Committee on the Elimination of Racial Discrimination

Concluding observations on the combined tenth to twelfth periodic reports of Azerbaijan

1. The Committee considered the combined tenth to twelfth periodic reports of Azerbaijan, submitted in one document, at its 2903rd and 2904th meetings, held on 15 and 16 August 2022. At its 2920th meeting, held on 26 August 2022, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined tenth to twelfth periodic reports of the State party. It also welcomes the constructive dialogue with the State party’s high-level delegation and thanks the delegation for the information provided during the consideration of the reports and after the dialogue.

B. Positive aspects

3. The Committee welcomes the following legislative and policy measures taken by the State party:

   (a) The amendment to the Law on Medical Insurance, on 3 December 2019, which expands the insurance coverage to include refugees and stateless persons;

   (b) The adoption of the State programme for the development of the Azerbaijani justice system (2019–2023), in December 2018;

   (c) The Cabinet of Ministers decision of 21 July 2017, which repeals the requirement for parents to present residence registration papers before the issuance of a birth certificate for their child;

   (d) The Cabinet of Ministers decision of 29 December 2017 on the procedures for the social protection of children, which eliminates discrimination on the grounds of race, ethnicity and origin, among other grounds, for the enrolment of children in preschools.

C. Concerns and recommendations

Application of the Convention in the context of the 2020 hostilities and beyond

4. In light of the hostilities that erupted in and around Nagorno-Karabakh on 27 September 2020 and ended on 9 November 2020, and following the trilateral statement declaring a “complete ceasefire”, the Committee recalls that, in situations of armed hostilities,
the applicability of international humanitarian law does not preclude the application of international human rights law, including the Convention, which operates independently. The Committee also recalls the order on provisional measures, dated 7 December 2021, of the International Court of Justice, in the case Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan). The Committee notes the information provided by the State party’s delegation during the dialogue: in particular that since the eruption of hostilities on 27 September 2020, 11 cases had been investigated in relation to violations of articles 115.2, 115.4 and 254 of the Criminal Code by military personnel; on investigations conducted into videos that were circulated on social media showing military personnel subjecting prisoners of war to ill-treatment and torture; and on the prosecution of four military personnel for insulting the tombs or corpses of Armenian soldiers. The Committee also notes the information provided by the delegation that the State party welcomes a mission by the United Nations Educational, Scientific and Cultural Organization. While noting the efforts of the State party to ensure accountability for the violations, including the investigation of some incidents, the Committee is deeply concerned about:

(a) Allegations of severe and grave human rights violations committed during the 2020 hostilities and beyond by Azerbaijani military forces against prisoners of war and other protected persons of Armenian ethnic or national origin – including extrajudicial killings, torture and other ill-treatment and arbitrary detention, as well as the destruction of houses, schools and other civilian facilities;

(b) Reports on the destruction of and damage to Armenian cultural heritage, including to churches and other places of worship, monuments, landmarks, cemeteries and artefacts, and the lack of information on investigations carried out into such allegations;

(c) Incitement to racial hatred and the propagation of racist stereotypes against persons of Armenian national or ethnic origin, including on the Internet and social media, as well as by public figures and government officials, and the lack of detailed information on investigations, prosecutions, convictions and sanctions for such acts;

(d) The lack of an independent and comprehensive mechanism to investigate such reports of violations and to provide victims with redress and support (arts. 2, 5 and 6).

5. The Committee recommends that the State party:

(a) Strengthen its efforts to ensure accountability and end impunity, including by conducting effective, thorough and impartial investigations into allegations of violations of human rights against prisoners of war and other protected persons of Armenian ethnic or national origin, which include reports of summary executions, enforced disappearances, torture and other ill-treatment and arbitrary detention as well as the destruction of houses, schools and other civilian facilities, perpetrated by the Azerbaijani military forces in the context of the 2020 hostilities and beyond, and to prosecute those responsible, and appropriately punish those convicted;

(b) Take immediate steps to provide medical, psychological, material and other support for victims, as well as adequate reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;

(c) Investigate reports on the destruction of and damage to Armenian cultural heritage, including but not limited to churches and other places of worship, monuments, landmarks, cemeteries and artefacts, adopt measures to prevent such acts, facilitate the mission proposed by the United Nations Educational, Scientific and Cultural Organization to draw up a preliminary inventory of significant cultural properties, and strengthen its efforts to preserve these sites while ensuring effective and meaningful consultation with ethnic Armenian communities;

(d) Adopt measures to monitor and combat hate speech, incitement and promotion of racial hatred and discrimination, including on the Internet and social media as well as by its officials and public institutions, targeted at persons of Armenian national or ethnic origin, and ensure that such incidents are effectively, thoroughly and impartially investigated and, where appropriate, prosecuted and punished with penalties commensurate to the offences.
Statistics

6. The Committee notes the information provided by the delegation on the population census carried out in 2019, and that the data are being processed and the results will be published soon. Nevertheless, the Committee expresses its concerns about the lack of comprehensive statistics on the demographic composition of the population, disaggregated by ethnic or national origin, limiting the Committee’s ability to properly assess the situation of such groups, including their socioeconomic status, and any progress achieved by implementing targeted policies and programmes (arts. 1–2 and 5).

7. Recalling its guidelines for reporting under the Convention, the Committee recommends that the State party collect and provide to the Committee reliable, updated and comprehensive statistics on the demographic composition of the population, including on ethnic origin, based on the principle of self-identification, as well as on non-citizens, including refugees, asylum-seekers, migrants and stateless persons, together with socioeconomic indicators, disaggregated by ethnic origin, gender, age and region, in order to provide the Committee with an empirical basis to evaluate the enjoyment in the State party of the rights enshrined in the Convention.

Convention in the domestic legal order

8. While noting that, in accordance with article 148 of the Constitution, the Convention is an inalienable part of the State party’s domestic legal system, the Committee regrets the information that the Convention has not been invoked or applied in domestic courts (art. 2).

9. Recalling its previous recommendation, the Committee recommends that the State party conduct training programmes and awareness-raising campaigns for judges, prosecutors, lawyers and law enforcement officials, as well as for the general population, to ensure that the provisions of the Convention are invoked by and before domestic courts. It requests the State party to include in its next periodic report concrete examples of the application of the Convention by domestic courts.

Definition of racial discrimination

10. The Committee takes note of the information provided by the State party’s delegation on the legislative framework on equality and the prohibition of racial discrimination, and of the information on the drafting of the Law on Prevention and Elimination of Racial Discrimination, as anti-discrimination legislation. Nevertheless, the Committee is concerned about:

   (a) The absence of “colour”, “national origin” and “descent” as prohibited grounds of discrimination in the definition of racial discrimination provided in article 25 (3) of the Constitution;

   (b) Provisions of the Criminal Code which do not contain an explicit definition of racial discrimination on all grounds enumerated in article 1 of the Convention and do not expressly prohibit both direct and indirect racial discrimination in the public and private spheres (arts. 1–2 and 5).

11. The Committee recommends that the State party:

   (a) Review and amend its legal framework, particularly the Constitution and the Criminal Code, to bring them in line with the Convention;

   (b) Accelerate the adoption of the draft Law on Prevention and Elimination of Racial Discrimination, within a clear time frame and with effective and meaningful participation and consultation with civil society organizations and members of ethnic minorities, and ensure that it includes a definition of racial discrimination in line with article 1 of the Convention and that it expressly prohibits both direct and indirect racial discrimination in the public and private spheres.

3 CERD/C/2007/1, paras. 10–12.
4 CERD/C/AZE/CO/7-9, para. 18.
Special measures to address inequalities

12. The Committee is concerned that the amendment of the Constitution in September 2016 did not revise article 25 (4), which is interpreted by the State party as prohibiting the granting of advantages or privileges on grounds such as “race”, “ethnicity” or “origin” (arts. 1–2).

13. Recalling the relevant recommendation in its previous concluding observations\(^5\) and its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee recommends that the State party take measures to review its position with a view to allowing the implementation of special measures as a means of addressing the impact of structural discrimination on all vulnerable groups in the State party and to securing adequate advancement of these groups in conformity with articles 1 (4) and 2 (2) of the Convention.

National human rights institution

14. The Committee is concerned that the Human Rights Commissioner of Azerbaijan was downgraded to B status by the Global Alliance of National Human Rights Institutions in May 2018, due to the lack of institutional independence, particularly for not considering serious allegations of human rights violations committed by the State party, and for the lack of a transparent, participatory and merit-based process for the selection and appointment of the Commissioner (art. 2).

15. The Committee recommends that the State party adopt legislative and operational measures to strengthen the institutional independence of the Human Rights Commissioner of Azerbaijan and ensure that it is able to carry out its mandate in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including by introducing and implementing a transparent, participatory and merit-based process for the selection of the Human Rights Commissioner.

Complaints of racial discrimination

16. The Committee notes the information provided by the State party’s delegation during the dialogue on the procedures for submitting complaints and the time frame for their consideration under the Law on Citizens’ Appeals and on the ongoing process to draft the Law on Free Legal Aid. Nevertheless, the Committee remains concerned about:

   (a) The low number of complaints of racial discrimination, with only seven crimes related to racial discrimination having been investigated since 2020 and only one person having been convicted between 2016 and 2021 under article 283 of the Criminal Code for incitement to ethnic, racial, social or religious hatred or enmity;

   (b) The lack of detailed information on complaints of racial discrimination filed with the national courts and other relevant institutions, as well as on investigations, prosecutions, convictions, sanctions and the reparations provided to victims;

   (c) The absence of measures adopted to undertake studies to address the low level of complaints of racial discrimination, recommended by the Committee in its previous concluding observations (arts. 6–7).\(^6\)

17. 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 an absence of complaints and legal action relating to 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:

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\(^5\) CERD/C/AZE/CO/7-9, para. 8.
\(^6\) CERD/C/AZE/CO/7-9, para. 20.
(a) Advoct measures, with a clear time frame, to assess the effectiveness of remedies available to victims of racial discrimination, including by conducting surveys and collecting information on inter-ethnic relations and racial discrimination, including stereotypes, and in doing so ensure effective and meaningful consultation with and participation of civil society organizations and persons belonging to ethnic minority groups;

(b) Conduct training programmes for police officers, prosecutors and other law enforcement officials on the identification and registration of incidents of racial discrimination;

(c) Undertake public education campaigns on the rights enshrined in the Convention and on how to file complaints of racial discrimination, particularly among Roma communities, stateless persons and migrant workers;

(d) Strengthen the legal assistance system;

(e) Accelerate the finalization and adoption of the draft Law on Free Legal Aid;

(f) Establish a mechanism for collecting statistics on complaints of racial discrimination submitted to the national courts and other relevant institutions, on investigations, prosecutions, convictions and sanctions imposed, and on the reparations provided to victims, disaggregated by age, gender and ethnicity, and include those data in its next periodic report.

Racist hate speech and hate crime

18. The Committee appreciates the information from the delegation on the amendments to article 283 of the Criminal Code to impose stricter penalties for incitement to ethnic, racial, social or religious hatred or enmity, as well as on the amendment of 17 March 2020 to the Law on Information, Informatization and Protection of Information to prohibit Internet providers and individuals from distributing any information promoting violence and religious extremism or inciting national, racial or religious hatred and enmity, including on the Internet and social media. However, the Committee remains concerned:

(a) That the national legislative framework, including the Criminal Code, the Non-Governmental Organizations Act and the Law on Information, Informatization and Protection of Information, does not contain provisions that expressly criminalize racist hate speech and hate crimes in accordance with article 4 of the Convention and does not include all grounds of discrimination recognized in article 1 of the Convention;

(b) At the low level of reporting of racist hate speech and hate crimes and the lack of detailed information, including statistics, on investigations and prosecutions carried out and sanctions imposed against those responsible;

(c) At the lack of information on measures taken to monitor the spread of hate speech on the Internet and social media (arts. 4 and 6–7).

19. Recalling the relevant recommendation in its previous concluding observations and its general recommendations No. 7 (1985) relating to the implementation of article 4 of the Convention, No. 15 (1993) on article 4 of the Convention and No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party:

(a) Review its legislative framework, particularly the Criminal Code, to explicitly criminalize racist hate speech and hate crimes in line with article 4 of the Convention and to include all grounds of discrimination recognized in article 1 of the Convention;

(b) Take effective measures to encourage the reporting of racist hate speech and hate crimes, including online, to ensure the availability and accessibility of reporting channels, and to collect data on complaints of racist hate speech and racially

7 CERD/C/AZE/CO/7-9, para. 20.
motivated crimes, on prosecutions, on convictions and on penalties imposed for such acts, and include these data in its next periodic report;

(c) Provide training for the police, prosecutors and judges on the proper methods for identifying, registering, investigating and prosecuting cases of racist hate speech and hate crimes.

Civil society organizations

20. The Committee is concerned about reports that the State party denied the registration of numerous new civil society organizations, including those working on the rights of ethnic minorities, and about the complex administrative regulations and procedures for the registration of civil society organizations and their inability to operate freely due to restrictions imposed, such as travel bans and asset freezing (art. 5).

21. The Committee recommends that the State party take measures, including legislative measures, to ensure an open space for the operation of civil society organizations, in particular those working on the rights of ethnic minorities, and to remove complex regulations and administrative procedures for the registration of civil society organizations.

Freedom of expression

22. The Committee remains concerned that the provisions of article 283 of the Criminal Code punishing “humiliation of national dignity” may be subject to arbitrary interpretations and lead to disproportionate interference with the right to freedom of expression, despite the information by the State party’s delegation that only one person was convicted between 2016 and 2021 under this article. The Committee is also concerned about reports that human rights defenders, members of civil society organizations and journalists have increasingly become targets of intimidation, surveillance, harassment, threats and reprisals, as a consequence of their work to promote and protect the rights of persons belonging to groups vulnerable to racial discrimination (art. 5).

23. Recalling the relevant recommendation in its previous concluding observations, the Committee recommends that the State party review and amend article 283 of the Criminal Code to prevent arbitrary interpretations and disproportionate interference with the right to freedom of expression of human rights defenders, members of civil society organizations and journalists. It also recommends that the State party conduct effective, thorough and impartial investigations into all reported cases of arbitrary detention, intimidation and harassment of, and threats and reprisals against, human rights defenders, journalists and members of civil society organizations.

Minorities in political and public affairs

24. The Committee is concerned that only a few members of ethnic minorities are part of the State party’s judiciary. It is also concerned about the lack of detailed information on the presence of ethnic minorities in the public sector, elected bodies, and decision-making and high-ranking positions, particularly among women (arts. 1–7).

25. The Committee recommends that the State party adopt measures to ensure fair and equitable representation of ethnic minorities, including women, in the public sector, elected bodies, and decision-making and high-ranking positions, including through special measures and by identifying and removing barriers that members of ethnic minorities face in this respect.

Languages of ethnic minorities

26. The Committee takes note of the information on articles 21 and 45 of the Constitution, which guarantee the free use and development of languages other than Azeri and promote the right to be raised and receive an education in one’s mother tongue, and on article 7 of the Law on Education, which allows education in languages other than Azeri. The Committee

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8 CERD/C/AZE/CO/7-9, para. 14.
also notes that Russian and Georgian are provided in secondary schools as languages of instruction. However, the Committee is concerned about reports that:

(a) Teaching of the languages of ethnic minorities is reduced in school programmes to a few hours per week or relegated to extracurricular classes, and there are insufficient human and financial resources for teaching these languages in schools and insufficient availability of school textbooks;

(b) Some ethnic minorities’ languages are at risk of disappearing due to their marginalization in the media, the education system, and public and political life (arts. 1–7).

27. The Committee recommends that the State party develop and adopt legislative and policy measures, including special measures, with effective and meaningful consultation with ethnic minorities and civil society organizations, to protect and preserve the languages of ethnic minorities. The Committee also recommends that the State party adopt measures to strengthen the access to mother tongue education in schools for children belonging to ethnic minorities, and increase the human, technical and financial resources for quality instruction in the languages of ethnic minorities.

Situation of Roma and Dom communities

28. The Committee is concerned about the lack of detailed information and official statistics on the situation of Roma and Dom communities in the State party, particularly on their social and economic situation. It is also concerned about the stigmatization, harassment and discrimination against Roma and Dom communities, which are reportedly affected by extreme poverty, high levels of unemployment and low levels of education among children, and whose members face obstacles in obtaining identity documents and in accessing health care and medical services, particularly Roma women (arts. 2 and 5).

29. Recalling its general recommendation No. 27 (2000) on discrimination against Roma and its general recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials, the Committee recommends that the State party adopt and implement a comprehensive policy to address the structural discrimination faced by Roma and Dom communities to ensure their access to education, employment, health care and housing and ensure that all members of the Roma and Dom communities are granted official identity documents. It also recommends that the State party take measures to address stigma and negative stereotypes against Roma and Dom persons, including by adopting legislative and operational measures against racial profiling. The Committee further recommends that the State party include, in its next periodic report, statistics about the Roma and Dom communities, particularly concerning their economic, social and cultural situation.

Refugees, asylum seekers and stateless persons

30. The Committee notes the information on the repeal of the requirement for parents to present residence registration papers before the issuance of a birth certificate for their child, in accordance with the decision of the Cabinet of Ministers of 21 July 2017. Nevertheless, the Committee is concerned about information provided by the delegation during the dialogue that the requirement to possess identity documents remains an obstacle to stateless women, asylum seekers and undocumented migrants registering their children and obtaining a birth certificate for them. The Committee is also concerned about reports that refugees, asylum seekers and stateless persons still face obstacles in their access to education and health services (arts. 2 and 5).

31. Recalling the relevant recommendation in its previous concluding observations, the Committee recommends that the State party continue to develop effective measures to ensure birth registration and issue birth certificates for all children without discrimination, and irrespective of the possession of identity documents by their mothers, including mothers who are asylum seekers or undocumented migrants. It also recommends that the State party strengthen its efforts to resolve the remaining

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* 9 CERD/C/AZE/CO/7-9, para. 32.
statelessness cases, including by developing and adopting a legislative framework for a statelessness determination procedure to enable all stateless persons, without discrimination, to have their status ascertained and to obtain identity documents. It further recommends that the State party adopt measures to ensure that refugees, asylum seekers and stateless persons can enjoy their economic and social rights without discrimination, in particular their access to education and health-care services.

Migrant workers

32. The Committee is concerned about reports that migrant workers face harsh working conditions, abuse and exploitation, are subjected to discrimination, including with regard to remuneration, and are vulnerable to trafficking. The Committee is also concerned about the barriers to migrant workers – particularly undocumented migrants – accessing justice and remedies (art. 5).

33. Recalling the relevant recommendation in its previous concluding observations,10 the Committee recommends that the State party adopt measures to combat abuse and exploitation of migrant workers, including by assessing and reviewing the employment framework on migrant workers to reduce their vulnerability to exploitation and abuse, particularly by their employers. It also recommends that the State party adopt measures to ensure the access of migrant workers to justice, irrespective of their status, including to free legal aid, and that it conduct awareness-raising campaigns among migrant workers on their rights and on existing remedies. The Committee recommends that the State party provide, in its next report, information on the number of investigations into trafficking, and the number of prosecutions and convictions of perpetrators, particularly in cases affecting migrant workers.

Training, education and other measures to combat prejudice and intolerance

34. The Committee notes the information from the delegation during the dialogue that the Ministry of Education and Science reviews school textbooks every four years, with the aim of addressing human rights issues and increasing the knowledge of teachers and children. Nevertheless, the Committee is concerned about reports that school textbooks promote prejudice and incite racial hatred, particularly against ethnic Armenians, and that ethnic minorities are marginalized in history education in the State party. It is also concerned about the lack of detailed information on measures taken by the State party to combat prejudice and intolerance and to incorporate human rights principles into school curricula and university programmes (art. 7).

35. In light of the multi-ethnic, multicultural and religiously diverse nature of the population of the State party, and its different historical experiences, the Committee recommends that the State party increase its efforts to raise public awareness of the importance of ethnic and cultural diversity and the fight against racial discrimination. It also recommends that the State party adopt measures to strengthen the school textbooks review process in order to integrate the concepts of ethnic and cultural diversity and the fight against racial hatred and discrimination at all levels of education. The Committee further recommends that the State party adopt measures to ensure that history is taught in such a way as to prevent a dominant historical narrative and ethnic hierarchizing, while ensuring the effective and meaningful participation of the ethnic minorities.

D. Other recommendations

Ratification of other treaties

36. 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

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10 CERD/C/AZE/CO/7-9, para. 34.

Amendment to article 8 of the Convention

37. The Committee recommends that the State party ratify the amendment to article 8 (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.

Follow-up to the Durban Declaration and Programme of Action

38. 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

39. 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. 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

40. 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 and including organizations representative of the groups most exposed to racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.

Dissemination of information

41. 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

42. The Committee encourages the State party to update its common core document, which dates to 2018, 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. In light of General Assembly resolution 68/268, the

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11 HRI/GEN/2/Rev.6, chap. I.
Committee urges the State party to observe the limit of 42,400 words for such documents.

Follow-up to the present concluding observations

43. 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 19 (b) and (c), 23 and 31 above.

Paragraphs of particular importance

44. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 5 (application of the Convention in the context of the 2020 hostilities and beyond), 7 (statistics) and 33 (migrant workers) 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

45. The Committee recommends that the State party submit its combined thirteenth and fourteenth periodic reports, as a single document, by 15 September 2025, taking into account the reporting guidelines adopted by the Committee during its seventy-first session 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.

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12 CERD/C/2007/1.