



International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
22 September 2014

Original: English

Committee on the Elimination of Racial Discrimination

Concluding observations on the combined fifteenth to twenty-first periodic reports of Iraq*

1. The Committee considered the combined fifteenth to twenty-first periodic reports of Iraq (CERD/C/IRQ/15–21), submitted in one document, at its 2307th and 2308th meetings (CERD/C/SR.2307–2308), held on 19 and 20 August 2014. At its 2319th meeting held on 27 August 2014, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined fifteenth to twenty-first periodic reports of Iraq. Furthermore, while it regrets the late submission of the report, it expresses its appreciation for the presentation given by the State party's high-level delegation, despite the difficult circumstances in the country, and the open and constructive dialogue as well as for the answers given to the many questions put by the Committee.

B. Positive aspects

3. The Committee notes with interest the legislative and institutional progress made by the State party since its last periodic report, which should contribute to combating racial discrimination, particularly:

(a) Adoption of the National Plan on Human Rights (2010–2014), as well as the Kurdistan Region Action Plan for Human Rights (2013);

(b) Decision of the Iraqi Supreme Criminal Tribunal in 2010, finding the forcible removal of Faili Kurds during the previous regime and the confiscation of their belongings to be crimes of genocide, and the establishment of a governmental committee aimed at responding to violence against Faili Kurds in 2013;

(c) Adoption of Act No. 53 (2008) establishing the Iraqi High Commission for Human Rights, and Act No. 4 (2010) establishing the Independent Board of Human Rights in the Kurdistan Region;

(d) Adoption of the Transnational Administration Act in 2004;

* Adopted by the Committee at its eighty-fifth session (11–29 August 2014).



(e) Establishment of different bodies aimed at investigating past human rights violations, including the Committee for the implementation of article 140 of the Constitution; the Martyrs Foundation, the Political Prisoners Foundation, and the Iraqi Property Claims Commission.

4. The Committee welcomes the fact that during the period under consideration the State party had ratified or acceded to the following international instruments:

(a) Convention on the Rights of Persons with Disabilities, in 2013;

(b) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2011;

(c) International Convention for the Protection of All Persons from Enforced Disappearance, in 2010;

(d) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2008;

(e) United Nations Convention against Transnational Organized Crime, in 2008; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention against Transnational Organized Crime, in 2009; Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organized Crime, in 2009.

C. Factors and difficulties impeding the implementation of the Convention

5. The Committee notes the persistence of terrorist attacks and the recent intensification of clashes between the Iraqi armed forces and the terrorist group calling itself the “Islamic State”. It further notes that in the past weeks thousands of civilians have been killed or at risk of death, and over 650,000 people have been internally displaced, most of them belonging to ethno-religious minority groups. The Committee acknowledges that the conflict severely restricts the State party’s control over important parts of its territory and is, consequently, unable to ensure the full application of the Convention. Taking into consideration the long-standing human rights issues in the State party, the Committee is particularly concerned that the ongoing conflict has a grave impact on a variety of minority groups. It reminds the State party that it bears the primary responsibility to protect all persons on its territory without discrimination in accordance with the Convention.

D. Issues of concern and recommendations

Democratic transformation process and inter-ethnic relations

6. The Committee appreciates the efforts embarked upon by the State party to establish peace and restore the rule of law over the past decade, as well as to address past human rights violations. However, the Committee expresses its serious concern about the:

(a) Emergence of sectarian insurgency in the State party since 2003 leading to increased attacks against members of ethnic or ethno-religious minorities, their holy sites and businesses, including those of Assyrians, Chaldeans, Faili Kurds, Shabak, Syriac, Turkmen and Yezidis in particular in Baghdad, Kirkuk city, the Nineveh Plain and other parts of the territory in which many minority communities reside;

(b) Inadequate response of the State party to such attacks that reportedly lead to virtual impunity;

(c) Failure of subsequent governments after the fall of the previous regime to establish an inclusive government resulting in deepening the division in Iraqi society among sectarian and ethnic lines;

(d) Alarming decrease in minorities' populations in Iraq since 2003, for instance the Sabeen Mandaean community reduced to a tenth of its pre-2003 size and the Assyrians to less than a third; 2010 surveys and other sources of information indicate that most members of minority groups fear for their personal security, principally Assyrians, Black Iraqi, Shabak, Turkmen and Yezidis; and some minority languages, such as Shabak and Mandaean, are at risk of extinction;

(e) Direct targeting by the "Islamic State" of ethno-religious minority groups which represent a high proportion of the internally displaced persons (arts. 1, 2 and 5).

The Committee urges the State party to recognize national reconciliation as a priority goal. To this end, it should:

(a) Establish an inclusive government representative of the various political and ethno-religious groups of Iraq, including women, and take effective measures to rebuild confidence between ethno-religious minority groups and the central authority while ensuring genuine engagement and representation of all communities concerned;

(b) Acknowledge the historic discrimination in Iraq perpetrated against various marginalized minority groups and study the root causes of that discrimination and its multifaceted impact on those groups; particular attention should be given to the fact that most members of minority groups, in particular in the Nineveh Plain, had already feared for their safety before the recent conflict erupted and were also the first to suffer from the brutal invasion of the "Islamic State" and the lack of protection by the State party;

(c) Develop and adopt a policy and programmes to combat racial discrimination, allocate sufficient resources thereto and periodically evaluate its effectiveness for the persons or groups particularly targeted, and include information in the next periodic report on measures taken in this regard and results achieved;

(d) Once control over the territories overtaken by the "Islamic State" is regained by the Government of the State party, accelerate the legal process necessary to resolve the issue of the disputed territories between the Central Government of Iraq and the Regional Government of Kurdistan in line with article 140 of the Constitution, with a view to ensuring minorities' security. In doing so, the State party should engage with and involve minority communities living in the disputed territories;

(e) Adopt protection measures to improve the security of minority communities, in consultation with the communities concerned, and launch independent investigations into past ethno-religious-based attacks, bring perpetrators to justice and, if convicted, punish them adequately and provide compensation to the victims;

(f) Take immediate measures to protect and maintain the diversity of languages, religions, ethnicities and cultures in Iraq that has existed for hundreds of years.

Relevant statistical data

7. The Committee regrets the absence of information on the ethnic composition of the population, including relevant socioeconomic indicators to assess the equal enjoyment by

all of the rights covered by the Convention. The Committee also expresses its concern about the continued delay in holding a nationwide census in Iraq (arts. 1 and 5).

In view of the ethno-religious diversity of the State party's population, drawing attention to the revised guidelines for reporting under the Convention (CERD/C/2007/1, paras. 10–12) and recalling its general recommendation No. 24 (1999) on reporting of persons belonging to different races or national/ethnic groups, the Committee requests the State party to collect and publicize reliable statistical data on the ethnic composition of its population as well as on the social and economic situation of the different ethnic and ethno-religious groups, disaggregated by areas where minority groups live in substantial numbers covering the whole territory of the State party, in order to provide an adequate basis for policies to enhance the equal enjoyment of rights under the Convention in the State party. It also encourages the State party to expedite the process of holding a nationwide census.

Status of the Convention in domestic legal order

8. The Committee notes the information provided by the State party's delegation that, according to article 8 of its Constitution, it is bound to respect its international obligations. However, the Committee remains concerned that, in order for the provisions of the Convention to become an integral part of national law and take precedence over competing national provisions, the Convention must be incorporated into domestic law, which has not yet been done by the State party (art. 2).

The Committee encourages the State party to pursue its intention to incorporate the Convention into its domestic law and take all legislative and other measures necessary to render the provisions of the Convention part of the national legal order with a view to allowing victims of discrimination to invoke the Convention in national courts.

Prohibition of racial discrimination and legal reform

9. While acknowledging the efforts invested in carrying out legal reform by reviewing existing laws and introducing new draft laws aimed at providing a better legal framework for the protection and advancement of various groups of minorities, the Committee is concerned about the:

- (a) Slow pace of reform;
- (b) Absence of a prohibition of racial discrimination and of racial hate speech in the State party's Criminal Code in line with articles 1, paragraph 1, and 4 of the Convention;
- (c) Non-compliance of the draft Anti-Discrimination and Labour laws with the Convention's provisions;
- (d) Fact that discriminatory laws are still in place, including the Social Protection Law (1971) that excludes some groups of persons from its protection (arts. 1, 2, 4 and 6).

The Committee urges the State party to give priority to, and accelerate the process of, legal reform, and to this end ensure that:

- (a) The draft law on the Protection of Religious and Ethnic Minority Group Rights is finalized and entered into force without further delay;**
- (b) The Criminal Code is amended to include an explicit provision on the prohibition of racial discrimination in line with article 1, paragraph 1, of the Convention;**
- (c) The draft Anti-Discrimination law complies fully with article 4 of the Convention in accordance with the Committee's general recommendation No. 35**

(2013) on combating racist hate speech, and inter alia provides for effective remedy for victims of racial discrimination, does not criminalize or punish unsuccessful discrimination claimants, and is supported by strong, effective and accessible enforcement mechanisms;

(d) The draft Labour law includes provisions clearly defining and prohibiting direct and indirect discrimination for all workers and at all stages of employment;

(e) All discriminatory laws are abrogated, and the new draft Social Protection law applies to all persons without discrimination; and

(f) The same legal framework to prohibit and combat racial discrimination in accordance with the Convention is developed and applied in the Kurdistan Region.

National human rights bodies

10. The Committee notes the establishment of the High Commission for Human Rights of Iraq in accordance with Law No. 53 (2008) and the Independent Board of Human Rights in the Kurdistan Region in accordance with Law No. 4 (2010) as well as the cooperative approach taken by the two institutions. However, it expresses concern about the continued delays in establishing central and regional offices for the High Commission and in appointing its Chair, and about its reported lack of independence and limited resources (art. 2).

The Committee encourages the State party to further strengthen the High Commission for Human Rights' mandate to effectively promote human rights and fight against all forms of racial discrimination, and to continue supporting the cooperation between the High Commission and the Independent Board of Human Rights. It also requests the State party, including the Kurdistan Regional Government, in line with its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate implementation of the Convention, to provide the High Commission and the Independent Board in Kurdistan Region with adequate financial and human resources, and to ensure its compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), and to take effective steps to ensure that both bodies enjoy public confidence and full independence.

Ethnic composition of security and police apparatus

11. The Committee notes with concern that, despite provisions in the Constitution requiring equitable composition of the State party's various components within the security services sector, there remains a disproportionately low representation of ethno-religious minorities in security and police forces, particularly within the Nineveh Plain, as well as in high-ranking positions of command and authority. The Committee is also concerned about the emergence of new armed militias formed on a sectarian basis (arts. 2 and 5).

The Committee recommends that the State party take special measures to better ensure that ethno-religious minorities are adequately represented at all levels of the Government's security and police forces, including in positions of command and authority, by engaging inter alia with such communities through effective outreach and recruitment. The State party should also ensure that all units of the Iraqi armed forces are organized on a strictly non-sectarian basis and remain within a chain of command that is transparent and accountable to the Government and the Council of Representatives.

Representation of minorities in political life

12. The Committee is concerned that the current electoral laws are inadequate as they make it difficult for minority ethnic groups to attain political representation in proportion to their representation in society, and that quotas allocated to some minority communities are too low (arts. 2 and 5).

The Committee recommends that the State party amend the electoral laws and increase the number of reserved seats for minorities, including minorities not benefiting from the quota system, guaranteeing the representation of the different components of the population in proportion to their real demographic weight. The State party should also abide by the 2010 Federal Court ruling which requires that the number of seats reserved for the Yezidis be increased.

Racial discrimination in the exercise of the freedom of religion or belief

13. Bearing in mind the intersectionality between ethnicity and religion in the State party, the Committee is concerned about information received from civil society according to which children of ethno-religious minority groups one or both of whose parents have converted to Islam, are banned from reverting to their original religion, such predicament having a far more reaching impact on girls who face difficulties in getting married when reaching adulthood (arts. 2 and 5).

The Committee calls upon the State party to ensure that personal status laws guarantee the freedom of religion to everyone, in line with article 14 of the Constitution without discrimination.

The situation of Black Iraqi and Roma communities

14. The Committee notes that the Black Iraqi and Roma communities are negatively affected by poverty and social exclusion. According to the data provided by civil society, the unemployment rate among Black Iraqis could be as high as 80 per cent while Roma are also disproportionately unemployed; high proportions of Black Iraqis and Roma communities live in deplorable conditions, lacking access to basic needs, such as water, electricity, health care and adequate food; and high illiteracy rates are common within both communities while in many Roma villages primary education facilities do not exist (arts. 2 and 5).

The Committee urges the State party to anchor the fight against inequality and the development of marginalized areas in its poverty and illiteracy reduction strategies. Furthermore, in the light of its general recommendations Nos. 32 (2009) on the meaning and scope of special measures in the Convention, 27 (2000) on discrimination against Roma and 34 (2011) on racial discrimination against people of African descent, the Committee recommends that the State party take concrete special measures to alleviate the precarious socioeconomic situation of Black Iraqi and Roma, with a view to improving their living conditions, including access to mainstream and higher education, adequate housing, health services and employment without prejudice or stereotyping. Further measures should be taken to address the root causes of the poverty and marginalization of the Black Iraqi and Roma communities, including any indirect discrimination they may face.

Information on cases related to racial discrimination

15. The Committee regrets that data on cases related to racial discrimination brought before domestic courts and corresponding decisions were not included in the State party report, in spite of the Committee's recommendation to that effect (CERD/C/304/Add.80, para. 20) (arts. 5–6).

Referring 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 calls on the State party, including the Kurdistan Regional Government, to take all necessary measures to ensure the reporting of acts of racial discrimination, and recommends that the State party provide comprehensive data on this in its next periodic report, including data on cases related to racial discrimination, in particular their nature, and the sanctions issued and reparation provided to victims.

Women belonging to minority groups

16. The Committee notes with concern that women belonging to minority groups face multiple forms of discrimination. For example, it is reported that Yezidi women suffer from a higher suicide rate; that minority women in marginalized areas, such as Black Iraqi and Roma women, are less employed outside the house and more illiterate than women belonging to the majority population; and that child marriage is more common among these groups of women. The Committee also expresses concern about lack of information on the impact the national strategy for the advancement of women may have had on minority women (art. 5).

The Committee draws the attention of the State party to its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and urges it to evaluate and monitor racial discrimination against women, particularly women belonging to minority groups. The State party has the obligation to guarantee the right of everyone to the enjoyment of human rights without discrimination based on gender, race, colour or national or ethnic origin. Finally, the State party is requested to integrate a minority-women perspective in all gender-related policies and strategies and report to the Committee on progress achieved with respect to women belonging to minority groups.

Citizenship and nationality

17. The Committee expresses concern about reports on the unequal application of the Nationality Law to Palestinian refugees. The Committee is also concerned that many Faili Kurds, who were stripped of their Iraqi citizenship in the 1980s, have not been able to reinstate their citizenship and face serious obstacles in proving their citizenship eligibility due to lack of documentation. The Committee is further concerned that Shabak and Yezidis are not recognized as distinct ethnic groups by the Kurdistan Regional Government, despite the fact that many members of these groups do not identify themselves as Kurds (art. 5).

The Committee urges the State party to ensure that laws and regulations relating to acquiring, reinstating and transmitting of nationality apply to all persons without discrimination. The Committee also requests the State party to expedite the process of reinstating Faili Kurds' citizenship, by means other than documentation. The Committee further urges the Regional Government of Kurdistan to recognize the Shabak and Yezidis living in their region as distinct ethnic groups and accordingly to extend to them the rights accorded by articles 5, 14, 35 and 36 of the Kurdish Constitution.

Refugees and internally displaced persons

18. The Committee appreciates the hosting of more than 220,000 Syrian refugees by the State party, mainly within the Kurdistan Region of Iraq, and acknowledges the difficulty in catering for more than 1.5 million internally displaced persons. However, it remains concerned about:

- (a) The inadequate legal framework to ensure protection of refugees;
- (b) The exclusion of Syrian refugees from the refugee law reach, and reports of ethnic-based violence against Palestinian and Syrian refugees;
- (c) The difficult situation of Iranians held in the former Ashraf camp;
- (d) The fact that the majority of internally displaced persons belong to ethnic, religious and native communities and that they endure dire conditions, including limited access to humanitarian aid and non-availability of basic needs;
- (e) Reports on enforcing rules and regulations of entry for internally displaced persons into the Kurdistan Region along ethnic and sectarian lines, in particular Arabs fleeing the conflict zone, and the confiscation of identity documents of persons belonging to other ethnic groups (art. 5).

The Committee calls upon the State party to:

- (a) Finalize the draft Refugee law which should be brought into line with international refugee standards, and accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol;**
- (b) Ensure that all refugees are treated without discrimination and enjoy equal protection from the law;**
- (c) Respect the principle of non-refoulement with respect to Iranians held in the former Ashraf camp;**
- (d) Prevent and respond to ethnically based violence targeted at refugees;**
- (e) Seek assistance from and cooperate with neighbouring countries as well as with United Nations and other refugee and humanitarian agencies with a view to reaching all refugees and internally displaced persons, protecting them and providing them with basic needs;**
- (f) Ensure the right to freedom of movement and residence within the State party of all individuals regardless of their racial, ethnic or ethno-religious background.**

E. Other recommendations

Ratification of other treaties

19. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), and International Labour Organization Convention No. 189 (2011) concerning decent work for domestic workers. The Committee also requests the State party to consider acceding to the Rome Statute of the International Criminal Court (1998).

Follow-up to the Durban Declaration and Programme of Action

20. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party, when implementing the Convention in its domestic legal order, 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, taking into account the outcome document of the Conference, which was 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.

Consultation with organizations of civil society

21. The Committee recommends that the State party consult and expand its dialogue with civil society organizations working in the area of the protection of human rights, in particular in combating racial discrimination, in connection with the implementation of the present concluding observations and the preparation of the next periodic report.

Declaration under article 14 of the Convention

22. The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention.

Dissemination

23. The Committee recommends that its reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to those reports continue to be widely disseminated in the official and other commonly used languages, as appropriate.

Common core document

24. The Committee encourages the State party to submit a 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).

Follow-up to concluding observations

25. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information on its follow-up to the recommendations contained in paragraphs 6 and 18 above within one year of the adoption of the present concluding observations.

Paragraphs of particular importance

26. The Committee also wishes to draw the attention of the State party to the particular importance of its recommendations in paragraphs 7, 10, 11 and 16 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.

Preparation of the next periodic report

27. The Committee recommends that the State party submit its twenty-second to twenty-fifth periodic reports in a single document, due on 13 February 2017, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60 to 80 pages for the common core document (see the harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para. 19).