



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 combined initial and second to sixth periodic reports of Andorra*

1. The Committee on the Elimination of Racial Discrimination considered the combined initial and second to sixth periodic reports of Andorra (CERD/C/AND/1-6) at its 2713th and 2714th meetings (CERD/C/SR.2713 and 2714), held on 24 and 25 April 2019. At its 2729th meeting, on 6 May 2019, the Committee adopted these concluding observations.

A. Introduction

2. The Committee welcomes the submission, albeit late, of the combined initial and second to sixth periodic reports of the State party.
3. The Committee expresses its appreciation for the frank, open and constructive dialogue with the State party's delegation. It wishes to thank the delegation for the information provided during the consideration of the report and for the additional information submitted in writing after the dialogue.

B. Positive measures

4. The Committee welcomes the State party's ratification or acceptance of the following international human rights instruments:
 - (a) International Covenant on Civil and Political Rights and the two Optional Protocols thereto, on 22 September 2006;
 - (b) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 22 September 2006;
 - (c) Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, on 11 March 2014;
 - (d) Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 25 September 2014;
 - (e) Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization (UNESCO), on 13 March 2018;
 - (f) Additional Protocol to the Council of Europe Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, on 16 November 2016;

* Adopted by the Committee at its 98th session (23 April–10 May 2019).



(g) Council of Europe Convention on Action against Trafficking in Human Beings, on 23 March 2011.

5. The Committee welcomes the legislative, institutional and political measures that have been taken by the State party:

(a) Act No. 13/2019 of 15 February 2019 on Equality and Non-discrimination;

(b) Act No. 4/2018 of 22 March 2018, on Temporary and Provisional Protection on Humanitarian Grounds, which allowed Syrian refugees to be received in Andorra;

(c) Act No. 26/2017 of 23 November 2017 amending the Act of 4 June 1998 on the Establishment and Work of the *Raonador del Cuitadà* (Ombudsman), which broadens the institution's mandate to cover the combating of racism and intolerance and to permit the consideration of complaints of racial discrimination in both the public and private sectors;

(d) Act No. 9/2017 of 25 May 2017 on Measures to Combat Trafficking in Persons and Protect Victims;

(e) Act No. 40/2014 of 11 December 2014 amending Act No. 9/2005 of 21 February 2005, the Criminal Code, which includes new offences relating to discrimination that had not previously been penalized;

(f) The establishment, on 23 September 2015, of the Department for Equality Policies, which is responsible, inter alia, for developing and promoting cross-cutting initiatives and programmes designed to step up efforts to combat inequality and discrimination, in particular the inequality and discrimination by which the most vulnerable persons and groups are affected;

(g) The establishment of the Judicial Assistance and Mediation Service in December 2014.

6. The Committee notes with satisfaction that the State party has extended a standing invitation for special procedure mandate holders of the Human Rights Council to visit the country.

C. Concerns and recommendations

Data collection

7. The Committee notes that, for philosophical and historical reasons, the State party does not collect data on the ethnicity of the people who live in its territory. However, the Committee is concerned that the State party has not developed precise criteria that make it possible to produce reliable statistics on the make-up of its population and stresses that, to identify and combat racial discrimination, it is important to have such statistics. In addition, it is regrettable that there are no recent and reliable economic and social indicators, for the country's ethnic groups in particular, enabling a comparison of the situation of the country's majority and minority population groups and thus that make it possible for the Committee to better assess the enjoyment by the latter groups of their economic, social and cultural rights in the State party (art. 2).

8. The Committee recommends that the State party conduct a more comprehensive analysis and develop tools that will provide an overview of the make-up of its population, in accordance with the Committee's general recommendation No. 8 (1990) on the interpretation and application of article 1 (1) and (4) of the Convention and paragraphs 10 to 12 of the Committee's revised reporting guidelines (CERD/C/2007/1). In this regard, the State party should provide information on mother tongues, languages commonly spoken or other indicators of ethnic diversity, together with any information about descent or national or ethnic origin derived from social surveys. In the absence of quantitative information, a qualitative description of the ethnic characteristics of the population should be supplied. Such information, including with regard to national minorities, should be obtained voluntarily, anonymously and on the basis of self-identification.

Domestic application of the Convention

9. The Committee notes the State party's recognition of the primacy of international treaties and agreements over domestic legislation and their direct application in domestic law upon their publication in the Official Gazette of the Principality of Andorra. It regrets, however, that the provisions of the Convention have not been invoked before national courts or applied by them in the only case of racial discrimination which has given rise to a trial (art. 2).

10. **The Committee recommends that the State party take appropriate measures, including through training, to ensure that judges, prosecutors and lawyers are sufficiently familiar with the provisions of the Convention to invoke them or have them applied by the courts. It also recommends that the State party conduct public campaigns on the provisions of the Convention. It calls on the State party to include specific examples of the application of the Convention by its courts in its next periodic report.**

Legislation and definition of racial discrimination

11. While noting the adoption of the Equal Treatment and Non-Discrimination Act, the Committee is concerned that the Act does not explicitly prohibit discrimination on grounds of national origin, colour or descent and is therefore not fully in line with article 1 of the Convention (arts. 1 and 2).

12. **The Committee recommends that the State party amend the Equal Treatment and Non-Discrimination Act to bring it fully into line with article 1 of the Convention.**

Institutional framework

13. The Committee notes the information provided by the State party on the activities and objectives of the Department for Equality Policies. It is nonetheless concerned by the lack of information on the Department's specialized expertise in combating racism and racial discrimination and in coordinating government action in that regard. The Committee regrets the lack of information on the effective setting up of the Observatory on Equality and on its duties.

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

(a) **Ensure the proper functioning and effectiveness of the Department for Equality Policies, making certain in particular that it has the expertise to combat racism and racial discrimination and coordinate government action in that regard;**

(b) **Provide, in its next periodic report, information on the operations of the Observatory on Equality, the effectiveness with which it is fulfilling its mandate and the activities it carries out or oversees, taking account of general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention.**

National human rights institution

15. The Committee welcomes the expansion of the mandate of the *Raonador del Cuitadà* to cover the combating of racism and intolerance and to permit the consideration of complaints of racial discrimination in both the public and private sectors. It also welcomes the information that the human and financial resources allocated to the institution are adequate. It is concerned, however, about the lack of visibility of the *Raonador del Cuitadà* and that institution's work in Andorran society, which could explain why no complaints of racial discrimination have been received by it in the past 21 years (art. 2).

16. **The Committee recommends that the State party amend its legislation to ensure that the *Raonador del Cuitadà* (Ombudsman) complies fully with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and that the necessary measures are taken to make the institution and its mandate and work more visible to the public, in particular to vulnerable persons and groups. The Committee requests the State party**

to describe in its next periodic report the activities undertaken by the *Raonador del Cuitadà* to combat racial discrimination, including an account of how the complaints of racial discrimination it receives are handled.

Complaints of racial discrimination

17. The Committee notes the extreme infrequency with which complaints of racial discrimination are made to the police and the courts (art. 4).

18. **With reference to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee reminds the State party that an absence of complaints or legal proceedings brought by victims of racial discrimination may reveal a lack of suitable legislation, ignorance of the legal remedies available, a lack of will on the part of the authorities to prosecute the perpetrators of such acts, a lack of trust in the criminal justice system or victims' fear of reprisals. The Committee requests the State party to ensure that there are appropriate provisions in domestic law and that members of the public know their rights. The Committee recommends that the State party undertake outreach campaigns to make certain that members of the public are aware of their rights and know how to lodge complaints of racial discrimination and gain access to judicial remedies. The Committee requests the State party to provide, in its next periodic report, information on complaints of racial discrimination brought before the relevant national and other courts, including statistics on the number of complaints, the types of complaint and the number of prosecutions and convictions of perpetrators, disaggregated by age, gender, ethnic and national origin of the victims. Information on the penalties imposed on the perpetrators of violations and the compensation granted to victims should also be provided.**

Aggravating circumstance for racially motivated crimes

19. The Committee notes that under article 30 (6) of the Criminal Code, discriminatory motives are aggravating circumstances applicable to all the offences specified in the Code. However, the Committee is troubled that the term "race" does not appear in the list of discriminatory motives (art. 4).

20. **The Committee recommends that the State party amend article 30 (6) of the Criminal Code to include race in the list of the discriminatory motives that aggravate liability for a criminal offence.**

Access to citizenship

21. The Committee notes that Andorran nationality may be acquired after 10 years of schooling (for a minor) or 3 years of marriage to an Andorran spouse. It is nonetheless concerned by the failure to amend the Qualified Act on Nationality, which requires 20 years' residence (arts. 2 and 5).

22. **In the light of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party consider amending the Qualified Act on Nationality to reduce the period of residence required for the acquisition of Andorran nationality.**

Situation of women belonging to vulnerable groups

23. The Committee notes the adoption of a comprehensive law on violence against women. It is nonetheless concerned by:

- (a) The large number of women migrants who are victims of violence;
- (b) The lack of information about the situation of women migrant workers in the workplace, the opportunities they are afforded for protection from occupational hazards, and about safety at work and mechanisms to protect them from lower wages and unfair dismissal;

(c) The lack of information on the situation of women belonging to minorities and the instances of multiple discrimination to which they may be subjected (art. 5).

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

(a) **Take measures to protect women migrants from gender-based violence and ensure that victims are provided with adequate legal, medical and psychosocial assistance, regardless of their immigration status, and that the perpetrators are held accountable;**

(b) **Ensure that the Labour Relations Code applies to women migrant workers, including domestic workers, and that they have access to means of lodging complaints with the courts to protect their rights;**

(c) **Include a gender perspective in all policies and strategies designed to combat racial discrimination with a view to eliminating the multiple forms of discrimination encountered by women belonging to minorities in particular.**

Discrimination in access to employment

25. The Committee is concerned about the lack of information on access to the labour market for persons of foreign origin, in particular those from countries outside the European Union, especially women (art. 5).

26. In the light of its general recommendations No. 30 (2004) on discrimination against non-citizens and No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party take all necessary measures to facilitate access to the labour market for persons of non-European Union origin, especially women. The Committee also recommends that the State party periodically evaluate the measures introduced to this end with a view to adjusting or improving them. Finally, the Committee recommends that the State party promote the effective application of labour legislation, provide judges, prosecutors and lawyers with training on this legislation and inform the Committee of cases related to discrimination in the labour market.

Trafficking in persons

27. The Committee welcomes the measures taken by the State party to combat trafficking in persons, not least the adoption of Act No. 9/2017 on Measures to Combat Trafficking in Persons and Protect Victims, the inclusion in the Criminal Code of provisions making trafficking in persons and related practices and trafficking in migrant workers in particular, a specific criminal offence, the development of a national protocol to strengthen mechanisms for the detection, identification, assistance and protection of victims of trafficking and to improve coordination among the various institutions involved in preventing and combating trafficking in persons and training officials of the Department for Equality Policies in matters related thereto. It also notes that no cases of trafficking in persons have been recorded in the State party. The Committee is nonetheless concerned about:

(a) The absence of studies and analyses that would make it possible to evaluate the scale of trafficking to, through and from the State party;

(b) The lack of a policy and coordination mechanism to effectively combat trafficking in persons;

(c) The lack of detailed information on the training of officials responsible for the implementation of Act No. 9/2017 and the provisions of the Criminal Code on the fight against trafficking in persons and related practices;

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

(a) **Conduct studies and analyses and systematically collect data, disaggregated by sex, age and origin, with a view to combating trafficking in persons more effectively;**

(b) **Adopt a national strategy and action plan to combat trafficking in persons, allocate sufficient human, technical and financial resources for the effective implementation of the strategy and the plan, ensure coordination among government security, justice and social service agencies in order to combat trafficking and enhance their cooperation with civil society;**

(c) **Scale up campaigns for the prevention of trafficking in migrant workers and take appropriate measures to counter the dissemination of misleading information regarding emigration and immigration;**

(d) **Ensure, through its national protocol, the early identification and referral of victims of trafficking, so that they receive adequate support and protection;**

(e) **Supply detailed information on the training of police officers and other law enforcement officials, border guards, immigration officers, judges, prosecutors, labour inspectors, teachers and health-care providers to ensure the effective application of domestic legislation designed to combat trafficking in persons;**

(f) **Conduct expeditious, effective and impartial investigations into all cases of trafficking in persons and other related offences, trafficking in migrant workers in particular, prosecute and punish the perpetrators and ensure that the penalties that are imposed are commensurate with the gravity of the offence;**

(g) **Step up international, regional and bilateral cooperation, including by exchanging information and harmonizing procedures, to prevent and combat trafficking in persons.**

Refugees and asylum seekers

29. The Committee notes the adoption of Act No. 4/2018, which makes it possible to provide temporary and provisional humanitarian protection to Syrian asylum seekers and of the measures that have been taken to facilitate the reception of such refugees and their integration into Andorran society. The Committee notes, however, that domestic law does not provide for the granting of asylum or refugee status and that there is no procedure for the determination of such status. In addition, it regrets the lack of information on measures to protect asylum seekers from refoulement, on their rights to information, interpretation services, free legal aid and humanitarian assistance or on the judicial remedies available (art. 5).

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

(a) **Adopt a law on asylum that is in line with international standards and put in place procedures for granting refugee status to persons who could qualify for that status;**

(b) **Provide information indicating to what extent the principle of non-refoulement is respected and whether appropriate information, interpretation services, free legal aid, humanitarian assistance and judicial remedies are available to asylum seekers;**

(c) **Ratify the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.**

Discriminatory stereotypes in the media

31. The Committee notes with satisfaction that the Act of 13 April 2000 on Public Broadcasting and Television states that public broadcasting and television services must ensure that their programmes and broadcasts abide by general principles, including respect for the principles of equality and non-discrimination. In addition, the Committee notes the training on racism and racial discrimination, combating exclusion and the perception of

differences offered to Andorran journalists and communication professionals. The Committee nonetheless regrets that there is no independent body to receive and consider complaints against the media for violations of domestic law, including racially discriminatory statements.

32. **In the light of its general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party establish an independent body to receive and consider complaints against all types of media and to monitor the media with a view to identifying any racially motivated hate speech or speech that serves as a vehicle for or incites racial discrimination or violence. It also recommends that the State party continue making efforts to provide journalists with training on the Convention and familiarize them with the principles thereof.**

D. Other recommendations

Ratification of other instruments

33. **As all human rights are indivisible, the Committee strongly encourages the State party to contemplate ratification of the international human rights instruments to which it is not yet a party, in particular those the provisions of which are of direct relevance to communities which may be subject to racial discrimination, such as the International Covenant on Economic, Social and Cultural Rights, 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 Disappearances and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.**

Follow-up to the Durban Declaration and Programme of Action

34. **In light of its general recommendation No. 33 (2009) concerning follow-up to the Durban Review Conference, the Committee recommends that the State party, in implementing the Convention, give effect to the Durban Declaration and Programme of Action adopted in September 2001 at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance and, at the same time, take account of the Outcome Document of the Durban Review Conference, held in Geneva in April 2009 and that it report back to the Committee on this matter in its next periodic report.**

International Decade for People of African Descent

35. **In light of General Assembly resolution 68/237, the Committee requests the State party to include in its next periodic report precise information about the specific measures it has adopted during the International Decade for People of African Descent, taking account of its general recommendation No. 34 (2011) concerning racial discrimination against people of African descent.**

Consultations with civil society

36. **The Committee recommends that the State party pursue and widen its dialogue with civil society organizations working to protect human rights, in particular those combating racial discrimination, when drawing up its next periodic report and taking action on these concluding observations.**

Amendment of article 8 of the Convention

37. **The Committee recommends that the State party ratify the amendment of article 8 (6) of the Convention, adopted on 5 January 1992 at the Fourteenth Meeting of States parties to the Convention and endorsed by the General Assembly in resolution 47/111.**

Action on these concluding observations

38. In accordance with article 9 (3) of the Convention and Rule 65 of its rules of procedure, the Committee requests the State party to supply, within one year of the adoption of these concluding observations, information on the action it has taken on the recommendations contained in paragraphs 24 (a) (women migrants belonging to vulnerable groups) and 30 (refugees and asylum seekers).

Paragraphs of particular importance

39. The Committee wishes to draw the State party's attention to the particular importance of the recommendations contained in paragraphs 14 (b) (institutional framework), 22 (access to citizenship), 26 (discrimination in access to employment) and 28 (trafficking in persons) and requests it to include in its next periodic report detailed information about the specific measures it has taken to give effect to them.

Dissemination of information

40. The Committee recommends that the State party make its reports available to the public as soon as they are submitted and disseminate the Committee's concluding observations thereupon in the official and other commonly used languages, as appropriate.

Preparation of the next periodic report

41. The Committee recommends that the State party submit its combined 7th to 8th periodic reports by 22 October 2023 taking account of the Guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. In light of General Assembly resolution 68/268, the Committee urges the State party to comply with the limit of 21,200 words for periodic reports.
