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## **Report of the Working Group on the Universal Periodic Review\***

**San Marino**

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## Introduction

1. The Working Group on the Universal Periodic Review, established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its seventh session from 8 to 19 February 2010. The review of San Marino was held at the 8th meeting, on 11 February 2010. The delegation of San Marino was headed by the Minister for Foreign Affairs, Antonella Mularoni. At its 12th meeting, held on 15 February 2010, the Working Group adopted the report on San Marino.
2. On 7 September 2009, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of San Marino: Bolivia, the Netherlands and Qatar.
3. In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of San Marino:
  - (a) A national report submitted/written presentation made in accordance with paragraph 15 (a) (A/HRC/WG.6/7/SMR/1);
  - (b) A compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR) in accordance with paragraph 15 (b) (A/HRC/WG.6/7/SMR/2);
  - (c) A summary prepared by OHCHR in accordance with paragraph 15 (c) (A/HRC/WG.6/7/SMR/3).
4. A list of questions prepared in advance by Argentina, the Czech Republic, Denmark, Germany, the Netherlands, Sweden and the United Kingdom of Great Britain and Northern Ireland was transmitted to San Marino through the troika. Those questions are available on the extranet of the universal periodic review.

## I. Summary of the proceedings of the review process

### A. Presentation by the State under review

5. The head of the delegation, the Minister for Foreign Affairs of San Marino, Antonella Mularoni, thanked the delegations taking part in the debate and those that had forwarded advance written questions. She recalled that the people of San Marino like to describe their country as the oldest republic in the world and that the modern State of San Marino observes the principles of the separation of powers, democracy and the rule of law.
6. As specified in the Declaration on the Citizens' Rights, set out in the Constitutional Charter, the two Captains Regent jointly represent the State and are guarantors of constitutional order; the Great and General Council, the Parliament, is vested with the legislative power; and the Congress of State, the Government, exercises the executive power. The judicial power, regulated by constitutional law, is guaranteed full independence and freedom of judgement.
7. San Marino regards the present review as an opportunity to take a step forward in the ongoing process of aligning its legal system and practices with international standards, while preserving the values and principles on which San Marino was built.
8. In recent decades, San Marino has experienced considerable changes, both internally and with regard to its external relations. San Marino must address new challenges and is now adopting legislative and non-legislative instruments to ensure that it can adjust to these changes, including with respect to its financial system. Despite rapid legislative changes

and limited human resources, San Marino is committed to attaining that objective. San Marino is making efforts to adjust its domestic legislation to international provisions aimed at combating terrorism and terrorist financing, although those phenomena do not directly affect the country.

9. The head of the delegation reported on the involvement of San Marino civil society in the universal periodic review and expressed her willingness to involve it in the follow-up to that review. Although she believed that the written contributions of some stakeholders expressed criticism of the Government that, in some cases, did not reflect the position of the majority of the population, San Marino had accorded attention to all of them. Active participation in the life of the State has always characterized San Marino.

10. With regard to treaty-body reporting obligations, San Marino acknowledged its delays, as well as the fact that it had not been able to provide answers to all the questions posed by the United Nations special procedures. Owing to its limited human resources, San Marino will be in a position to submit no more than one report per year to treaty bodies. However, the country attaches great importance to the monitoring functions of treaty bodies, and a number of important human rights law provisions were adopted pursuant to specific recommendations made by regional and/or international monitoring bodies. However, San Marino does not intend to rely on the technical assistance service kindly offered by OHCHR, as delays were due to a lack of human resources, not a lack of expertise.

11. San Marino demonstrated its willingness to fully cooperate with human rights mechanisms by extending a standing invitation to all special procedures in 2003. Moreover, San Marino has received periodic visits by and collaborated with several monitoring bodies of the Council of Europe.

12. San Marino has considered the possibility of acceding to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, the establishment of an independent national preventive mechanism is a difficult task for a small country to carry out in order to guarantee the independence, capacity and expertise of the members of such a mechanism. In addition to the allocation of financial resources that would be required, San Marino emphasized that that such a task was not among the country's national priorities, since no cases of torture had ever been reported in San Marino.

13. For similar reasons, San Marino has not yet established an independent mechanism, in compliance with the Paris Principles. In San Marino, ombudsman functions have always been carried out by the Captains Regent, and recourse to the Captains Regent not only for citizens, but also for residents, became part of the legal system in 2005.

14. The principle of equality and the prohibition of discrimination are included in the Declaration on the Citizens' Rights, as amended in 2002. The rights set out in international conventions are an integral part of the constitutional order of San Marino and prevail over domestic legislation. Therefore, article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, relating to the prohibition of discrimination, has constitutional status in the country. San Marino has also ratified Protocol No. 12 to the Convention, which has been applied many times in national case law.

15. The prohibition of gender-based discrimination is now enshrined in the Declaration on the Citizens' Rights, as amended in 2000, although it had already been provided for in article 4 of the Declaration and article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

16. In addition, Law No. 66 of 2008 amended the Criminal Code, which now punishes anyone disseminating through any means ideas based on superiority or on racial or ethnic

hatred, or encouraging someone else to commit, or committing discriminatory acts on the grounds of race, ethnicity, nationality, religion or sexual orientation. Under this law, the commission of an offence for purposes related to discrimination based on race, ethnicity, nationality, religion or sexual orientation is an aggravating circumstance.

17. San Marino case law has reaffirmed the interpretation whereby sexual orientation cannot constitute grounds for discrimination. In addition to being party to Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, San Marino amended its Criminal Code in 2004 and, in 2008, specified the types of offences and aggravating circumstances relating to discrimination based on sexual orientation.

18. With regard to family-related social welfare and other public benefits, San Marino attributes a special role to the traditional family, but the country's welfare State and social legislation provide for a large number of incentives and forms of assistance to support traditional and non-traditional families, regardless of whether heads of families are married or cohabitants. Law No. 64 of 2009 provides for new benefits to protect one-parent families, as well as an extra sum for families that include children up to 3 years of age.

19. San Marino also referred to a document, adopted by Parliament in March 2009, providing for the overall reform of social benefits and the integration of the systems of the San Marino welfare State. The Government is committed to establishing a non-discriminatory, comprehensive system of social benefits, aimed not only at preserving jobs, but also at protecting the incomes and acquired professional skills of workers. In that regard, Law No. 110 of 2009 provides for the comprehensive reform of social benefits.

20. With regard to the granting of pensions, San Marino does not discriminate between citizens and foreigners.

21. The social security system provides various types of benefits to protect insured people in the event of old age, incapacity to work, occupational illness and accidents. Such benefits, where applicable, can be provided to minor children, spouses or cohabitants.

22. The retirement system was reformed in 2005 to ensure its financial stability until at least 2020 or 2023. The current pension system clearly includes foreigners with fixed-term contracts as private caregivers.

23. Regarding the integration of persons with disabilities into the labour market, Law No. 71 of 1991 affirms the right to work of people with disabilities and sets forth the conditions for the exercise of that right. San Marino is finalizing a law providing for a partial reform.

24. San Marino attaches great importance to the protection and promotion of children's rights and allocates considerable resources to adequately protecting them during all phases of their lives. San Marino promotes the development of the personalities of young people and educates them about the free and responsible exercise of their fundamental rights. San Marino has ratified several international instruments in that regard, including the Council of Europe convention on the protection of children against sexual exploitation and sexual abuse.

25. Concerning the prohibition of corporal punishment, San Marino condemns the excessive use of correction and disciplinary measures. Notably, such condemnation is included in the Criminal Code (articles 234, 155, 157 and 179). Its article 235 refers more specifically to the use of any form of violence within the family and provides for the criminal punishment of anyone mistreating a member of the family who is under his or her authority or custody. Furthermore, Law No. 97 of 2008 obliges health and social services, police forces and teachers to report to the relevant judge any act of violence committed against minors. Finally, the prohibition of corporal punishment and maltreatment can be

indirectly inferred from other laws relating to family education and the penitentiary. The jurisdictional protection of minors is entrusted to a specific section of the court.

26. As recommended by the Council of Europe Commissioner for Human Rights, San Marino adopted Law No. 57 of 2009, providing for a legal framework regarding the enforced hospitalization of persons with mental disorders. This law provides broad guarantees for the dignity of such persons, who are subject to mandatory health treatment. A special commission is responsible for the correct implementation of the law.

## **B. Interactive dialogue and responses by the State under review**

27. During the interactive dialogue, 26 delegations made statements. A number of delegations commended San Marino for its active participation in the universal periodic review and for the involvement of civil society in the drafting of the national report. Recommendations made during the dialogue are found in section II of the present report.

28. Algeria commended San Marino for its commitment to promoting and protecting human rights, shown through its ratification of the majority of the core human rights instruments and their incorporation into its national legislation. Algeria referred to the country's delay with regard to its obligation to report to the monitoring bodies. Algeria also noted that various treaty bodies had encouraged San Marino to continue its efforts to establish an independent national human rights institution. Algeria made recommendations.

29. Hungary stated that San Marino met high standards in the area of human rights protection. It echoed the recommendation, made by the Commissioner for Human Rights of the Council of Europe, that San Marino continue in its plans to establish a separate ombudsman and asked about progress made in that regard. Hungary also inquired as to the timetable for becoming a party to the few remaining human rights instruments and, recalling the recommendation of the Human Rights Committee, asked if San Marino intended to re-examine the conditions of naturalization.

30. France asked whether San Marino had taken measures to give candidates for certain public positions the right, in reciting their oath, to choose to refer to religious texts or to use the phrase "on my honour". France welcomed the country's decision to criminalize the act of committing or inciting acts of discrimination based on the sexual orientation of the victim, as well as its introduction of aggravating circumstances for the commission of such offences. France asked for further information about measures undertaken to prevent such discrimination. France made recommendations.

31. Canada welcomed the positive steps taken by San Marino on behalf of people with disabilities. It noted that the Commissioner for Human Rights of the Council of Europe had indicated that there was no special entity in the Government entrusted with ensuring the rights of women. Canada also echoed the views of the Commissioner regarding the establishment of a new form of ombudsperson, as the current system could create potential conflicts of interest and limit potential long-term activities. Canada commended the leading role played by San Marino in putting an end to violence against women and encouraged it to engage actively on that issue within the Human Rights Council. Canada made recommendations.

32. The Czech Republic asked whether San Marino would consider abolishing the rule requiring a foreigner to present a guarantor in order to be able to initiate civil litigation. It also inquired about the specific measures adopted to ensure the protection of the rights of the children of persons in detention or prison, in particular the rights of the babies of imprisoned mothers. The Czech Republic made recommendations.

33. The United States of America commended San Marino for its strong record in the area of human rights. It congratulated the country on its ratification of the Convention of the Rights of Persons with Disabilities and the Optional Protocol thereto, whose implementation would enable San Marino to provide full access to the country's buildings, as well as employment opportunities, to citizens and visitors with disabilities. The United States of America made recommendations.

34. Germany welcomed the use of alternatives to the deprivation of liberty with regard to young offenders. It also referred to a 2008 report by the Commissioner for Human Rights of the Council of Europe, which had highlighted the lack of a separate justice system for minors and the increase in crimes committed by young people in the country, and asked how San Marino planned to address those issues. Germany made recommendations.

35. Slovenia commended San Marino for its good human rights record and its best practice aimed at including in regular schools all children with disabilities, with the exception of severely disabled children. It asked for further information about measures taken to ensure that its domestic legislation was fully aligned with the Convention on the Rights of the Child. Slovenia echoed the concerns of the Human Rights Committee regarding the obligation that San Marino citizens from 16 to 60 years of age serve in the military in the event of a general mobilization. Slovenia made recommendations.

36. Slovakia highlighted San Marino's commitment to the promotion and protection of human rights. Noting that the role of the ombudsman was played by the head of State, Slovakia made a recommendation concerning that issue.

37. Brazil recognized the commitment of San Marino to the full realization of human rights. It welcomed, *inter alia*, the law on violence against women and the criminalization of racial discrimination. Noting the increase in the number of foreign workers in San Marino, Brazil asked about the effects of certain legal provisions on the rights of non-nationals, in particular with regard to social benefits. While recognizing the existence of a comprehensive legal framework concerning the rights of the child, Brazil drew attention to the observations made by the Committee on the Rights of the Child regarding the importance of establishing statistical data on child abuse and neglect. Brazil made recommendations.

38. Spain highlighted the fact that San Marino had been one of the first countries in Europe to abolish the death penalty and recognized the Government's achievements in terms of protecting persons with disabilities, including intellectual disabilities. Spain inquired about San Marino's progress and plans regarding Human Rights Committee recommendations concerning a review of the procedure and the time limits for acquiring citizenship, the establishment of an independent monitoring mechanism and the implementation of a legal framework against discrimination. Spain made recommendations.

39. Italy asked for further information about steps taken by San Marino to integrate human rights education into the school system. It also asked whether the norm requiring a foreigner to present a financial guarantee in order to initiate a civil action had become obsolete. In addition, Italy requested further information concerning access to free legal assistance. Italy commended San Marino for its overall implementation of international human rights provisions. It made a recommendation.

40. China praised measures to protect vulnerable groups, recognizing in particular efforts to promote tolerance and non-discrimination and to provide social security for the population. China noted that certain laws in San Marino were not consistent with international human rights instruments to which it was party, and asked whether adjustments were planned.

41. Sweden noted that constitutional and legislative norms guaranteed full equality and freedom from discrimination, including with regard to sexual orientation. Nonetheless, Sweden referred to certain disparities in the enjoyment of social benefits, notably for the members of non-traditional family models. It welcomed the information provided by the delegation in order to address those disparities. Sweden asked for information about measures taken by San Marino to ensure the prohibition of all corporal punishment. Sweden made recommendations.

42. Morocco welcomed the fact that international instruments ratified by San Marino prevailed over national law and noted with satisfaction the legislative framework concerning children's rights, including that set out in the Declaration on the Citizens' Rights. Morocco welcomed the multiyear project for persons with disabilities. It asked whether San Marino intended to create a national human rights institution and about human rights education in the school system. Morocco made recommendations.

43. Turkey asked if the reform of San Marino's criminal code would reflect the recommendations of the Human Rights Committee and requested the Government's views regarding the need for a separate juvenile justice system. Turkey welcomed the 2008 law on violence against women and encouraged San Marino to consider the Committee's recommendation concerning the adoption of programmes and practical measures to combat gender-based violence. Turkey also welcomed efforts to promote the rights of persons with disabilities and encouraged San Marino to establish an independent national human rights institution.

44. The Holy See stressed San Marino's commitment to human rights protection in all spheres of society, as well as the conviction of the people of San Marino in that regard. The Holy See asked for further information about the scope of the 2008 charter on the rights of the elderly. The Holy See highlighted the efforts made by San Marino to protect the rights of persons with disabilities and of born and unborn children. The Holy See also stressed the importance of the family in San Marino and made recommendations.

45. Argentina drew attention to the fact that San Marino had adopted the Plan of Action for the World Programme for Human Rights Education and welcomed the reforms introduced in the country's national legislation aimed at preventing and punishing acts of domestic violence. Argentina made recommendations.

46. Mexico welcomed the progress made in protecting human rights, including with regard to social security, children and persons with disabilities. It highlighted the fact that San Marino had become a model for the campaign of the Council of Europe aimed at combating violence against women. With reference to volunteer initiatives to achieve the societal integration of female migrant workers, Mexico asked whether any governmental initiative existed in that regard, including any measures taken to reduce the risk of the exploitation of migrant workers. Mexico made recommendations.

47. Israel applauded San Marino's efforts in the Council of Europe campaign aimed at ending violence against women, including the 2008 amendments to the Penal Code, and strongly encouraged the country to continue those efforts. Israel also commended San Marino in particular for the ratification of the Convention on the Rights of Persons with Disabilities and the extensive measures taken to combat the social stigma attached to such persons. Israel made recommendations.

48. The United Kingdom of Great Britain and Northern Ireland welcomed San Marino's emphasis on human rights. It inquired whether the Government had plans to revise its policies to ensure provision of education and training programmes to promote the integration of sexual minorities. It asked when San Marino intended to submit its follow-up report to the Human Rights Committee regarding the establishment of an independent monitoring mechanism for the implementation of ICCPR and the adoption of



comprehensive anti-discrimination legislation. It inquired about steps taken to ensure legislation on violence against women covered all forms of gender-based violence. The United Kingdom made recommendations.

49. Chile highlighted the active participation of San Marino in the European campaign to end violence against women, as well as the approval of Law No. 97, which provided for the punishment of any act resulting in physical, sexual or psychological harm to the victim. Chile also welcomed the fact that both teachers and students received human rights education focused on the principal international human rights instruments. Chile made recommendations.

50. The Netherlands commended San Marino for its human rights record, for the ratification of the core international instruments and for the extension of a standing invitation to all special procedures. It asked if San Marino had planned to re-examine the qualifying period for and practicalities of acquiring citizenship for long-term residents. The Netherlands also asked if the minimum age of 16 years for service in the military in the event of a general mobilization would be raised. In addition, the Netherlands inquired about protection against all forms of discrimination in the legislation. Netherlands made recommendations.

51. Belarus commended the determination of San Marino to promote human rights and noted its success with regard to health protection and the social integration of persons with disabilities, as well as its resolve to prevent racial discrimination and establish the principle of tolerance, as reflected in Law No. 66. Belarus noted the attachment of San Marino to combating violence against women. The amendment to the Criminal Code would ensure the legal basis for the fight against trafficking, and Belarus asked whether national legislation included the concept of trafficking and, if so, what the penalties were for that offence. Belarus made recommendations.

52. Austria welcomed San Marino's substantial financial contribution to OHCHR. Austria commended the efforts to promote human rights education and welcomed measures to protect women's rights, such as the 2008 law on violence against women. While recognizing ongoing reforms, Austria expressed concern that the minimum age for those subject to military draft was only 16 years. Austria made recommendations.

53. Monaco asked for clarification regarding the status of international human rights instruments in the internal legal order and the links between those instruments and the Declaration on the Citizens' Rights and other constitutional texts. Monaco welcomed the progress made over the previous 30 years by San Marino in the field of gender equality, especially the increased presence of women in all sectors of society. In particular, Monaco stressed the importance of the 2008 law on violence against women. Monaco made a recommendation.

54. The head of the delegation thanked all delegations that took the floor. She said that San Marino will reply before June 2010 to all questions which will be left without reply due to lack of time.

55. Regarding the status of human rights international instruments in the San Marino legal system, the head of the delegation recalled that they formed an integral part of the constitutional order of San Marino and that the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms were directly applied by judges. Although San Marino attached considerable importance to international human rights instruments, it had not ratified some of them because of a lack of human resources to study and systematically examine all the principal international legal texts.

56. San Marino was committed to promoting and raising awareness about human rights in schools, universities and training programmes. That was accomplished in particular

through courses for teachers of all school grades and human rights educational projects organized in primary and secondary schools. Human rights education was an interdisciplinary endeavour involving teachers of all subjects. Every school, both primary and secondary, implemented interdisciplinary education projects aimed at promoting tolerance.

57. For example, at the university level, the Specialization School in San Marino Law, organized in cooperation with Italian law universities, provided specific legal training to participants, who must possess in-depth knowledge of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the relevant court. As far as vocational training was concerned, the State examination for lawyers, notaries and accountants required, in particular, proficient knowledge of the Convention and of the case law of the relevant court.

58. Law No. 97 of 2008, on violence against women and gender-based violence, provides for the establishment of an Equal Opportunities Authority, which became operational in January 2009. Its principal tasks are, in particular, the collection of data and the coordination of public services, particularly those relating to prevention. The data collected in 2009 by the Authority indicated that the number of cases of violence against women and gender-based violence had not increased compared with the period from 2006 to 2008, but confirmed the existence of the phenomena.

59. In the area of labour, equality between men and women was guaranteed by Law No. 40 of 1981, which prohibited any discrimination based on gender. To date, no dispute had ever been recorded in San Marino on the matter, and no judgements had been pronounced on the non-application of the relevant domestic legislation or of ILO Convention No. 100, on equal remuneration. San Marino was committed to the effective implementation of the right to labour and professional training through adequate economic policies.

60. Unemployment benefits were provided to workers in San Marino, without distinction. With regard to foreign workers who were non-residents and living in the surrounding Italian areas, under the 1974 convention between Italy and San Marino concerning social security, unemployment benefits were paid directly by the competent Italian institutions, which were subsequently reimbursed by San Marino.

61. With regard to other welfare services, all workers were eligible to benefit from the wage supplementation fund, irrespective of their nationality and their working contract and until the expiration of the latter, while all workers employed under open-ended contracts, including commuters, could be placed on mobility lists.

62. Concerning the facilitation of access to public buildings, San Marino had been removing architectural barriers from public buildings for a number of years, and all new public premises took into account the needs of disabled persons, in compliance with the Convention on Persons with Disabilities, ratified by San Marino in 2008.

63. The head of the delegation referred to the 2008 charter on elderly people's rights, aimed at protecting the rights of the elderly. In addition to the services already provided by the Government, San Marino, through this law, encouraged private entities to provide relevant services for the elderly.

64. Regarding the *ius commune* rule requesting a "guarantee" to enable a foreigner to file a civil suit, San Marino indicated that it had ceased to be applied more than a century earlier, having fallen into desuetude. Moreover, the rule would now run counter to article 15 of the Declaration on the Citizens' Rights.

65. With regard to the right to defence in legal proceedings, it had to be exercised through a legally registered lawyer freely chosen by the litigant. In criminal cases, every accused, apprehended or arrested person who did not have legal assistance of his or her

own choosing had the right to a public defender. Public defenders were always available and, in the event of an impediment, provided the name of another defender to perform functions on their behalf. In both criminal and civil cases, whenever a party had insufficient economic resources, the right to defence was recognized and guaranteed through free legal assistance, which was also available in the second instance. A special commission, the Council of Twelve, was mandated to handle requests for such assistance.

66. In San Marino, nationality was regulated by the principle of *ius sanguinis*. Law No. 84 of 2004 had eliminated the unequal treatment accorded to children of San Marino fathers, on the one hand, and children of San Marino mothers, on the other, as far as the transmission of nationality was concerned. All San Marino women now transmitted their citizenship to their children at birth. Under the same law, children with only one parent of San Marino citizenship were required, within 12 months after reaching 18 years of age, to sign a declaration that they intended to keep their San Marino citizenship, without having to renounce their other citizenship(s).

67. As far as citizenship by means of naturalization was concerned, it could be acquired through an extraordinary law, provided that foreign citizens included in the population registry at the time of the law's adoption had been residing in San Marino for at least 30 consecutive years, or 15 years if married to a San Marino citizen. In that case, renunciation of the citizenship of origin was required. Since 2000, the Parliament had been required to take a decision on naturalization every 10 years.

68. San Marino citizenship by means of naturalization was immediately acquired by a minor, provided that both parents had become naturalized citizens. If San Marino citizenship by means of naturalization had been acquired by only one parent and the other parent had kept his or her foreign citizenship, San Marino citizenship was granted to the minor when he or she had reached 18 years of age, provided that he or she resided in San Marino.

69. Finally, with regard to a general mobilization in the event of serious danger to the security of the State, the head of the delegation indicated that there were five military corps (two professional corps and three voluntary corps). The minimum recruitment age for all of them was 18 years. In San Marino, there was neither a compulsory military service nor a compulsory civil service. Article 3 of Law no. 15 of 1990, stipulating that San Marino citizens from 16 to 60 years of age must serve in the military, should be read in the light of article 4 of the same law, regulating the exceptional circumstances of the general mobilization. That provision was still in force. However, a draft set of comprehensive regulations for the military corps, which was still under discussion, would set the age limit at 18. San Marino had never resorted to compulsory recruiting or a general mobilization, even during the most serious crises.

## **II. Conclusions and/or recommendations**

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

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);
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);

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);
  4. To fully implement the Convention on the Rights of Persons with Disabilities (United States of America);
  5. To further integrate persons with disabilities into society (Germany);
  6. To provide specialized training to the police forces on how to deal with situations of domestic violence (Austria);
  7. To provide secure shelter, as well as psychological and other assistance, to victims of domestic violence (Austria);
  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);
  9. To continue to protect the institution of the family, based on a stable relationship between a man and a woman (Holy See);
  10. To continue to protect the right to life from conception to natural death (Holy See);
  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:
1. To consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Algeria);
  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);
  3. To sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance (France);
  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);
  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);
  6. To consider ratifying the Convention on the Prevention and Punishment of the Crime of Genocide and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Brazil);
  7. To sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance (Spain);
  8. To sign and ratify the Optional Protocol to the Covenant on Economic, Social and Cultural Rights (Spain);

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);
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);
11. To establish an independent national human rights institution in accordance with the Paris Principles (France);
12. To establish a national human rights institution in accordance with the Paris Principles (Morocco);
13. To establish an accredited national human rights institution in accordance with the Paris Principles (United Kingdom of Great Britain and Northern Ireland);
14. To establish, in conformity with the Paris Principles, an independent ombudsperson with a robust mandate to promote and protect human rights (Canada);
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);
16. To establish an independent institution for the promotion and protection of human rights at the national level (Argentina);
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);
18. To address the issue of timely reporting to human rights monitoring bodies (Algeria);
19. To strengthen cooperation with treaty bodies and the special procedures of the Human Rights Council (Brazil);
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) ;
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);
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);
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);

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);

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

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

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

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);

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);

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);

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

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:

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.

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

<sup>1</sup> 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.

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.

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);

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;

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);

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);

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;

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;

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*;

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);

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

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;

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.

73. All conclusions and/or recommendations set out in the present report reflect the positions of the submitting State(s) and/or the State under review. They should not be construed as endorsed by the Working Group as a whole.



## Annex

### Composition of the delegation

The delegation of San Marino was headed by the Minister for Foreign Affairs, Antonella Mularoni, and was composed of five members:

- Dario Galassi, Ambassador, Permanent Representative;
  - Federica Bigi, Director of Political Affairs, Ministry for Foreign Affairs;
  - Eros Gasperoni, First Secretary, Ministry for Foreign Affairs;
  - Ilaria Salicioni, First Secretary, Ministry for Foreign Affairs;
  - Lino Zonzini, Adviser, Ministry for Foreign Affairs.
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