

ADVANCE UNEDITED VERSION

Distr.: General
29 August 2019

Original: English

Committee on the Elimination of Racial Discrimination**Concluding observations on the combined initial and second periodic reports of the State of Palestine***

1. The Committee considered the combined initial and second periodic reports of the State of Palestine (CERD/C/PSE/1-2), submitted in one document, at its 2749th and 2750th meetings (see CERD/C/SR.2749 and 2750), held on 13 and 14 August 2019. At its 2764th meeting, held on 23 August 2019, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined initial and second periodic reports of the State party and expresses its appreciation for the 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 participation of representatives of the Independent Commission for Human Rights of Palestine and its contribution to the dialogue with the State party.

B. Factors and difficulties impeding the implementation of the Convention

3. The Committee notes that the Israeli occupation of the territory of the State party, the expansion of the settlements and the continued blockade of the Gaza Strip, which are considered unlawful under international law, pose severe challenges for the State party in fully implementing its obligations under the Convention. However, it reminds the State party that the Convention is applicable in its entire territory and that the State party should take all possible measures to implement it in all parts of the territory. In that regard, the Committee regrets that limited progress has been made in resolving internal political issues that negatively affect the full enjoyment by Palestinians, including ethno-religious and national minority groups in the West Bank, including East Jerusalem, and the Gaza Strip, of their rights under the Convention. The Committee also notes that, owing to the political and geographical fragmentation of the State party's territory, Palestinians, including ethno-religious and national minority groups, continue to be subjected to multiple legal systems that greatly impede the full realization of their rights under the Convention.

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

C. Positive aspects

4. The Committee welcomes the State party's accession to the following international human rights instruments since the entry into force of the Convention for the State party in 2014:

(a) Amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination, in 2019;

(b) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in 2019;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2017;

(d) The Rome Statute of the International Criminal Court, in 2015;

(e) The United Nations Convention against Transnational Organized Crime, in 2015, and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, in 2017;

(f) The International Covenant on Economic, Social and Cultural Rights, in 2014;

(g) The International Covenant on Civil and Political Rights, in 2014;

(h) The Convention on the Elimination of All Forms of Discrimination against Women, in 2014, and its Optional Protocol, in 2019;

(i) The Convention on the Rights of the Child, in 2014, and its Optional Protocol on a communications procedure, in 2019;

(j) The Convention on the Rights of Persons with Disabilities, in 2014, and its Optional Protocol, in 2019;

(k) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2014, and its Optional Protocol, in 2017;

(l) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2014;

(m) The International Convention on the Suppression and Punishment of the Crime of Apartheid, in 2014.

5. The Committee notes with appreciation that the State party made the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State party of any of the rights set forth in this Convention.

6. The Committee welcomes the adoption of the following legislative and policy measures taken by the State party since the entry into force of the Convention for the State party:

(a) The Public Education Act, in 2017, which aims at developing values and conduct associated with respect for human rights and freedoms and the principles enshrined in international instruments, including equality and non-discrimination;

(b) The National Strategic Plan for Culture and Cultural Heritage (2014–2016), which aims, *inter alia*, at reinforcing the values of mutual understanding, tolerance, pluralism, democracy, citizenship and equality;

(c) The National Strategy for Justice and Rule of Law (2014–2016), which stipulates that the legal aid system must be institutionalized so as to meet the needs of marginalized and vulnerable groups.

D. Concerns and recommendations

Statistics

7. While noting the Population, Housing and Establishments Census undertaken by the Palestinian Central Bureau of Statistics in 2018, the Committee regrets the lack of comprehensive statistics on the demographic composition of the population, disaggregated by ethnic or national origin, including on non-citizens, such as migrants, refugees and stateless persons. The Committee also regrets the absence of socio-economic indicators to enable it to evaluate the enjoyment of the rights under the Convention by all groups residing in the territory of the State party, including ethno-religious and national minority groups (arts. 1 and 5).

8. **Recalling paragraphs 10–12 of its guidelines for reporting under the Convention (CERD/C/2007/1) and recalling its general recommendation No. 24 (1999) concerning article 1 of the Convention, the Committee recommends that the State party provide information on the demographic composition of the population in the whole of the State party’s territory, disaggregated by ethnic or national origin, including on non-citizens, such as migrants, refugees and stateless persons, as well as on socio-economic indicators to enable the Committee to evaluate the enjoyment of the rights under the Convention by all groups residing in the territory of the State party, including ethno-religious and national minorities.**

Convention in the domestic legal order

9. The Committee commends the State party for ratifying the Convention without reservations. The Committee is, however, concerned about the interpretation of the Supreme Constitutional Court, in its decisions No. 4 (2017) of 19 November 2017 and No. 5 (2018) of 12 March 2019, according to which international treaties acceded to by the State party take precedence over national legislation only insofar as they are consistent with the national, religious and cultural identity of the Palestinian Arab people, which may impede the enjoyment of the rights set forth in the Convention. The Committee is also concerned that the Convention has not yet been published in the Official Gazette to make it enforceable in the State party (arts. 1 and 2).

10. **The Committee recommends that the State party:**

(a) **Fully and expeditiously incorporate the provisions of the Convention into its national law, including through publication in the Official Gazette, and take all possible measures to ensure its implementation throughout its territory;**

(b) **Ensure that the interpretation of the Supreme Constitutional Court, in its decisions No. 4 of 19 November 2017 (2017) and No. 5 (2018) of 12 March 2018, and its application do not prevent persons or groups living in the territory of the State party, including Palestinian non-Arab people, from fully enjoying their rights under the Convention;**

(c) **Conduct trainings and awareness-raising campaigns for judges, prosecutors, lawyers and other law enforcement officials, as well as for the population, to ensure that the provisions of the Convention are invoked by and before domestic courts.**

Prohibition of racial discrimination

11. The Committee notes that “race” and “colour” are mentioned as grounds of discrimination under article 9 of the Amended Basic Law of 2003 and that an attempt was made to define discrimination in article 546 of the proposed draft penal code of 2011. However, the Committee is concerned about the absence of a comprehensive definition of racial discrimination in the legislation of the State party, in line with article 1 of the Convention (art. 1).

12. **The Committee recommends that the State party:**

(a) **Adopt comprehensive anti-discrimination legislation that includes a definition of racial discrimination covering all grounds of discrimination mentioned in the Convention, including “descent” and “ethnic or national origin”, and encompassing direct and indirect discrimination in both the public and private spheres, in line with article 1 of the Convention;**

(b) **Ensure that relevant legislation, including the Amended Basic Law, as well as the proposed draft penal code of 2011, which aims at prohibiting and punishing discrimination, are revised to bring them into conformity with the Convention.**

Harmonization of legislation and compliance with the Convention

13. While welcoming the establishment of a legislative harmonization committee to review all laws to ensure their compliance with the human rights treaties to which the State party has acceded, including the Convention, the Committee is concerned that the State party has not set a time frame for completing such review. The Committee is also concerned that:

(a) The Palestinian Legislative Council was dissolved by the Supreme Constitutional Court, in its decision No.10 on 12 December 2018;

(b) The laws enacted by presidential decrees since the suspension of the Palestinian Legislative Council in 2006 are neither recognized nor enforced in the Gaza Strip, which exacerbates the fragmentation of the legal system and subjects Palestinians in the Gaza Strip and the West Bank, including East Jerusalem, to multiple sets of laws affording varying levels of protection;

(c) Various laws, including the Civil Service Code, the Decree Law on General Elections and the Law on the Lease and Sale of Immovable Property to Foreigners, are not in line with the Convention;

(d) No time frame has been set for the review and adoption of draft laws, such as the draft penal code, the draft personal status code and the draft family protection law (arts. 1 and 2).

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

(a) **Ensure popular participation in decision-making and address the current rule of law deficit through reinstating a democratically elected parliamentary legislative body, such as the Palestinian Legislative Council;**

(b) **Harmonize, through a democratic legislative process, the different sets of laws implemented in the Gaza Strip and the West Bank, including East Jerusalem, to ensure that all persons living under the jurisdiction of the State party are equally protected under the law;**

(c) **Adopt a clear time frame for the completion of the review of the existing legislative framework, in collaboration with civil society organizations, to ensure compliance with the Convention;**

(d) **Expedite the review of draft laws, including the draft penal code, the draft personal status code and the draft family protection law, to ensure their compliance with the Convention, , and their adoption.**

National human rights institution

15. The Committee welcomes the fact that the Global Alliance of National Human Rights Institutions granted the Independent Commission for Human Rights of Palestine (“the Commission”) A status in 2015. However, the Committee is concerned that the draft law formalizing the establishment of the Commission has not yet been adopted despite its submission to the Palestinian Legislative Council in 2005. It is also concerned that the Commission does not have adequate human and financial resources to effectively discharge its mandate (art. 2).

16. **The Committee recommends that the State party formalizes in law the establishment of the Independent Commission for Human Rights of Palestine and provide it with adequate human and financial resources to carry out its mandate fully, effectively and independently, in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).**

Complaints of racial discrimination

17. The Committee is concerned that no complaints of racial discrimination were brought before the Independent Commission for Human Rights. It also regrets the lack of detailed information on racial discrimination complaints filed with the national courts and other relevant Palestinian institutions, as well as on investigations, prosecutions, convictions and sanctions imposed, and on the reparations provided to victims (art. 6).

18. **The Committee draws the State party's attention to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, and recalls that the absence of complaints and legal actions for racial discrimination may reveal a lack of suitable legislation, poor awareness of the legal remedies available, a lack of trust in the judicial system, a fear of reprisals or a lack of will on the part of the authorities to prosecute the perpetrators of such acts. It recommends that the State party:**

(a) **Facilitate the filing of complaints for acts of racial discrimination, ensure that such acts are properly investigated and that those responsible are adequately sanctioned;**

(b) **Provide training programmes for law enforcement officials, prosecutors, judges and other public officials on the identification and registration of incidents of racial discrimination;**

(c) **Undertake public education campaigns on how the rights under the Convention can be invoked before the courts and on remedies available;**

(d) **Provide information and statistics on complaints of racial discrimination, as well as on investigations, prosecutions, convictions and sanctions imposed, and on the reparations provided to victims, disaggregated by the age, sex, ethnic and national origin.**

Racist hate speech and hate crimes

19. The Committee is concerned:

(a) That the State party's legislation criminalizing racist hate speech and hate crimes, as well as organizations that promote and incite racial discrimination, in particular the Penal Code of 1936 and the Jordanian Penal Code of 1960, which are applicable in the Gaza Strip and the West Bank respectively, the Press and Publication Act, the Cybercrimes Act and Presidential Decree No. 8 on the Strengthening of National Unity and Prevention of Incitement, is not fully in line with article 4 of the Convention;

(b) That the overly broad and vague character of some of these provisions allow for the imposition of severe restrictions on free speech, the criminalization of journalists, human rights defenders and political opponents for exercising their right to freedom of opinion and expression;

(c) About the existence of hate speech in certain media outlets, especially those controlled by Hamas, social media, public officials' statements and school curricula and textbooks, which fuels hatred and may incite violence, particularly hate speech against Israelis, which at times also fuels antisemitism (art. 4).

20. **Recalling its general recommendations No. 7 (1985) relating to the implementation of article 4 of the Convention, No. 8 (1990) concerning the interpretation and application of article 1 (1) and (4) of the Convention, No. 15 (1993) on article 4 of the Convention and No. 35 (2013) on combating racist hate speech, the Committee urges the State party to:**

(a) Amend its legislation, in particular the Penal Code of 1936 and the Jordanian Penal Code of 1960, which are applicable in the Gaza Strip and the West Bank respectively, the Press and Publication Act, the Cybercrimes Act and Presidential Decree No. 8 on the Strengthening of National Unity and Prevention of Incitement, to ensure its conformity with provisions of article 4 of the Convention;

(b) Ensure that the above-mentioned laws are not used to intimidate, harass, arrest, detain and prosecute journalists, human rights defenders and political opponents for exercising their right to freedom of opinion and expression;

(c) Combat hate speech and incitement to violence, including on the Internet and by public figures, politicians and media officials, and remove any derogatory comments and images from school curricula and textbooks that perpetuate prejudices and hatred.

Situation of ethno-religious and national minorities

21. The Committee regrets the lack of information on the situation of ethno-religious and national minorities in the State party and on their ability to fully enjoy all the rights covered by the Convention without discrimination. The Committee is particularly concerned about the lack of information on the situation of Bedouins, who face a number of challenges in terms of accessing essential services, as well as forcible evictions and demolition of their houses (art. 5).

22. **The Committee recommends that the State party:**

(a) Ensure that all ethno-religious and national minorities have full access to all the rights covered by the Convention without discrimination;

(b) Take all possible measures to ensure access to, *inter alia*, employment, health care, water, sanitation and electricity for Bedouins who are particularly vulnerable to forcible evictions and demolition of their houses, and continue to provide them with humanitarian assistance.

Minorities in public and political life

23. The Committee notes the measures to promote the political participation of Syriacs and Samaritans. It is, however, concerned that these measures do not benefit all minorities. It is also concerned about the lack of information regarding the representation of ethno-religious and national minorities in the elective bodies at all levels and in public office (arts. 2 and 5).

24. **The Committee recommends that the State party ensure that ethno-religious and national minorities are adequately represented in all elective bodies as well as in public office, by taking all necessary measures, including amending its electoral laws.**

Migrant domestic workers

25. The Committee is concerned that migrant domestic workers remain excluded from the protection guaranteed by the Labour Act of 2000. It is also concerned about the lack of information on the working conditions of migrant domestic workers and their ability to fully enjoy all the rights covered by the Convention without discrimination (arts. 5–7).

26. **Recalling its general recommendations No. 25 (2000) on gender-related dimensions of racial discrimination and No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party:**

(a) Ensure that the employment of migrant domestic workers be regulated under the Labour Act;

(b) Provide detailed information on the measures taken to protect migrant domestic workers from exploitative labour practices, including data on the number, types and outcomes of the complaints filed by migrant domestic workers.

Situation of minority women

27. The Committee is concerned that minority women may face multiple and intersecting forms of discrimination on the basis of ethnic origin and gender, including barriers in access to employment, education, health care and justice (arts. 2 and 5).

28. Recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party eliminate all barriers faced by minority women in access to employment, education, health care and justice. To this end, it recommends that the State party incorporate a minority-women perspective in all gender-related policies and strategies.

Nationality

29. The Committee notes that, under Palestinian law, women and men have equal rights to transmit, acquire, change or retain their nationality. It is concerned, however, that legislation concerning nationality is governed by a complex set of laws, including the Personal Status Act of 1999, the Palestinian citizenship decrees issued in 1925 under the British Mandate and the amended Jordanian Citizenship Act of 1954. In particular, the Committee is concerned about:

(a) The lack of information on measures to adopt a comprehensive law to unify and clarify the above-mentioned provisions in order to reduce the risk of statelessness;

(b) The high number of Palestinians who are deprived of citizenship owing to prolonged refugee status abroad, displacement within the territory of the State party and discriminatory citizenship laws in the occupied Palestinian territory, in particular in East Jerusalem (arts. 2 and 5).

30. The Committee recommends that the State party:

(a) **Adopt a comprehensive nationality law that harmonizes the various provisions on nationality to reduce the risk of statelessness;**

(b) **Engage with the international community to address the issue of nationality for Palestinians who are deprived of citizenship owing to prolonged refugee status, displacement within the State party territory and discriminatory citizenship laws, in particular those living in East Jerusalem;**

(c) **Ratify the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.**

E. Other recommendations

Ratification of other treaties

31. **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, the International Convention for the Protection of All Persons from Enforced Disappearance, the first Optional Protocol to the International Covenant on Civil and Political Rights, and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The Committee also recommends that the State party consider ratifying the Convention relating to the Status of Refugees and its Protocol.**

Follow-up to the Durban Declaration and Programme of Action

32. **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

33. 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

34. The Committee recommends that the State party continue consulting and increasing its dialogue with 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.

Common core document

35. The Committee encourages the State party to submit a common core document and to regularly update it, 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 the 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

36. 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) (Convention in the domestic legal order), 14 (a) and (c) (harmonization of legislation and compliance with the Convention), and 20 (b) (racist hate speech and hate crimes) above.

Paragraphs of particular importance

37. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 8 (statistics), 10 (b) (Convention in the domestic legal order), 14 (b) and (d) (harmonization of legislation and compliance with the Convention), and 30 (nationality) 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

38. 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.

Preparation of the next periodic report

39. The Committee recommends that the State party submit its combined third to fifth periodic reports, as a single document, by 2 April 2023, 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.
