



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Eightieth session

13 February – 9 March 2012

Consideration of reports submitted by States parties under article 9 of the convention

Concluding observations of the Committee on the Elimination of Racial Discrimination

Italy

1. The Committee considered the combined sixteenth to eighteenth periodic reports of Italy (CERD/C/ITA/16-18), submitted in one document, at its 2156th and 2157th meetings (CERD/C/SR.56 and 57), held on 5 March 2012. At its 2164th meeting (CERD/C/SR.64), held on 9 March 2012, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report and commends the regularity with which the State party has interacted with the Committee. It expresses appreciation for the dialogue held with the large delegation of the State party and thanks it for the information provided orally to complement the report. The Committee welcomes the positive and constructive dialogue with the delegation of the State party as well as its efforts to answer to the questions put by Committee members.

B. Positive aspects

3. The Committee notes with interest the upcoming revision of Law No. 482/1999 to allow the recognition of Roma, Sinti and Camminanti communities as minorities.

4. The Committee also notes the strengthening of the National Office against Racial Discrimination (UNAR) and the relevant activities undertaken by UNAR during the period under review.

5. The Committee welcomes the legislative measures reversing the burden of proof on the defendant for civil cases of racial discrimination.

6. The Committee welcomes the ratification on 5 June 2008 of the Cybercrime Convention of the Council of Europe and the State party's declaration regarding the upcoming amendment of the Criminal Code to tackle hate speech on the Internet.
7. The Committee welcomes the creation of a working group tasked to prepare by September 2012 a new National Plan of Action against all forms of racial discrimination and to implement the Durban Declaration and Programme of Action at the national level.
8. The Committee welcomes the adoption on 24 February 2012 of the National Strategy for the Inclusion of Roma, Sinti and Camminanti communities within the European Union Framework covering relevant key sectors such as education, employment, health and housing.
9. The Committee notes with particular interest the information provided by the State party on the creation of a new Ministry for Cooperation and Integration, to be responsible, inter alia, for interethnic relations.
10. The Committee welcomes the information that the State party is considering withdrawing its declaration with regard to article 4 of the Convention.

C. Concerns and recommendations

11. The Committee takes note of the statistical data provided on foreigners and on UNAR's activities but regrets the absence in the report of data on the ethnic composition of the population. It is also extremely concerned about the census which took place further to the state of emergency imposed in May 2008 and the "Nomad Emergency Decree" (NED) regarding the settlements of nomad communities in Italy. It is concerned by the information that this census, in the course of which fingerprints and photographs of camps' residents Roma and Sinti including children have been collected. The Committee notes the declaration made by the State party that data has since been destroyed.

The Committee invites the State party to compile disaggregated data on the ethnic composition of its population. In view of its general recommendation No. 8 (1990) on identification with a particular racial or ethnic group, the Committee wishes to recall that the ways in which individuals are identified as members of racial or ethnic groups should be established on a voluntary and anonymous basis, and on the basis of self-identification by the individuals concerned. The Committee also recommends that the State party refrain from conducting emergency censuses targeted at minority groups.

The Committee strongly recommends that the State party inform the communities concerned that data from the previous emergency census have been destroyed.

12. The Committee regrets that the equality provisions of article 3 of the Italian Constitution do not include non-citizens nor is it clear to the Committee that the offence of racial discrimination in the State party's legislation includes both the purpose and the effect of prohibited acts (art. 1).

In view of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee urges the State party to ensure that non-citizens enjoy equal protection and recognition before the law. The Committee recommends that the State party ensure that its legislation and policies do not discriminate, in purpose or effect, on grounds of race, colour, descent, or national or ethnic origin. The Committee draws the attention of the State party to the importance of ensuring that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status.

13. The Committee is concerned that despite the State party's commitment to its establishment, a national human rights institution has not yet been established. According to the information received by the Committee, the relevant bill, currently in the Second Chamber (Camera dei Deputati), has been finalized without proper consultation with civil society actors (art. 2).

The Committee notes the commitment by the State party to conclude as soon as possible the lengthy process to establish an independent national human rights institution in line with the Paris Principles. The Committee encourages the State party to actively involve civil society actors in this process and to revise draft Law No. 4534 to ensure that the institution is fully compliant with the Paris Principles. The Committee encourages the State party to request technical assistance from the Office of the Human Rights Commissioner for Human Rights (OHCHR).

14. The Committee notes concerns raised regarding the need to increase the independence of UNAR as the single equality body established in compliance with European Union Directives (art. 2).

Noting the commitment by the State party to improve UNAR's functional, administrative and management independence, the Committee recommends that the State party take necessary measures to guarantee the independence of UNAR so that it may implement its activities more efficiently.

15. The Committee deplores the targeted evictions of Roma and Sinti communities which have taken place since 2008 in the context of the NED and notes with concern the lack of remedies provided to them despite the ruling of the Council of State in November 2011 annulling the NED. It is concerned that forced evictions have rendered several Roma and Sinti families homeless and regrets the ways in which security personnel and video-controlled access to some of these camps are used. As indicated in its previous concluding observations, the Committee is concerned that the Roma, Sinti and Camminanti populations, both citizens and non-citizens, are living in a situation of de facto segregation from the rest of the population in camps that often lack access to the most basic facilities. The Committee takes note of the statement of the delegation on the intention to apply a new housing policy in favour of Roma and Sinti (art. 3).

The Committee encourages the State party to take the necessary measures to avoid forced evictions and provide adequate alternative housing to these communities. It also urges the State party to refrain from placing Roma in camps outside the populated areas without basic facilities such as health-services and education. Bearing in mind its general recommendations No. 27 (2000) on discrimination against Roma and No. 30 (2004), as well as the National Strategy for the inclusion of Roma, Sinti and Caminanti communities, the Committee encourages the State party to intensify efforts to avoid residential segregation of Roma and Sinti communities, both citizens and non-citizens, and to develop social housing programmes for them.

In view of the ruling of the Council of State, the Committee recommends that the State party take appropriate measures to provide effective remedies to members of Roma and Sinti communities for all the negative effects that followed the implementation of the NED, including by providing appropriate housing for them, and ensuring that segregated camps are not the only housing solution available to them.

16. While noting that Law No. 654/1975 punishes racial discrimination and that Law No. 205/1993 (Mancino's Law) provides for aggravating circumstances for ordinary crimes committed with racial motives, the Committee is concerned that the provision on aggravating circumstances is used when a racist motive appears to be the only motivation but not when there are mixed motives. The Committee also regrets the lack of information

on decisions adopted to apply this provision and penalties for propaganda of racial or ethnic superiority (art. 4).

The Committee recommends that the State party amend article 61 of the Criminal Code so as to establish that an offence with racist motivation constitutes an aggravating circumstance, including in cases where there are mixed motives. It also recommends that the State party take the necessary measures to prosecute and punish cases of dissemination of ideas of racial superiority and of incitement to racist violence or crime, in accordance with the provisions of the law and with article 4 of the Convention.

17. The Committee is extremely concerned by the prevalence of racist discourse, stigmatization and stereotypes directed against Roma, Sinti, Camminanti and non-citizens. The Committee is concerned that in the few cases where politicians have been prosecuted for discriminatory statements, stays of execution have allowed those prosecuted to continue their political activities and to stand for election. The Committee notes that the fundamental right to freedom of expression does not protect the dissemination of ideas of racial superiority or incitement to racial hatred. The Committee is also concerned that racial discrimination is increasing in the media and on the Internet, particularly on the social networks (arts. 2 and 4).

The Committee recommends that the State party:

(a) **Take appropriate measures to prosecute individuals, including politicians, for the acts referred to in article 4, and to ensure that the legal principle of stay of execution does not prevent justice from prevailing. The Committee wishes to underline that the fundamental right of freedom of expression should not subtract from the principles of equality and non-discrimination as the exercise of the right to freedom of expression carries with it special responsibilities, among which is the obligation not to disseminate ideas on racial superiority or hatred.**

(b) **Reinforce the mandate of the Authority which monitors the media to ensure that racist statements are prosecuted and victims granted reparations. The Committee recommends that the State party ensure that the media do not stigmatize, stereotype or negatively target non-citizens and ethnic minorities. It encourages the State party to invite the media to strictly respect the Rome Charter in order to avoid racist, discriminatory or biased language. It also encourages the State party to consider ratifying the Additional Protocol to the European Convention on Cybercrime concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems.**

(c) **Raise awareness among media professionals of their responsibility not to disseminate prejudice and to avoid reporting incidents involving non-citizens, members of Roma and Sinti communities in a way that stigmatizes such communities as a whole, bearing in mind its general recommendations No. 27 (2000) and No. 30 (2004).**

18. The Committee is deeply concerned about several cases of racist violence and the murders of a number of migrants, including people of African descent and members of Roma and Sinti communities. It is also concerned about racist violence manifested against members of these groups, including destruction of their property (arts. 2, 4 and 6).

Bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party ensure the security and integrity of non-citizens, and of Roma and Sinti, without any discrimination, by adopting measures to prevent racially motivated acts of violence against them, and ensure

prompt action by the police, prosecutors and judges and make sure that perpetrators, including political authorities do not enjoy de jure or de facto impunity. It also recommends that the State party systematically collect data on racist hate crimes.

19. The Committee regrets that Roma, Sinti and Camminanti communities continue to experience severe marginalization and discrimination. It expresses regret that measures such as the NED have fostered stereotypes, prejudices and negative attitudes towards these communities. The Committee regrets the persistence of stereotypes associating ethnic minorities and non-citizens with criminality, and Islam with terrorism (arts. 3 and 5).

In view of the National Strategy for the inclusion of Roma, Sinti and Camminanti communities, the Committee recommends that the State party initiate consultations with these communities as well as organizations representing them for the implementation, monitoring and evaluation of this strategy. Particular attention should be given to the enjoyment of their economic, social and cultural rights as well as awareness-raising activities on tolerance, respect for diversity, social cohesion and non-discrimination in Italian society. The Committee, bearing in mind its general recommendations No. 27 (2000) and No.30 (2004), invites the State party to keep it informed regarding the implementation and impact of the actions under the above-mentioned Strategy.

Bearing in mind the intersectionality of racial and religious discrimination, the Committee recommends that the State party increase its efforts to prevent and combat racial discrimination against Muslims and foster dialogue with Muslim communities.

20. The Committee expresses its concern that children of Roma and Sinti communities continue to experience discrimination with regard to access to education. It is concerned by the information that forced evictions and inadequate housing conditions have negatively affected school enrolment and attendance of children from these communities. The Committee is also concerned about the high school dropout rate and the low number of Roma and Sinti children enrolled in secondary schools and about the fact that very few of them progress to higher education (art. 5).

The Committee encourages the State party to intensify its efforts to ensure effective access to education by Roma and Sinti children and other vulnerable groups. The Committee recommends that the State party take all necessary measures to facilitate the inclusion of all Roma and Sinti children in the school system. In this regard, the Committee encourages the State party to avoid implementing policies which may indirectly discriminate against these groups or affect their school attendance. It recommends that the State party ensure that the administrative measure limiting to 30 per cent the number of children with non-Italian nationality in each class does not negatively affect the enrolment in education of children from the most vulnerable groups.

The Committee encourages the State party to recruit school personnel from among members of Roma and Sinti communities, to promote intercultural education in schools and to provide training to school staff and awareness-raising activities for Roma and Sinti parents.

21. The Committee regrets the lack of information on the situation of migrant women and women belonging to Roma and Sinti communities. It is concerned that the already lamentable situation of these groups as regards their enjoyment of human rights in Italy may be worse for women belonging to these communities (art. 5).

Bearing in mind its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party

provide data on difficulties experienced by Sinti and Roma women as well as migrant women, and that it provide information on measures taken to guarantee to these women equal enjoyment of their rights under the Convention.

22. The Committee is concerned that, despite its previous recommendations, the precarious conditions in assistance, reception and identification centres have worsened with the arrival of migrants from North Africa, particularly in recent years. The Committee is concerned about information according to which migrants are more likely to be arrested and often receive harsher sentences than Italians. This situation may also have been aggravated by Law No. 94/2009 which criminalized undocumented entry and stay in Italy, and Law No. 129/2011 which allows the detention of undocumented migrants for up to 18 months. The Committee is concerned about breaches of international norms regarding protection of refugees or asylum-seekers as demonstrated by the judgement of the European Court of Human Rights of 23 February 2012 against the State party on the collective expulsion of 24 Somalian and Eritreans (arts. 2 and 5).

The Committee recommends that the State party:

(a) Take the necessary measures to ensure that conditions in centres for refugees and asylum-seekers meet international standards. The Committee notes the State party's declaration that preliminary steps are being taken to implement the European Court of Human Rights' judgment including bilateral agreements with North African countries so as to avoid similar human rights violations in the future. The Committee wishes to reiterate that the State party has the obligation under its international human rights law to respect the principle of non-refoulement and to ensure that migrants are not subject to collective expulsion.

(b) Seek to eliminate the discriminatory effects of some of its legislation and prevent arrests and harsher sentences based solely on the origin or status of individuals on its territory and to monitor and punish racial discrimination by law enforcement officials.

(c) Adopt a comprehensive long-term strategy for the protection of refugees and asylum-seekers in addition to any emergency measures in accordance with the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.

23. The Committee notes the difficulties experienced by non-citizens in accessing some social services provided in particular by local authorities. For example, according to Law 133/2008 they cannot access rent reimbursements offered by the State party without providing a certificate of residence for a minimum of ten years. The Committee expresses its concern that discrimination against non-citizens in the labour market persists. It is also concerned by the lack of appropriate legal protection for migrants, in particular against exploitation or abusive working conditions.

In line with its general recommendation No. 30 (2004), the Committee recommends that the State party remove obstacles that hinder the enjoyment of economic, social and cultural rights by non-citizens, in particular their rights to education, adequate housing, employment and health. The Committee recommends that the State party amend its legislation to allow undocumented migrants to claim rights arising out of previous employment and to file complaints irrespective of immigration status. It also recommends that the State party take all other measures to eliminate discrimination against non-citizens in relation to working requirements and conditions.

The Committee recommends that the State party review some of its administrative policies and organize awareness-raising activities for regional and local authorities on the prohibition of racial discrimination, including on non-discriminatory access to social services.

24. The Committee notes that a number of Roma who came to Italy following the dismantling of the former Yugoslavia have lived in Italy for many years without citizenship, a situation which also affects their children. The Committee notes that citizenship for children born in Italy whose parents are foreigners is still to be granted (art. 5).

The Committee recommends that the State party take measures to facilitate access to citizenship for stateless Roma, Sinti and non-citizens who have lived in Italy for many years, and to pay due attention to and remove existing barriers. Bearing in mind the 1954 Convention relating to the status of Stateless Persons and 1961 Convention on the Reduction of Statelessness, the Committee also recommends that the State party take measures to reduce statelessness, in particular statelessness among Roma and Sinti children and children born in Italy.

25. The Committee notes the persistently low number of proceedings and convictions for racial discrimination despite many manifestations of racial or ethnic discrimination and stereotypes. While noting that a revision of Law No. 654 is under consideration to increase effective remedies for victims of racial discrimination, it is concerned that the State party has not taken effective measures to raise awareness of legal remedies available to victims as well as to reduce the costs of court proceedings (arts. 2 and 6).

The Committee requests that the State party provide statistical data on complaints, prosecutions and convictions relating to acts of racism and xenophobia, as well as on compensation provided to the victims of such acts. The Committee recommends that UNAR continue its collaboration with non-governmental organizations in assisting victims of racism and encourages the State party to review the system of registration so as to facilitate the inclusion of non-governmental organizations on the "list", allowing them to initiate legal action on behalf of victims.

The Committee recommends that the State party raise awareness among the population, including the most vulnerable social groups, about legal and administrative remedies and increase free legal services for such groups. It requests that the State party include additional information on measures taken to improve redress for victims of racial discrimination in its next periodic report.

26. The Committee is concerned about the lack of systematic specialized training for law enforcement officials on the international obligations of the State party under the Convention, which may explain the small number of prosecutions and convictions for racial discrimination despite the high number of hate crimes and violence (arts. 2, 6 and 7).

The Committee wishes to recall that, in accordance with article 2 of the Convention, States parties must ensure that all national and local public authorities do not engage in racial discrimination. The Committee strongly recommends that law enforcement officials receive intensive training to ensure that, in the performance of their duties, they respect and uphold all human rights for all without discrimination. The Committee recommends that the State party ensure that claims of racial discrimination are thoroughly investigated and are subject to independent inspection. It also invites the State party to encourage the recruitment of persons belonging to ethnic groups into the police or other law enforcement agencies.

27. The Committee is concerned that the strongly decentralized system of Italy may lead to diversity of policies and decisions at the level of regions and provinces with regard to discrimination on ground of race or ethnic origin. The Committee also notes the need to adopt a global and comprehensive plan of action on human rights in view of the fragmented nature of measures on human rights taken by regional authorities (arts. 2 and 5).

The Committee recommends that the State party establish a mechanism of consultation and coordination with the local authorities, so as to avoid policies and decisions that are contrary to articles 2 and 5 of the Convention. It encourages the State party to adopt a global and comprehensive plan of action on human rights.

28. 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 the provisions of which have a direct bearing on the subject of racial discrimination, such as the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

29. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee welcomes that the State party gave 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, by adopting a national plan of action against racism in 2006 and currently drafting a new plan. The Committee requests that the State party include in its next periodic report specific information on the implementation of that plan of action.

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

31. The Committee recommends that the State party ratify the amendments to article 8, paragraph 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. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243 and 65/200, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

32. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

33. Noting that the State party has not submitted a core document, the Committee encourages the State party to submit a core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

34. 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, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 13 and 15 above.

35. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 12, 18 and 25 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

36. The Committee recommends that the State party submit its nineteenth and twentieth periodic reports in a single document by 4 February 2015, taking into account the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1), and addressing all the 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 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, chap I, para. 19).
