textbooks may still portray discriminatory and stereotyped images of Roma community and Africans/people of African descent (arts. 2, 5 and 7).

27. **The Committee recommends that the State party take measures to remove any images from school textbooks that perpetuate prejudices or discrimination against Roma, Africans/people of African descent and any other affected minority groups. Moreover, the State party is requested to reflect adequately in school curricula and textbooks its colonial past and the cultural heritage and history of groups protected under the Convention living in the State party, and their contribution to Portuguese society and culture.**

#### **Civil society**

28. The Committee takes note of the information provided by the delegation about the measures taken to encourage non-governmental organizations to submit alternative reports and to solicit their inputs on the draft national report. However, it expresses its concern about the lack of presence of non-governmental organizations during the review procedure

and the absence of alternative reports of Portuguese non-governmental organizations, notwithstanding the existence of organizations working on combating racial discrimination in the State party.

29. The Committee wishes to underscore the importance that it attaches to reports that are submitted by non-governmental organizations, which enrich the dialogue between the Committee and the State party delegation during the consideration of State parties' reports. The State party should continue to consult and expand its dialogue with civil society organizations working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

#### **D. Other recommendations**

##### **Ratification of other instruments**

30. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights instruments that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

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

31. In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

##### **International Decade for People of African Descent**

32. In the light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015-2024 the International Decade for People of African Descent, and Assembly resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies. The Committee requests that the State party include in its next periodic report specific information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

##### **Follow-up to the present concluding observations**

33. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 13 (c) and (d), 15 (a) and 21 (a) above.

**Paragraphs of particular importance**

34. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 9, 17 (a) and (c), 19 (b) and (c) and 23 (b) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

**Dissemination of information**

35. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly translated and publicized in its official language.

**Preparation of the next report**

36. The Committee recommends that the State party submit its combined eighteenth and nineteenth periodic reports, as a single document, by 23 September 2019, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.

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