

ADVANCE UNEDITED VERSIONDistr.: General
9 March 2012

Original: English

Committee on the Elimination of Racial Discrimination**Eightieth session**

13 February – 9 March 2012

Consideration of reports submitted by States parties under article 9 of the convention**Concluding observations of the Committee on the Elimination of Racial Discrimination****Portugal**

1. The Committee considered the combined twelfth to fourteenth periodic report of Portugal (CERD/C/PRT/12-14), submitted in one document, at its 2137th and 2138th meetings (CERD/C/SR.37 and CERD/C/SR.38), held on 20 and 21 February 2012. At its 2155th meeting (CERD/C/ SR.2155), held on 2 March 2012, it adopted the following concluding observations.

A. Introduction

2. The Committee commends the quality of the combined twelfth to fourteenth periodic report submitted by the State party. It welcomes the presence of the delegation and expresses its appreciation for updated information provided orally by the delegation to complement the report, bearing in mind the list of themes identified by the Country Rapporteur.

3. The Committee also appreciates the constructive dialogue that ensued and the delegation's extensive responses to Committee members' questions and observations.

B. Positive aspects

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

(a) The revision of article 246 of the Criminal Code providing that a person convicted for discrimination (article 240) may be temporarily deprived of his/her active and/or passive electoral capacity;

(b) The amendments introduced to the Portuguese Nationality Act by Organic Law No. 2/2006 of 17 April 2006 allowing the second and third generation immigrants to acquire Portuguese nationality under certain conditions and shifting towards a Jus Soli regime for nationality;

(c) The adoption of Law No. 27/2008 of 30 June 2008 on Asylum establishing a suspensive effect of the appeal in the admissibility phase of the asylum procedure, as recommended by the Committee in 2004 (CERD/C/65/CO/6, para. 15).

5. The Committee welcomes the adoption of the following plans and strategies:

(a) The National Action Plans for the Integration of Immigrants developed since 2007;

(b) The Second National Plan against Trafficking in Human Beings (2012-2013);

(c) The Strategy for Inclusion of the Roma communities launched in December 2011;

(d) The creation of an inter-ministerial body aimed at reducing the backlog of overdue reports to treaty bodies.

6. The Committee welcomes the creation of the High Commission for Immigration and Intercultural Dialogue (ACIDI) by Decree-Law No. 167/2007 of 3 May 2007. Regarding ACIDI's programmes, the Committee particularly welcomes the pilot project which helped to place 28 intercultural mediators in 25 public services to enhance intercultural dialogue and combat racial stereotypes and prejudices. The Committee notes also the Commission's work to support and foster intercultural dialogue.

7. The Committee notes with interest the establishment in 2007 of the Roma Support Office and its associated initiatives.

8. The Committee particularly commends the innovative policies, laws and actions of the State party regarding the integration of immigrants as confirmed by the United Nations Human Development Report 2009 and the Migrant Integration Policy Index.

9. The Committee welcomes ACIDI's national telephone information service, "SOS Imigrante", providing information in the languages mostly common to immigrants in Portugal, and the Translation Phone Service available free of charge in 60 different languages.

C. Concerns and recommendations

10. While taking note that the Portuguese Law on Data Protection (article 7/1 of Law No. 67/98 of 26 October 1998) expressly prohibits the treatment of personal data dealing with racial or ethnic origin, the Committee regrets the lack of statistical disaggregated data on the ethnic composition of the population, both citizens and non-citizens. The Committee notes that while the State party, in paragraph 2 of its periodic report, affirms that there are no ethnic minorities recognized as such; and that immigrants living in Portugal are not acknowledged as ethnic minorities but rather as foreigners, the State party does not deny the existence of ethnic and racial groups.

The Committee recalls its general recommendation No. 8 (1990) on the interpretation and application of articles 1 and 4 of the Convention which states that the identification of individuals as belonging to a particular racial or ethnic group shall be based on self-identification by the individual concerned.

The Committee reiterates its view that the purpose of compiling disaggregated data is to allow States parties to assess achievements and obstacles in fighting racial

discrimination experienced by both citizens and non-citizens residing on its territory. In line with its general recommendation No. 4 (1973) regarding reporting by States parties and paragraph 8 of the reporting guidelines (CERD/C/2007/1), it invites the State party to compile statistical data on the demographic composition of its population based on anonymous and voluntary ethnic self-identification by those concerned.

11. While the Committee notes the State party's reference to the principles of the Universal Declaration on Human Rights in its legislation, it is concerned that the relationship between the Convention and domestic law of the State party remains unclear.

The Committee recommends that the State party find legal means to clarify the issue and give prominence to international human rights treaties including the International Convention on the Elimination of All Forms of Racial Discrimination.

12. The Committee notes the information provided by the State party on the limited number of complaints registered in relation to Article 240 of the Penal Code dealing with racial discrimination. It is particularly concerned by the information indicating that this situation may be due, *inter alia*, to a lack of confidence in the judicial system because of complex and long judicial procedures and lack of awareness regarding such legal remedies (arts. 2 and 6).

Bearing in mind its general recommendation 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:

(a) Disseminate existing legislation on racial discrimination in ways that are accessible, and where relevant in various languages, and inform the public, in particular vulnerable groups, on all available legal remedies;

(b) Take measures to significantly increase confidence of the population in the judicial system, shorten the judicial procedures where possible and allow victims to access legal remedies.

The Committee invites the State party to include in its next periodic report updated information on the number of complaints, prosecutions, convictions, and sentences for racial discrimination and remedies to victims.

13. The Committee notes the holistic approach taken by the State party to deal with racial discrimination. While this has many positive dimensions, the Committee is concerned that the generality of the approach to dealing with racial discrimination may not allow sufficient attention to the concerns of groups of citizens as well as immigrants and foreigners who may be susceptible to direct and indirect discrimination (art. 2).

The Committee reiterates its recommendation that the State party take appropriate special measures for vulnerable groups including Ciganos, Roma and people of African descent in line with its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, in cases where direct or indirect discrimination affects vulnerable groups disproportionately as well as in accordance with its general recommendations No. 27 (2000) on discrimination against Roma and No. 34 (2011) on racial discrimination against people of African descent.

14. Despite innovative measures by the State party to promote integration, prevent and address racial discrimination of less favoured communities, including the impact of the work of socio-cultural mediators, the Committee is concerned about prevalent racial stereotypes and prejudices against immigrants, foreigners and some citizens. Reports have been received regarding discrimination against Brazilians, as well as against other groups

including Chinese, Sub-Saharan Africans, and in particular Ciganos and Roma. The Committee is also concerned at the incidence of racist and xenophobic speech emanating from a few extremist political parties, and manifestations of racism and intolerance in sport towards members of ethnic minorities (arts. 2 and 4).

The Committee urges the State party to take effective measures to prevent and prosecute manifestations of racism, xenophobia and intolerance. It recommends that the State party condemn racist and xenophobic speech by politicians and promote tolerance and diversity, including in sport.

15. Despite training sessions on human rights organized by the State party and previous recommendations by the Committee, the Committee is concerned about reported cases of discriminatory conduct, and manifestations of racist stereotypes and prejudice towards individuals of foreign origin and other groups vulnerable to racial discrimination by law enforcement officials (arts. 2, 5 and 7).

Bearing in mind the Committee's general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights, the Committee urges the State party to ensure that training sessions organized for law enforcement officials equip them to fully respect and protect the fundamental rights of all persons without discrimination on the basis of race, colour or ethnic or national origin. The Committee requests that the State party include in its next periodic report information on prosecutions of law enforcement or police officers for racial discrimination.

16. The Committee is conscious that the foreign population, according to available statistics, is overrepresented in prisons. It expresses its concerns regarding possible discrimination against immigrants and ethnic minorities in the judicial system such as reported cases of severe penalties, longer imprisonment and possible ethnic profiling (arts. 2, 5 and 6).

The Committee encourages the State party to assess the situation and take effective measures to combat racial discrimination in the judicial system bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. The Committee is of the view that further analysis is needed as well as appropriate responses to tackle this issue and provide remedies to victims.

17. The Committee is concerned about the limited effectiveness of the racial discrimination complaint procedure before the Commission for Equality and Against Racial Discrimination (the competent body dealing with racial discrimination under Law 18/2004 which transposed the European Union Directive on Racial Discrimination). Few decisions have been taken since its creation, a number of cases remain unsolved and the promised review of its procedure, as indicated by the State party, remains pending (art. 6).

The Committee recommends that the State party expedite the revision of Law 18/2004 so as to guarantee remedies to victims of racial discrimination. It encourages the State party to provide additional resources to the Commission for Equality and Against Racial Discrimination to reduce the backlog of cases and also to raise awareness of the public regarding legal and administrative remedies available. It invites the State party to include in the next periodic report updated information on steps taken towards the effectiveness of this body.

18. The Committee notes with concern that immigrant women and women belonging to minority groups face multiple discrimination. For example, according to the 2008 Ministry of Labour's statistics, the average salary of immigrant women is less than those of Portuguese citizens or immigrant men (art. 5).

The Committee draws the attention of the State party to its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and urges it to evaluate and monitor racial discrimination against women, particularly immigrant women and women belonging to minority groups. The State party has the obligation to guarantee the right of everyone to equality in the enjoyment of human rights without discrimination based on gender, race, colour or national or ethnic origin.

19. The Committee notes efforts to address discrimination against Ciganos and Roma peoples including the launch in December 2011 of the Strategy for Inclusion of the Roma communities in compliance with European Union requirements and public awareness campaigns regarding non-discrimination against Roma communities. However, it expresses its deep concern that, as confirmed by the State party, Ciganos and Roma are still the most discriminated against and most vulnerable people in Portugal. In addition to housing, there are persistent and continuing concerns with regard to their right to education, health, employment, access to public services or participation in public life (arts. 2, 5 and 7).

The Committee urges the State party to promote economic, social and cultural rights of the Ciganos and Roma, while respecting their culture in accordance with the principle of equality and ensuring that all actions and policies affecting them are designed, implemented, monitored and evaluated with full participation by Ciganos, Roma and their organizations, bearing in mind the Committee's general recommendation No. 27 (2000) on discrimination against Roma.

The Committee requests that the State party provide information on the implementation and impact of the Strategy for Inclusion of the Roma communities. In implementing this Strategy, the State party should ensure that concrete measures are taken to improve the living conditions of these communities by improving their access to adequate housing, education, health services, employment and public services.

The Committee would also appreciate information on the impact of public awareness campaigns regarding non-discrimination against these communities as well as efforts by the State party to integrate persons belonging to these communities into the police or other public services. All actions taken should particularly note and target the improvement and realization of rights by Ciganos and Roma women.

20. While the Committee is conscious of challenges posed by the economic crisis confronted by the State party, it expresses concern about the negative impact that budget cuts may have on public awareness programmes and on institutions in charge of the promotion and protection of human rights, and fighting racial discrimination, and on support to relevant non-governmental organizations (arts. 2 and 7).

In view of its general recommendation No. 33 (2009) on the Follow-Up to the Durban Review Conference, the Committee draws the attention of the State party to the concern that its responses to the current financial and economic crises should not lead to a situation which would increase poverty and potentially give rise to racism, racial discrimination, xenophobia and related intolerance against foreigners, immigrants, persons belonging to minorities and other particularly vulnerable groups. The Committee urges the State party to continue and re-double its efforts to fight racial discrimination and to promote tolerance and diversity, including through support of relevant non-governmental organizations involved in this work.

21. The Committee notes that the Ombudsman is the National Human Rights Institution and that the National Human Rights Commission the State party set up in March 2010 following its Universal Periodic Review by the Human Rights Council has responsibility for coordinating prompt reporting to Treaty Bodies. The Committee also notes that the Ombudsman mainly deals with complaints rather than the broader range of responsibilities of a National Human Rights Institution (art. 2).

The Committee encourages the State party to change the nomenclature of the National Human Rights Commission in charge of overdue reports to treaty bodies so as to avoid confusion with the National Human Rights Institution. The Committee recommends that the work of the Ombudsman as a National Human Rights Institution with A status under the Paris Principles (Annex to General Assembly resolution 48/134) reflect more visibly a wide range of measures in addition to its complaints procedures, particularly with regard to racial discrimination.

22. The Committee regrets the lack of involvement of non-governmental organizations in the reporting session while noting the verbal commitment of the State party to their inclusion and engagement in the process of developing the next State party report which is currently under way (art. 2).

The Committee invites the State party to continue to encourage the involvement of non-governmental organizations in the preparation of the next periodic report and to facilitate their participation at the next reporting session.

23. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

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

25. While bearing in mind the holistic approach to reporting adopted by the State party, the Committee would welcome information on measures to implement the Convention in Madeira and Azores in the next periodic report.

26. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolution 61/148, 63/243 and 65/200, in which the Assembly General strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

27. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

28. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 18, 19, and 20 above.

29. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations in paragraphs 12, 14 and 15 and requests the State party to

provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

30. The Committee recommends that the State party submit its 15th to 17th periodic reports in a single document, due on 23 September 2015, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para. 19).
