

Responses to Recommendations

SAN MARINO

Review in the Working Group: 11 February 2010
 Adoption in the Plenary: 10 June 2010

San Marino's responses to recommendations (as of 28.06.2010):

In the Report of the Working Group:	In the Addendum:	During the plenary:	Summary:
11 REC accepted; 13 rejected; 32 pending	Out of the 32 pending REC, 11 REC were accepted, 18 rejected and 4 commented without giving a clear position	The delegation specified not accepting REC n°1, 2, second part of n°6 and n°9.	Accepted: 22 Rejected: 35 No clear position: 0 Pending: 0

List of recommendations contained in Section II of the Report of the Working Group A/HRC/14/9:

70. The recommendations formulated during the interactive dialogue and listed below enjoy the support of San Marino:

A - 1. To ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Slovenia, Spain, Morocco, Chile, Belarus);

A - 2. To ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) (Belarus);

A - 3. To further develop a national strategy, with the full participation of all relevant stakeholders, for the integration of human rights into educational policies, curricula, textbooks and the training of teachers (Italy);

A - 4. To fully implement the Convention on the Rights of Persons with Disabilities (United States of America);

A - 5. To further integrate persons with disabilities into society (Germany);

A - 6. To provide specialized training to the police forces on how to deal with situations of domestic violence (Austria);

A - 7. To provide secure shelter, as well as psychological and other assistance, to victims of domestic violence (Austria);

A - 8. To fully and thoroughly implement Law No. 97 of 20 June 2008, on the prevention and repression of violence against women and gender violence (Monaco);

A - 9. To continue to protect the institution of the family, based on a stable relationship between a man and a woman (Holy See);

A - 10. To continue to protect the right to life from conception to natural death (Holy See);

A - 11. To continue cooperation with civil society organizations in the follow-up to the present review (Austria).

71. The following recommendations will be examined by San Marino, which will provide responses in due course, but no later than the fourteenth session of the Human Rights Council, to be held in June 2010:

R - 1. To consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Algeria);

R - 2. To adhere to the principles set out in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and to favourably consider its possible ratification, following which the country would be party to all major international human rights treaties (Mexico);

R - 3. To sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance (France);

R - 4. To consider the possibility of ratifying the International Convention for the Protection of All Persons from Enforced Disappearance, and of accepting the competence of the relevant Committee (Argentina);

A - 5. To ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Slovenia, Spain, Morocco, Chile);

A - 6. To consider ratifying the Convention on the Prevention and Punishment of the Crime of Genocide and

R - the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Brazil);

R - 7. To sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance (Spain);

R - 8. To sign and ratify the Optional Protocol to the Covenant on Economic, Social and Cultural Rights (Spain);

R - 9. To accede, in keeping with the recommendations made by the Committee on Economic, Social and Cultural Rights, to the following International Labour Organization (ILO) Conventions: Labour Inspection Convention, 1947; Social Security Convention, 1952; Social Policy Convention, 1962; and Equality of Treatment Convention, 1962 (Argentina);

A - 10. To update the legislation aimed at the training of persons who deal with children, the elderly, ill persons and disabled persons (United States of America);

R - 11. To establish an independent national human rights institution in accordance with the Paris Principles (France);

R - 12. To establish a national human rights institution in accordance with the Paris Principles (Morocco);

R - 13. To establish an accredited national human rights institution in accordance with the Paris Principles (United Kingdom of Great Britain and Northern Ireland);

R - 14. To establish, in conformity with the Paris Principles, an independent ombudsperson with a robust mandate to promote and protect human rights (Canada);

R - 15. To consider the establishment of a national human rights institution that will be granted accreditation status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (Slovakia);

R - 16. To establish an independent institution for the promotion and protection of human rights at the national level (Argentina);

R - 17. To ensure that, at a minimum, the institution of the ombudsman will be in a position to provide full protection to vulnerable groups through a human rights institution in conformity with the Paris Principles (Algeria);

A - 18. To address the issue of timely reporting to human rights monitoring bodies (Algeria);

A - 19. To strengthen cooperation with treaty bodies and the special procedures of the Human Rights Council (Brazil);

R - 20. To ensure that all members of society, including members of sexual minority groups, have access to equal rights and are afforded the same level of protection, through adequate legislation and awareness-raising and training programmes, especially with regard to integration (United Kingdom) ;

R - 21. To introduce educational or training programmes that promote the integration of sexual minorities with a view to preventing discrimination on the basis of sexuality (Netherlands);

A - 22. To assess the possibility of eliminating the concepts of “legitimate children” and “natural children”, which, according to the Committee on Economic, Social and Cultural Rights, continue to exist in the domestic legal order (Chile);

A - 23. To take further measures to ensure the freedom of children from all physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, in accordance with the Convention on the Rights of the Child, including by ensuring the full legal prohibition of all corporal punishment of children (Sweden);

A - 24. To adopt specific legislative measures to criminalize corporal punishment (not only abuse) in all settings, together with major awareness-raising campaigns to promote an overall culture of non-violence “through education, dialogue and cooperation” (Spain);

A - 25. To abolish corporal punishment by law and in practice, by enacting specific national legislation prohibiting corporal punishment in all environments (Israel);

A - 26. To explicitly prohibit corporal punishment, under any circumstances, for boys and girls (Chile);

A - 27. To pursue the changes envisioned with regard to the criminal liability of minors (Germany);

R - 28. To create and adopt all legislative and administrative measures necessary to ensure that all families, including those based on non-conventional family models, are treated equally under the law, particularly with regard to issues of residency and inheritance (Israel);

R - 29. To put in place measures to protect members of non-conventional family models from discrimination in terms of employment, immigration, family-related social welfare and other public benefits (Netherlands);

R - 30. To take further steps to ensure the equal protection of the rights of persons in non-traditional family models, such as unmarried partners, cohabitants and same-sex civil partners (Sweden);

R - 31. To soften the very strict requirements for citizenship, and to ensure nondiscrimination, particularly with regard to children who have one parent who lacks San Marino citizenship (Czech Republic); 1

R - 32. To guarantee dual nationality in order to prevent discrimination against children whose parents have not renounced their nationality of origin (Mexico).

72. The following recommendations did not enjoy the support of San Marino:

R - 1. To accede to (Czech Republic)/ratify (Chile)/consider ratifying (Brazil)/sign and ratify (Spain) the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

San Marino is not in a position to accept the recommendation above, because it includes a request to accede to the Optional Protocol to the Convention against Torture. The possibility of acceding to that instrument has been considered, but the establishment of an independent national preventive mechanism, as requested by the Optional Protocol, represents a difficult task for San Marino.

R - 2. To clarify the status of the relationship between San Marino's international obligations and its domestic legislation, to ensure that those international obligations are given effect by domestic courts, and to carry out a comprehensive review of its *ius commune* in order to identify provisions of domestic legislation that contradict principles and provisions of the Conventions, as recommended by the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child, respectively (Israel);

As indicated in the national report and during the interactive dialogue, international instruments concerning human rights and freedoms, once ratified, prevail over domestic legislation and are directly applied by judges. Should a previous domestic norm be in conflict with an international instrument, the latter always prevails.

R - 3. To establish a high-level platform for the monitoring and promotion of women's rights and gender equality, and to ensure that a gender perspective is mainstreamed in policy- and decision-making (Canada);

R - 4. To establish a special entity entrusted with promoting women's rights or, alternatively, to expand the functions of the Equal Opportunities Commission (Chile);

San Marino is not in a position to accept recommendations Nos. 3 and 4 above, because three institutions in place - namely, the Ministry for Health, Social Security, Family, Social Affairs and Equal Opportunities; the Authority for Equal Opportunities; and the Equal Opportunities Commission – already perform, under their respective mandates, the functions of protecting, promoting and monitoring women's rights;

R - 5. To consider amending the Declaration of Citizens' Rights to expressly include such grounds as race, colour, language, nationality and national or ethnic origin, which are currently subsumed under the notion of "personal status" (Brazil);

R - 6. To adopt a comprehensive legal framework explicitly prohibiting discrimination on the various grounds that are currently subsumed under article 4 of the Declaration of Citizens' Rights (Mexico);

R - 7. To explicitly include sexual orientation and gender identity as protected grounds under the principle of non-discrimination in relevant legislation and programmes, and to apply the Yogyakarta principles with regard to human rights and sexual orientation and gender identity (Czech Republic);

San Marino is not in a position to accept recommendations Nos. 5, 6 and 7 above, because the definition of "personal status", set out in the Declaration on Citizens' Rights and Fundamental Principles of San Marino Constitutional Order, already includes all grounds for discrimination. That interpretation has been reaffirmed through San Marino case law;

R - 8. To amend its legislation in order to ensure that children are not discriminated against on the grounds of nationality (Brazil);

San Marino is not in a position to accept the recommendation above, since children are not discriminated against on the basis of their nationality;

R - 9. To abolish the discriminatory provision requiring a foreigner to present a guarantor in order to be able to initiate a civil action before a court (Czech Republic);

San Marino is not in a position to accept the recommendation above, since the ancient *ius commune* provision ceased to be applied more than a century ago, having fallen into desuetude. Desuetude is a way to extinguish a *ius commune* rule: a rule is repealed and no longer exists. Under the San Marino legal system, it would be impossible to abolish such a rule by adopting a specific law, since the rule no longer exists, in accordance with the principles of *ius commune*;

R - 10. To raise the minimum age for military recruitment under any circumstances to at least 18 years, and to provide for conscientious objection to military service (Slovenia);

R - 11. To raise the minimum age of those subject to military draft to 18 (Austria);

R - 12. To initiate legislation introducing the possibility of conscientious objection or an alternative civilian service for citizens eligible for military service (Austria);

San Marino is not in a position to accept recommendations Nos. 10, 11 and 12 above, as there is neither compulsory military service nor compulsory civil service in the country. Recruitment into the military corps, which is on a strictly voluntary basis, is reserved for citizens older than 18 years of age;

R - 13. To improve the forms of social security protection applicable to foreign workers who have become unemployed or whose employment has been suspended and who are deprived of the benefits provided to nationals in the same situation (Argentina);

San Marino is not in a position to accept the recommendation above, because the existing forms of social security protection are considered to be adequate.

Notes

1 The recommendation as read during the interactive dialogue: to liberalize the very strict demands for acquiring citizenship, and to ensure non-discrimination, particularly for children who have one parent who does not have the citizenship of San Marino.

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