



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 initial report of San Marino*

1. The Committee considered the initial report of San Marino at its 3055th and 3056th meetings, held on 11 and 12 April 2024.^{1,2} At its 3072nd meeting, held on 24 April 2024, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's initial report, albeit after a delay. It also welcomes the constructive dialogue with the State party's delegation and thanks the delegation for the information provided during the consideration of the report and for the additional written information submitted in writing after the dialogue.

B. Positive aspects

3. The Committee welcomes the State party's ratification of the following international instruments:

(a) The Convention against Discrimination in Education, on 11 March 2020;

(b) The Violence and Harassment Convention, 2019 (No. 190), of the International Labour Organization, on 14 April 2022.

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

(a) Law No. 1/2019 of 28 March 2019 amending the Declaration on Citizens' Rights and the Fundamental Principles of the San Marino Legal Order to expand the list of prohibited grounds for discrimination under article 4;

(b) Delegated decree No. 62/2024 of 20 March 2024 amending Law No. 97/2008 of 20 June 2008 on the prevention of violence against women and gender-based violence;

(c) Delegated decree No. 102/2021 of 4 June 2021 on the teaching of the Spanish language and culture in upper secondary schools.

C. Concerns and recommendations

Data collection

5. The Committee notes the data provided by the State party and its concerns with regard to respect for people's private life, which limit the collection of statistics disaggregated on

* Adopted by the Committee at its 112th session (8-26 April 2024).

¹ CERD/C/SMR/1.

² See CERD/C/SR.3055 and CERD/C/SR.3056.



the basis of the grounds for discrimination referred to in article 1 of the Convention. The Committee regrets that such data were not available, which prevented it from verifying that various groups enjoy their rights under the Convention (arts. 1 and 2).

6. **Recalling its guidelines for reporting under the Convention,³ the Committee recommends that the State party collect anonymous, reliable and up-to-date statistics on socioeconomic indicators, disaggregated by mother tongue, languages commonly spoken or other indicators of ethnic diversity, in order to provide an adequate empirical basis for assessing policies and measures aimed at ensuring the equal enjoyment of all the rights protected under the Convention by all the groups of people living in its territory, without discrimination.**

Legislation against racial discrimination

7. The Committee is concerned that article 4 of the Declaration on Citizens' Rights and the Fundamental Principles of the San Marino Legal Order does not provide for the equality of all persons before the law. Instead, this article provides for equality before the law without distinction on the basis of sex, sexual orientation or personal, economic, social, political or religious conditions. The Committee notes that the expression "personal conditions" has been interpreted broadly to include racial discrimination, but it remains concerned that this provision does not explicitly include all the grounds for discrimination listed in article 1 of the Convention. The Committee is also concerned that the title of the Declaration, its preamble and each of the rights established therein are specific to citizens, which is a clear indication of inequality between citizens and non-citizens (art. 1).

8. **The Committee recommends that the State party review its legislation in order to guarantee equality before the law for all persons on its territory and that it define and clearly and expressly prohibit direct and indirect discrimination in the public and private spheres on the basis of race, colour, descent or national or ethnic origin, in accordance with article 1 of the Convention.**

Implementation of the Convention

9. The Committee notes that the Convention may be invoked and directly applied by the national courts, pursuant to article 1 (4) of the Declaration on Citizens' Rights and the Fundamental Principles of the San Marino Legal Order. It also notes that complaints can be submitted to the Captains Regent and the Authority for Equal Opportunities, established pursuant to Law No. 97/2008 of 20 June 2008. The Committee regrets the lack of disaggregated data on the number and type of complaints of racial discrimination and is concerned by the information provided indicating that few cases are brought before the courts. It also regrets the lack of information on measures taken to guarantee access for victims of racial discrimination to an effective remedy, particularly measures taken to raise public awareness of racial discrimination and the judicial and non-judicial remedies and legal aid available (art. 2).

10. **The Committee draws the State party's attention to the fact that having few or no cases or complaints does not mean that there is no racial discrimination in the country, but rather suggests that there are barriers preventing people from claiming their rights before the national courts. These barriers may take the form of a lack of public awareness-raising on the Convention, a lack of information on rights and their justiciability, a lack of trust in the justice system, or a lack of attention or sensitivity on the part of the authorities with respect to cases of racial discrimination. The Committee recommends that the State party:**

(a) **Set up a mechanism for the collection of statistics on complaints of racial discrimination, disaggregated by age, sex and ethnic or national origin;**

(b) **Conduct public awareness-raising campaigns on the rights protected under the Convention, available remedies and how to lodge a complaint of racial discrimination;**

³ CERD/C/2007/1.

(c) **Guarantee access to interpretation services and free legal aid services for victims of racial discrimination;**

(d) **Conduct training and awareness-raising activities for public authorities, judges, prosecutors, law enforcement personnel, lawyers and the general public on the Convention in order to ensure that it is invoked or directly applied by the courts;**

(e) **Provide, in its next periodic report, information and disaggregated statistics on complaints of racial discrimination and the corresponding investigations, prosecutions, convictions, sentences and reparations.**

National human rights institution

11. The Committee welcomes the approval, on 18 March 2024, of a request filed by the “*istanza d’Arengo*” concerning the establishment of a national guarantor of human rights. The Committee regrets, however, the lack of information on measures taken or planned by the State party since it accepted the recommendation made during the universal periodic review in 2019 to establish a national human rights institution compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles)⁴ (art. 2).

12. The Committee recommends that the State party expedite and adopt a specific timeline for the adoption of the constitutional amendment required for the establishment of an independent human rights institution with a substantial budget and sufficient staff, in line with the Paris Principles, with a clear mandate and responsibility for guaranteeing the effective implementation of the Convention.

Compliance of criminal law with the Convention

13. The Committee notes that article 179 bis of the Criminal Code prohibits discrimination based on race, ethnicity, nationality, religion and sexual orientation or gender identity, and that article 90 of the Code recognizes discrimination as an aggravating circumstance. It is concerned that neither article 179 bis nor article 90 includes colour or descent among the prohibited grounds for discrimination. The Committee regrets the absence of information on any provisions in domestic law that criminalize incitement to hatred or racial discrimination or that prohibit organizations or activities that promote or incite racial discrimination (arts. 2 and 4).

14. The Committee recommends that the State party bring its national legislation, including the aforementioned laws, into full compliance with article 1 of the Convention. Recalling its general recommendations No. 7 (1985), No. 15 (1993) and No. 35 (2013), it also recommends that it incorporate in its criminal law specific provisions that make incitement to hatred or racial discrimination a criminal offence and prohibit all organizations or activities that promote or incite racial discrimination, in line with article 4 of the Convention.

Racist hate speech and crimes

15. The Committee welcomes the adoption of Decree No. 77/2024 of 29 March 2024 on cyberbullying. It also takes note of the measures taken by the State party to combat racist hate speech, hate crimes and cybercrime, including disabling websites that publish hate speech and confiscating computer hardware with judicial authorization. However, it is concerned by reports of hate speech against migrants, persons of African origin and persons of eastern European origin, in particular on the Internet and social media. It is also concerned at the absence of statistics disaggregated by race and ethnic or national origin of the victims, without which it is impossible to assess the scale of the problem of racial hate speech. The Committee also regrets the lack of information on the number of complaints, cases, investigations, prosecutions and convictions for racist hate speech or hate crimes. It is also concerned that articles 179 bis and 90 of the Criminal Code do not comprehensively prohibit and criminalize racist hate speech and crimes, in accordance with article 4 of the Convention,

⁴ See [A/HRC/43/9](#) and [A/HRC/43/9/Add.1](#).

by including all of the grounds for discrimination recognized in article 1 of the Convention. Lastly, the Committee is concerned that the Code of Conduct for Parliamentarians does not provide for liability or disciplinary measures for public servants who engage in hate speech (art. 4).

16. The Committee recommends that the State party:

(a) Step up its efforts to stop the spread of racial hate speech over the Internet and on social media in close cooperation with Internet service providers, social media platforms and the groups of people that are the main targets of racial hate speech;

(b) Take measures to prevent, condemn and combat hate speech against the groups most at risk of racial discrimination, including when these speeches are broadcast on the Internet and social media;

(c) Collect reliable and comprehensive data, disaggregated by race and ethnic or national origin of the victims, on reported cases of racist hate speech, the prosecutions, convictions and penalties arising from these reports, and the remedies offered to victims;

(d) Conduct public awareness campaigns aimed at combating prejudice and misinformation concerning migrants, refugees, asylum-seekers and people of African descent and promoting respect for diversity and the elimination of racial discrimination;

(e) Ensure that all reported cases of speech inciting racial hatred are effectively investigated and, if necessary, prosecuted and punished;

(f) Criminalize racist hate speech and crimes, in line with article 4 of the Convention;

(g) Include in the Code of Conduct for Parliamentarians provisions on liability and disciplinary measures for public servants who engage in hate speech.

Racial profiling

17. The Committee notes the information provided on the training of police, gendarmerie, military and civil police officers. It is concerned, however, by reports of racial profiling by border agents and regrets the lack of information on investigations, prosecutions, convictions and available remedies. The Committee is also concerned that there are no legislative provisions explicitly prohibiting racial profiling.

18. Recalling its general recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials, the Committee recommends that the State party:

(a) Conduct training on racial profiling for border agents and law enforcement agents, in line with the Committee's general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights;

(b) Ensure that the police and other law enforcement agents have clear guidance aimed at preventing racial profiling during police checks, identity checks and other law enforcement measures;

(c) Effectively investigate all complaints involving racial profiling, acts of racial discrimination, ill-treatment and the excessive use of force by law enforcement authorities, ensuring that those responsible are prosecuted and punished if found guilty;

(d) Include in its legislation an absolute prohibition of racial profiling.

Enjoyment of economic, social and cultural rights and participation in public affairs

19. The Committee welcomes the progress made in improving working conditions and access to health care and education for migrant workers in the State party, including the annual surveys conducted by the Labour Inspectorate and the provision of health care by the Social Security Institute. However, it is concerned about the inadequate measures taken by the State party to guarantee equality in the enjoyment of economic, social and cultural rights, particularly with regard to:

(a) The case currently before the courts concerning racial discrimination against *badanti* migrant workers by health-care providers at the national hospital;

(b) The lack of social security coverage for health-care services for occupational illnesses or conditions, with the exception of coverage for Italian cross-border migrant workers in the event of workplace accidents or emergencies;

(c) The minimum residence period of 10 years, which restricts the right of non-nationals to participate in public affairs as candidates in municipal elections;

(d) The lack of information on measures taken to facilitate the social integration of Argentine migrants of San Marino descent or origin (art. 5).

20. The Committee recommends that the State party adopt measures to guarantee the equal enjoyment of economic, social and cultural rights by all persons under its jurisdiction. To this end, the Committee recommends that the State party:

(a) **Take all measures necessary to ensure that all persons under its jurisdiction enjoy their economic, social and cultural rights on an equal footing, particularly in terms of access to education, employment, housing and health-care services;**

(b) **Guarantee equal access to social security, including health-care services, to all persons under its jurisdiction, including cross-border migrant workers;**

(c) **Review the minimum residence period and any other barriers that limit the right of non-nationals to participate in public affairs as candidates in municipal elections;**

(d) **Facilitate the social integration of Argentine migrants of San Marino origin, taking account of the specific needs related to their cultural and linguistic diversity.**

Situation of non-nationals, including migrants, refugees, asylum-seekers and stateless persons

21. The Committee welcomes the approval, on 20 March 2024, of a request by the “*istanza d’Arengo*” concerning the amendment of Law No. 114/2000 of 30 November 2000 on citizenship in order to remove the obligation for applicants to renounce their existing citizenship in order to become naturalized citizens. Noting that San Marino has concluded free movement agreements with neighbouring countries and issues humanitarian permits, the Committee is concerned by:

(a) The absence of legal provisions guaranteeing strict compliance with the principle of non-refoulement and respect for the rights of refugees and asylum-seekers, including their rights to seek asylum, to be assessed on an individual basis without discrimination, and to have access to information on asylum procedures and legal aid;

(b) The lack of information on existing policies or practices in relation to the reception, registration and identification of refugees and asylum-seekers, including those arriving from neighbouring countries;

(c) The absence of statistical data on the number of refugees, asylum-seekers and stateless persons within the territory of the State party;

(d) The lack of information on safeguards to ensure that the permits issued by the State party, including work permits and humanitarian permits, do not lead to discrimination on the basis of race, colour or ethnic or national origin;

(e) The lack of information on the measures taken to address statelessness (art. 5).

22. Recalling its general recommendation No. 30 (2004), the Committee recommends that the State party take all necessary measures to combat discrimination against non-nationals, including migrants, refugees, asylum-seekers and stateless persons. In particular, it recommends that the State party:

- (a) **Amend Law No. 114/2000 on citizenship in order to remove the obligation for applicants to give up their existing citizenship and all other barriers to naturalization;**
- (b) **Ratify the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;**
- (c) **Provide disaggregated statistics on the number of migrants, refugees, asylum-seekers and stateless persons on the State party's territory;**
- (d) **Ensure strict compliance with the principle of non-refoulement and guarantee in law and in practice that all persons on its territory can apply for international protection and humanitarian permits without discrimination, are referred to asylum authorities and refugee status determination procedures, are individually assessed, and have access to information and legal aid;**
- (e) **Put in place a specific and effective determination procedure for cases of statelessness;**
- (f) **Provide training to law enforcement officials and authorities working on migration in order to raise awareness of the impact of racial biases on their work and thereby ensure that they perform their functions in a non-discriminatory manner.**

Situation of migrant workers (*badanti*)

23. The Committee takes note of the data disaggregated by nationality provided by the Office for Foreigners of the gendarmerie on the number of *badanti*, who are mainly private family carers from Ukraine (approximately 70 per cent), Albania and the Philippines (art. 5). While also noting the information indicating that the majority of *badanti* are women, the Committee regrets the lack of disaggregated data in this regard. It also regrets the lack of information on the measures taken to protect *badanti* and their rights, including their labour rights. Bearing in mind the sexist dimension of racial discrimination and the particular vulnerability of female domestic migrant workers, the Committee is concerned about trafficking in persons and other forms of exploitation, especially in respect of *badanti* from Ukraine in the context of the war and partial occupation (arts. 2 and 5).

24. **Recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party:**

- (a) **Combat all forms of racial discrimination to which migrant workers, including *badanti*, are exposed, in particular recruitment and payment of salaries based on nationality;**
- (b) **Investigate all reports of racial discrimination against migrant workers;**
- (c) **Provide free legal aid and guarantee victims' access to effective remedies;**
- (d) **Ensure the protection of migrant workers' labour rights, taking account of the particular vulnerability of female domestic migrant workers;**
- (e) **Establish procedures for the early identification of victims of trafficking and other forms of exploitation, their referral to the appropriate assistance services and their rehabilitation.**

Education and training to combat racial discrimination

25. The Committee notes that the training modules for teaching qualifications drawn up by the Department of Education and the Department of Humanities take account of social and academic inclusion, and that school curricula include respect for diversity. It is concerned, however, that human rights education, including on racism and racial discrimination, is not included in school curricula. The Committee regrets the lack of information on measures taken to raise public awareness in relation to combating prejudice and intolerance (art. 7).

26. **The Committee recommends that the State party adopt measures to ensure that human rights education, including on combating racism and discrimination, as well as**

on respect for diversity and the promotion of equal treatment, is part of the curriculum at all school levels. It also recommends that the State party conduct public awareness-raising campaigns, with measurable outcomes, targeting the general public, civil servants, law enforcement officials and members of the judicial authorities on the importance of ethnic and cultural diversity, tolerance and inter-ethnic understanding.

D. Other recommendations

Ratification of other instruments

27. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights instruments that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189).

Implementation of article 8 of the Convention

28. 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

29. In the 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 specific information in its next periodic report 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

30. In the 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, and given that the International Decade is in its final year, the Committee requests the State party to include in its next periodic report the results of the implementation of the programme of activities and the sustainable measures and policies put in place in collaboration with organizations and peoples of African descent, taking into account the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

31. 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, 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

32. The Committee recommends that the State party's reports be made readily available 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, and publicized on the website of the Ministry of Foreign and European Affairs in the official and other commonly used languages, as appropriate.

Common core document

33. The Committee encourages the State party to update its common core document, which dates to 2002, 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 2006.⁵ 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

34. 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 12 (national human rights institution) and 24 (e) (situation of migrant workers (*badanti*)) above.

Paragraphs of particular importance

35. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 6 (data collection) and 8 (legislation against racial discrimination) 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

36. The Committee recommends that the State party submit its combined second and third periodic reports by 11 April 2027, taking into account the reporting guidelines adopted by the Committee at its seventy-first session⁶ and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.

⁵ HRI/GEN/2/Rev.6, chap. I.

⁶ CERD/C/2007/1.