

ADVANCE UNEDITED VERSION

Distr.: General
29 August 2019

Original: English

Committee on the Elimination of Racial Discrimination**Concluding observations on the combined twenty-second to twenty-fourth periodic reports of Poland***

1. The Committee considered the combined twenty-second to twenty-fourth periodic reports of Poland (CERD/C/POL/22-24), submitted in one document, at its 2741st and 2742nd meetings (see CERD/C/SR.2741 and 2742), held on 6 and 7 August 2019. At its 2758th meeting, held on 20 August 2019, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined twenty-second to twenty-fourth periodic reports of the State party and expresses its appreciation for the frank and constructive dialogue with the State party's delegation. It thanks the delegation for the information provided during the consideration of the report and for the additional written information submitted after the dialogue. The Committee also welcomes the active participation of representatives of the Commissioner for Human Rights of Poland in the consideration of the combined twenty-second to twenty-fourth periodic reports of the State party. The Committee encourages the State party to strengthen its cooperation with the Commissioner for Human Rights of Poland.

B. Positive aspects

3. The Committee welcomes the State party's ratification of or accession to the following international human rights instruments:

(a) The Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, on 20 February 2015;

(b) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming to the abolition of the death penalty, on 25 April 2014.

4. The Committee welcomes the following legislative, institutional and policy measures taken by the State party:

(a) The adoption of amendments to the Act on granting protection to foreigners within the territory of the Republic of Poland and some other Acts, in 2014 and 2015;

(b) The adoption of the new National Action Plan against Trafficking in Human Beings (2019-2021);

(c) The creation of the Inter-ministerial Team for preventing the promotion of fascism and other totalitarian systems and crimes of incitement to hatred based on national,

* Adopted by the Committee at its 99th session (05-29 August 2019).

ethnic, racial or religious differences or for reason of lack of any religious denomination, in 2018;

(d) The establishment of the Office of the National Police Headquarters for Combating Cybercrime and the appointment of coordinators for combating hate crimes in the cyberspace, in 2016;

(e) The adoption of the National Broadcasting Regulatory Strategy (2014-2016).

C. Concerns and recommendations

Statistics

5. The Committee regrets that the State party did not provide updated information on the ethnic composition of the population since the 2011 national census and regrets the lack of statistics on migrants, refugees and asylum-seekers. It also regrets the lack of statistics or comprehensive information on the policy for the collection of socioeconomic indicators for the various ethnic groups residing in the territory of the State party (art. 2).

6. Recalling its reporting guidelines (CERD/C/2007/1) and its general recommendation No. 8 (1990) concerning the interpretation and application of article 1 (1) and (4) of the Convention, the Committee recommends that the State party gather and provide the Committee with updated statistics on the ethnic composition of its population, disaggregated by ethnicity, national origin and languages spoken, taking into account the principle of self-identification, along with statistics on migrants, refugees and asylum-seekers. It also recommends that the State party develop socioeconomic indicators on the enjoyment of rights protected under the Convention by the various ethnic groups residing in the territory of the State party, disaggregated by sex, age and ethnicity, including through dialogue with ethnic minorities.

Anti-discrimination legislation

7. The Committee is concerned:

(a) That the Equal Treatment Act of 2010 does not explicitly prohibit discrimination on grounds of “national origin”, “colour” and “descent” and is therefore not fully in line with article 1 of the Convention;

(b) About the lack of full and consistent implementation of existing legal provisions prohibiting racial discrimination;

(c) The lack of detailed examples of the specific invocation of those legal provisions in courts and other relevant complaint mechanisms (arts. 1 and 2).

8. The Committee recommends that the State party:

(a) Amend the Equal Treatment Act to introduce “national origin”, “colour” and “descent” as grounds of discrimination, in order to bring them in line with article 1 (1) of the Convention;

(b) Ensure the full and effective implementation of existing legal provisions prohibiting racial discrimination and facilitate effective access to justice for all victims of racial discrimination;

(c) Strengthen the training of judicial officials on the provisions of the Convention and provide detailed examples of cases of racial discrimination decided by judicial and other relevant complaint mechanisms.

National human rights institution

9. While noting with satisfaction that the Commissioner for Human Rights of Poland was reaccredited with A status in 2017 by the Global Alliance of National Human Rights Institutions, the Committee remains concerned about the insufficient human and financial resources allocated to the Commissioner, in particular its Department of Equal Treatment, which put in jeopardy its ability to fulfil its mandates. The Committee remains also concerned

that the Commissioner has no statutory mandate to investigate complaints from victims of racial discrimination concerning incidents occurring in the private area.

10. The Committee recommends that the State party:

(a) Provide the Commissioner for Human Rights of Poland (“The Commissioner”), in particular its Department of Equal Treatment, with the human and financial resources necessary to enable it to fully discharge its mandates in an independent and impartial manner, in accordance with the Paris Principles;

(b) Amend its legislation to provide the Commissioner with the statutory mandate to investigate cases of racial discrimination both in the public and private areas;

(c) Ensure that the statutory competences of the Commissioner are fully recognized and respected, and more specifically, that requests made by the Commissioner to initiate proceedings in cases to be prosecuted by public indictment, including racially motivated crimes, result in an immediate investigation by the National Public Prosecutor’s Office or the respective subordinate prosecutors, as required by art. 14(5) of the Act on the Commissioner for Human Rights.

Institutional framework

11. The Committee notes that the mandate of the Government Plenipotentiary for Equal Treatment, together with the Plenipotentiaries for Equal Treatment in voivodeships and the Coordinators for Equal Treatment in all Ministries, represents the national machinery for equal treatment and the elimination of racial discrimination. It is, however, concerned about:

(a) The reported insufficient resources and limited authority of the Plenipotentiary to coordinate the action of the Government in combating racial discrimination;

(b) The dissolution, in 2016, of the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance without replacing it by another institution with a similar mandate;

(c) The changes to the institutional framework made since 2015, which may jeopardize the independence of the judiciary and National Public Prosecutor, raising concerns about the integrity of the legal enforcement of equality guarantees.

12. The Committee recommends that the State party:

(a) Strengthen the mandate and authority of the Government Plenipotentiary for Equal Treatment and increase its financial and human resources to ensure effective coordination of government policies to combat racial discrimination;

(b) Reinstate the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance or establish an alternative multi-stakeholder institution with a similar mandate;

(c) Take effective steps to guarantee the independence of the judiciary and the National Public Prosecutor from political interference.

Policy framework

13. The Committee is concerned that impact assessments of the National Action Programme for Equal Treatment (2013-2016) was not made public and that the National Action Programme was either not renewed for the subsequent years or developed without public participation or even consultation with government sectors outside the ruling party.

14. The Committee recommends that the State party provide detailed information on the impact assessments and the results achieved in the implementation of the previous National Action Programme for Equal Treatment (2013-2016), and adopt a new National Action Programme for Equal Treatment, in consultation with civil society organizations and the Commissioner for Human Rights.

Racist hate speech and hate crimes

15. While noting the criminalization of hate crimes and hate speech in articles 119, 256 and 257 of the Criminal Code, the Committee is deeply concerned:

(a) That “colour” and “descent” as grounds for inciting hatred are missing from this definition;

(b) By the prevalence of racist hate speech against minority groups, in particular Muslims, Roma, Ukrainians, people of African and Asian descent, Jews and migrants, refugees and asylum-seekers, which fuels hatred and intolerance and incites violence towards such groups;

(c) That leading public figures, including politicians and media officials, are frequently the source of such offensive statements or fail in their responsibility to strongly denounce hate speech;

(d) That the Penal Code still does not contain a provision expressly establishing racist motives of a crime as an aggravating circumstance (arts. 4 and 6).

16. **Recalling its general recommendations No. 15 (1993) on article 4 of the Convention and No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party:**

(a) **Ensure that the definition of hate speech enshrined in the Criminal Code is fully in line with article 4 of the Convention and that it includes all grounds of discrimination recognized in article 1 of the Convention and recommendation No. R 97 (20) of the Council of Ministers of the Council of Europe;**

(b) **Take all necessary measures to firmly combat racist hate speech and incitement to violence, including on the Internet, and publicly condemn and distance itself from racist hate speech by public figures, including politicians and media officials;**

(c) **Intensify its public campaigns to combat hate speech, incitement to hatred and hate crimes, to address prejudices and negative sentiments towards national and ethnic minorities, migrants, refugees and asylum-seekers, and to promote tolerance and understanding towards these groups;**

(d) **Send strong messages to journalists and broadcasters that they have a responsibility to avoid the use of hate speech and stereotypes in describing minority communities, take action against websites promoting racial hatred and, particularly in the context of election campaigns, closely scrutinize broadcasters with respect to content that incites hatred or strengthens xenophobic attitudes;**

(e) **Amend article 53 (2) of its Criminal Code, specifically making racist motive of a crime an aggravating circumstance and allowing for enhanced punishment to combat the occurrence of such acts.**

Prohibition of organizations that promote racial discrimination

17. The Committee notes the prohibition in article 13 of the Constitution of “political parties and other organizations [...] whose programmes or activities sanction racial or national hatred”. The Committee is, however, concerned that the participation in such organizations is not yet prohibited by law. The Committee is alarmed by the continuing existence and open operation of organizations that promote racial hatred in the State party, particularly those that openly espouse affinity with the ideology and publicly display the symbols of Nazism, fascism or totalitarianism (art. 4).

18. **The Committee urges the State party to:**

(a) **Ensure effective enforcement of the laws declaring illegal parties or organizations which promote or incite racial discrimination, such as the National Movement, the National-Radical Camp, All-Polish Youth, Falanga, Szturmowcy, Nizlot, the National and Social Congress, Autonomic Nationalists, Pride and Modernity Association, and the local chapter of Blood and Honour;**

(b) Amend the Penal Code to make participation in such organizations a punishable offence, in line with article 4 (b) of the Convention and general recommendation No. 35.

Prosecution of racially motivated crimes

19. The Committee welcomes the efforts of the State party to train law enforcement, prosecutorial and judicial officers on racial discrimination, hate speech and hate crimes. It also notes the issuance, in 2014, of the General Prosecutor's guidelines on the conduct by prosecutors of proceedings in cases of hate speech and hate crime. It remains, however, concerned:

(a) About the extremely low percentage of offenses of hate speech and hate crimes that are reported, despite the recorded increase in the incidence of such crimes;

(b) About the fact that some of the reported racially motivated crimes remain unregistered and not investigated as such;

(c) That the increased number of preparatory proceedings and indictments of perpetrators of racist crimes did not result in a significant increase in the number of convictions;

(d) About the lack of detailed information on investigations and prosecutions of, and convictions for, racist hate speech and hate crimes, especially those committed by public figures and politicians (arts. 4 and 6–7).

20. **The Committee recalls that, in line with its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, a low number of complaints may signify the existence of barriers to victims accessing their rights, such as a lack of trust among victims in the State party's justice institutions and authorities. The Committee recommends that the State party:**

(a) Take measures to encourage and facilitate the reporting of hate speech and hate crimes, including by raising public awareness about access to legal aid and available legal remedies, and by ensuring the registration of all reported cases, effective investigations and prosecutions, and the imposition of appropriate penalties on perpetrators;

(b) Commission an independent research agency to do an annual estimate of the number of unreported hate-motivated crimes along with an analysis of causes and recommended solutions;

(c) Recruit persons belonging to minority groups into the police force and the judiciary, and as prosecutors and lawyers, and continue providing training on the proper identification, registration, investigation and prosecution of racist hate speech and hate crimes;

(d) Provide detailed information on investigations and prosecutions of, and convictions for, racist hate speech and hate crimes, especially those committed by public figures and politicians.

Situation of Roma

21. While taking note of the information provided on measures taken to improve the situation of Roma, including through the Programme for the Integration of the Roma Community in Poland (2014-2020), the Committee remains highly concerned about:

(a) The persistence of structural discrimination against Roma;

(b) The low attendance rates of Roma children in primary school, their high rates of high school dropout, their persistent overrepresentation in special schools and their underrepresentation in secondary and post-secondary education;

(c) The extreme poverty and substandard living conditions faced by Roma in segregated neighbourhoods with no proper infrastructure and basic services, as well as threats of eviction;

(d) High rates of unemployment among Roma and the large wage gap between Roma and the rest of society;

(e) Reports that Roma are frequently subject to hate speech and hate crimes and are often not provided with adequate protection;

(f) Reports that Roma are subject to ethnic profiling by law enforcement officers.

22. Recalling its general recommendation No. 27 (2000) on discrimination against Roma, the Committee urges the State party to improve the situation of Roma, including through coordination at all levels of government and by engaging with Roma communities in the design, implementation and evaluation of inclusion policies and action plans. The Committee recommends that the State party:

(a) Take all measures to eliminate structural discrimination against Roma;

(b) Continue its efforts to end all segregation in education faced by Roma children and take effective measures, including special measures, to enhance rates of school attendance, including in institutions of higher education, and rates of school completion among Roma children;

(c) Take measures to end extreme poverty among Roma, provide genuine solutions for housing problems, including by improving infrastructure and basic services available in Roma settlements with the engagement of Roma communities, and end forced evictions of Roma and housing demolitions;

(d) Take effective measures to end unemployment among Roma and to eliminate the wage gap;

(e) Take measures to end hate speech and hate crimes against Roma, provide them with protection from hate crimes and violence, and ensure the proper registration, investigation, prosecution and conviction of perpetrators of any cases of hate speech and hate crime;

(f) Prevent all ethnic profiling by law enforcement and conduct training to ensure such practices are not utilized.

Situation of migrants, refugees and asylum seekers

23. The Committee takes note of the measures taken to facilitate access to free public education and educational support services to foreign children, including refugee and asylum-seeking children. The Committee remains, nevertheless, concerned about:

(a) The continuing practice of detaining children with their parents and unaccompanied or separated children in guarded prison-like centres for foreigners, which subjects children to a traumatic experience and prevents those children from having access to full-time education;

(b) Reports that asylum seekers have been denied entry to the State party's territory or denied access to asylum procedures by border guards;

(c) The inadequacy of individualized programmes for integration of refugees and beneficiaries of subsidiary protection;

(d) The multiple and intersecting forms of discrimination that undocumented migrant women face in accessing maternal health-care;

(e) Reports of the persistence of hate speech and hate crimes against migrants, refugees and asylum seekers.

24. Recalling its general recommendation No. 22 (1996) on refugees and displaced persons in the context of article 5 of the Convention, and its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party:

(a) Refrain from detaining migrant and asylum seeking children and families with children and implement non-custodial alternatives, as provided for in the Act on foreigners;

(b) Ensure that asylum-seekers are properly registered by border guards and promptly referred to asylum authorities and granted access to a lawyer if they so request;

(c) Increase the duration and amount of the financial support provided to refugees and beneficiaries of subsidiary protection in order to facilitate their full integration into society;

(d) Remove all financial barriers, as well as any legal, administrative, language or cultural barriers that impede undocumented migrant women's access to affordable maternal health care throughout pregnancy, including by prohibiting health care facilities and medical professionals from eliciting from patients information about their immigration status;

(e) Prevent hate speech and hate crimes against migrants, refugees and asylum-seekers, including through educational campaigns on tolerance and the elimination of prejudices and social stereotypes, as well as the proper registration, investigation, prosecution and conviction of perpetrators of hate speech and hate crimes.

D. Other recommendations

Ratification of other treaties

25. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties 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 and the International Convention for the Protection of All Persons from Enforced Disappearance and Domestic Workers Convention 2011 (No. 189) of the International Labour Organization. The Committee also encourages the State party to accede to the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

Follow-up to the Durban Declaration and Programme of Action

26. In 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

27. In 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 in collaboration with organizations and peoples of African descent. The Committee requests that the State party include in its next report precise 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.

Consultations with civil society

28. The Committee recommends that the State party establish a dialogue with a broad cross section of civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.

Dissemination of information

29. 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 made available to all State bodies entrusted with the implementation of the Convention, including municipalities, in the official and other commonly used languages, as appropriate.

Common core document

30. The Committee encourages the State party to update its common core document, which dates to 19 September 2014, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.6, chap. I). In light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for such documents.

Follow-up to the present concluding observations

31. 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 10 (a) (national human rights institution), 12 (institutional framework), 16 (b), (c) and (d) (racist hate speech and hate crimes) and 18 (a) (prohibition of organizations that promote racial discrimination) above.

Paragraphs of particular importance

32. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 8 (anti-discrimination legislation), 14 (policy framework), 20 (prosecution of racially motivated crimes), and 24 (situation of migrants, refugees and asylum seekers) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

Preparation of the next periodic report

33. The Committee recommends that the State party submit its combined twenty-fifth to twenty-seventh periodic reports, as a single document, by 4 January 2022, 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 light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.