Child Rights References in the Universal Periodic Review

Summary:
A compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the 'National Report', the 'Compilation of UN Information' and the 'Summary of Stakeholder's Information'. Also included is the 'Final Report' and 'Conclusions and Recommendations' from the Review.

San Marino - 7th Session - 2010
11th February, 2.30pm to 5.30pm

National Report

III. PROMOTION AND PROTECTION OF HUMAN RIGHTS
C. Application of international provisions on human rights
1. Equality, non-discrimination and individuals enjoying specific rights
b) Children
41. Law No. 15 of 25 June 1975 fixes majority at age 18. Parents exercise parental authority over the minor, by mutual agreement, until he/she reaches the age of 18 years, or following emancipation. Parents are the legal representatives of their minor children and administer their property. In case of unfair administration, the Law Commissioner (Judge) may take temporary measures, ex officio, in favour of the minor. The loss of parental authority can be decided only by a judge when a parent seriously neglects his/her duties or abuses his/her authority to the detriment of the child. Under Article 31 of Law No. 49 of 26 April 1986, (“Reform of family law”), parental authority is exercised in compliance with the obligation to financially support and educate children while respecting their personality and aspirations.

42. Article 10 of San Marino Criminal Code sets forth that a child under the age of 12 cannot be charged with a crime, while a reduced punishment can be imposed upon a minor who has reached the age of 12 but is less than 18. Moreover, a reduced punishment can be imposed upon anyone who was under the age of 21 when committing the crime.

43. According to law, children born out of wedlock shall enjoy spiritual, legal and social protection and be treated on an equal footing as children born in wedlock. These principles, guaranteed at a constitutional level, are implemented by Law No. 49 of 26 April 1986. This Law also regulates adoptions by establishing rules, requirements and conditions both for minor’s foster care and adoptability. Laws No. 83 of 20 July 1999 “Law on adoption of foreign minors” and No. 68 of 28 April 2008 “Regulation on intercountry adoption and protection of minors” regulate practical aspects and set forth the procedure for the adoption of a minor residing abroad, in accordance with ratified international treaties. The rules enshrined in Law No. 137 of 29 October 2003 shall be applied to adoptive and foster parents. They regard measures supporting families and regulate, inter alia, breastfeeding and maternity leaves.

44. Article 11 of the Declaration stipulates that the Republic of San Marino shall have the duty to promote the development of the personality of young people and shall educate them to a free and responsible exercise of their fundamental rights in the context of school, work, sports and recreational activities. Primary and secondary education is completely free of charge in San Marino since 1963 and is ensured by Article 6 of the Declaration, recognising to all citizens the right to education, free and at no cost. The State guarantees free transport, catering and books.

45. Education is compulsory until the age of 16. Compulsory education can be carried out within the education system or in the professional training system, with the possibility to move from one system to the other. There are no cases of minors who do not receive or complete primary education and first level secondary education, or who do not complete compulsory education until 16 years of age. School attendance is extended to all minors, whether residents or with a stay permit. Schools welcome foreigners and provide them with assistant teachers who help them through linguistic mediation and facilitate their learning.

46. Starting from primary school, San Marino students are educated to the protection of human rights. The Education Department organises initial training courses for San Marino teachers of any school level and grade, as well as annual refresher courses concerning human rights education. During these courses some of the main international documents on human rights are analysed, with particular reference to the ECHR and the awareness raising campaigns promoted by the Council of Europe.
47. In San Marino all children and teenagers enjoy protection and assistance measures like the rest of the population. In order to ensure the protection and attention necessary for children’s wellbeing, Law No. 21 of 3 May 1977 established a specific body, namely the Minors’ Service, which deals with the social, psychological and pedagogical assistance of children and teenagers until 18 years of age.

48. With a view to addressing violence against minors, San Marino Criminal Code punishes violation of sexual freedom (art.171), sexual harassment of minors or consenting incapable persons (art.173), abuse of the powers of punishment or discipline (art.234), maltreatment (art.235). By adopting Law No. 97 of 20 June 2008, new measures have also been introduced with regard to the protection of minors victims of violence, such as the offence of abduction and holding of a minor abroad, protection decrees against family abuses and reporting obligations – by Social Services, Law Enforcement Authorities and health professionals - in relation to any act of violence against women or minors, entailing no violation of professional secrecy.

49. The Republic of San Marino has acceded to the following international Conventions: Convention on the Rights of the Child; Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption; ILO Convention No. 29 on Forced Labour; ILO Convention No. 182 on the Worst Forms of Child Labour; Council of Europe Convention on Personal Relations concerning Children; Convention on the Civil Aspects of International Child Abduction. Moreover, San Marino has signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

50. In addition, San Marino has actively taken part in the Council of Europe’s campaign “Building a Europe for and with Children”. Like in the past, it is and will be committed to contributing to humanitarian projects in favour of children promoted by UNICEF and UNESCO.

e) Racism

77. In order to raise San Marino people’s awareness of the fight against racism and promote increasing social cohesion based on intercultural values, especially in the fields of education, culture, youth policies and voluntary activities, the Republic joined, in 2007, the Council of Europe Campaign “All different, all equal”. On the eve of San Marino Chairmanship of the Committee of Ministers of the Council of Europe, the Conference “Migration and Development” was organised by the Museum of the Emigrant - Permanent Study Centre on Emigration – under the aegis of the Secretary General of the Council of Europe. The objective of this initiative was to contribute to the analysis of this theme, within the wider framework of intercultural dialogue, while trying to propose specific solutions.

2. Right to life, prohibition of slavery and torture

85. Slavery and slave trade are prohibited by the Criminal Code, which criminalises the acts of reducing someone in slavery and trading and trafficking in slaves. Moreover, other forms of reduction in slavery are criminalised, namely kidnapping, violation of sexual freedom, sexual abuse of minors or consenting incapable persons, sexual harassment, kidnapping with the purpose of engaging in sexual acts and corruption of minors. These provisions have been further supplemented by Law No. 61 of 30 April 2002 aimed at eradicating sexual exploitation of minors. San Marino has ratified the Supplementary Convention on the abolition of slavery, slave trade and practices comparable to slavery, as well as ILO Conventions No. 29 on forced labour, No. 105 on the abolition thereof and No. 182 on the worst forms of child labour.

5. Right to citizenship

106. Under Law No. 114 of 30 November 2000, “Law on Citizenship”, and subsequent amendments, in particular Law No. 84 of 17 June 2004, San Marino citizens by origin are children: born of parents who are both San Marino citizens; born of a San Marino parent, the other parent being unknown or stateless; adopted by a San Marino citizen; born on the territory of the Republic, both parents being unknown or stateless; born of a San Marino parent, provided that, within 12 months from reaching full age, they declare their intention to maintain the San Marino citizenship.

6. Right to a family

108. Within San Marino society, great importance is attached to the family institution, which is conceived as a union between a man and a woman, includes children both born or adopted during the marriage and is regarded as the basic building block of society.

109. Law No. 49 of 26 April 1986 on Family Law, in setting forth the subjective requirements for spouses, stipulates that marriage cannot be contracted by a minor, unless the minor is at least 16 years old and has been authorised by a judge to marry on serious grounds, or by a person in respect of whom a judgment for disqualification has been passed or is pending.

10. Right to social security

125. There are no groups in the country not enjoying the right to social security. However, the Government pays special attention to some groups considered particularly vulnerable or in any case more in need of assistance. In particular, the General Guidelines for the Health and Social Plan approved in 2005 include some specific provisions concerning children, young people and adolescents, elderly, disabled people and people affected by chronic diseases. All children have access to trained personnel for their care. All residing children aged 0-14 have indeed access to a Paediatric Service. All pregnant women have access to trained personnel during pregnancy and delivery in health structures. Over the last ten years no maternity mortality cases, both before and after childbirth, have been recorded.

127. In San Marino all eligible people are provided with the following services:

free health care;

[...] maternity benefits: working mothers receive a maternity benefit equal to 100 percent of their remuneration for 150 days; they have the right to be absent from work for a maximum period of sixteen months; they shall receive 30 percent of their daily net wage until the first year of age of the child and 20 percent for the remaining period, if the child does not attend a nursery school; they are eligible to two nursing hours a day until the first year of age of the child; they have the right to keep their job and to work part-time. The above provisions shall also apply to working mothers registered in the so-called mobility lists. Also working fathers shall be entitled to post-partum leave instead of the mother;
...survivors’ benefits: surviving spouses and children until 18 years of age, or under specific circumstances, until 26 years of age receive survivors’ benefits;

...family allowances for families with dependent children are granted, pursuant to Decree No. 15 of 26 April 1976 to employees, farmers, retired individuals and craftsmen;

12. Right to an adequate standard of living
135. In San Marino, the problem of hunger and malnutrition has been completely solved. Possible poor families on the territory are assisted by public services and volunteer associations. In 2006, the State established the Social Credit Certification for people who live in a particularly disadvantaged family context. It provides for a sum to access public services or agreed services, to integrate or substitute the payment of bills, taxes, charges, medicines, prosthesis, treatment and assistance in general. This intervention is specifically directed at single income families with minor dependent children, at those families providing care for elderly or disabled family members, or households living on old age pensions.

13. Right to take part in cultural life
138. The measures adopted to raise cultural awareness among citizens, especially young people, include both initiatives held in San Marino and participation in meetings and events organised by international organisations. Framework Law No. 91 of 30 July 2007, which provides for the implementation of youth policies, acknowledges the key role played by young people in the growth of the country and promotes measures aimed at helping them to affirm themselves and fostering their participation in social and cultural life.

139. In 2007, the Summer School – Theatre and Education to Citizenship – was set up with a view to exploring civil theatre as a tool to educate people to active citizenship. The Summer School has been able to ensure people’s involvement and has served as an important venue for cultural debate over the issue of active citizenship.

Compilation of UN Information
I. BACKGROUND AND FRAMEWORK
A. Scope of international obligations
1. In 2003, the Committee on the Rights of the Child (CRC) encouraged San Marino to ratify and implement OP-CRC-SC and OP-CRC-AC. […]

B. Constitutional and legislative framework
4. In 2003, CRC encouraged San Marino to take all necessary measures to ensure that its domestic legislation conforms fully to the Convention on the Rights of the Child. In that regard, it recommended that San Marino carry out a comprehensive review of its ius commune to identify the provisions of domestic legislation which contradict the principles and provisions of the Convention.

C. Institutional and human rights infrastructure
5. As of 14 October 2009, San Marino does not have a national human rights institution accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). In 2007, CESCR encouraged San Marino to pursue its efforts to establish an independent national human rights institution, in accordance with the Paris Principles, with a mandate to protect and promote all human rights. CRC and the HR Committee also made recommendations in this regard.

D. Policy measures
7. In 2003, CRC recommended that San Marino systematically work on the development of a strong rights-based child policy covering all rights contained in the Convention on the Rights of the Child. It stressed that the principles of the best interests of the child (article 3) and respect for the views of the child (article 12) should be reflected in all policies and programmes relating to children.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND
B. Implementation of international human rights obligations
1. Equality and non-discrimination
12. In 2007 CESCR was concerned by the use of concepts such as “legitimate children” and “natural children” in legal language, since distinctions based on such criteria may affect the enjoyment of all the rights established under ICESCR. In 2003, CRC recommended that San Marino make greater efforts to ensure that all children within its jurisdiction enjoy all rights set out in the Convention on the Rights of the Child without discrimination.

2. Right to life, liberty and security of the person
16. In 2006, the ILO Committee of Experts noted that the Penal Code and the Act for the repression of the sexual exploitation of minors No. 61 of 2002, provide for the prohibition of slave trading and trafficking, child prostitution, child pornography and forced labour. In 2003, CRC was concerned about the lack of any concrete statistical data on cases of child abuse and neglect. It recommended undertaking studies to assess the prevalence and nature of violence against children and develop a comprehensive plan of action, based on these studies, for the prevention of and intervention in cases of child abuse and neglect, including the provision of services for recovery and social reintegration of victims. It also recommended that San Marino undertake awareness-raising campaigns on the negative impact of corporal punishment.

4. Right to privacy, marriage and family life
20. In 2003, concern was expressed by CRC about possible irregularities regarding intercountry adoptions. It highlighted the fact that the Registry Office did not make any reference to the natural parents of adopted children, which implied that such children did not have the right to know their natural parent(s). CRC recommended that San Marino provide the child with the right to know, as far as possible,
his/her natural parent(s). It also encouraged the ratification of the 1993 Hague Convention on Protection of Children and Co-operation in
Respect of Intercountry Adoption. In 2008, CESCR welcomed the accession of San Marino to this Convention.

6. Right to work and to just and favourable conditions of work
27. In 2006, the ILO Committee of Experts noted that according to resolution No. 1 of 2002, no authorization shall be given by the
Employment Office to a worker under 18 years of age to carry out tasks considered at high risk. The ILO Committee of Experts
requested indications on the measures adopted or envisaged to specify where the types of work exist which, by their nature or the
circumstances in which they are carried out, are likely to harm the health, safety or morals of young persons.

7. Right to social security and to an adequate standard of living
30. With respect to the very high prevalence of obesity among children, CRC recommended that San Marino continue and strengthen its
special programmes to address this issue and promote a healthy lifestyle.

8. Right to education and to participate in the cultural life of the community
32. In 2006, the ILO Committee of Experts noted that section 11 of the Declaration of Citizens' Rights provides for free education at all
levels of compulsory schooling and a substantial financial contribution for all those who wish to continue their studies in San Marino or
abroad. It also noted that education is compulsory in San Marino until the age of 16.

10. Migrants, refugees and asylum-seekers
35. In 2007, CESCR noted with satisfaction the adoption of Law No. 84 of 17 June 2004, which recognizes the right of both parents to
transmit their citizenship to their children. While noting the adoption of Law No. 84, the HR Committee remained concerned that
differences still exist between children whose parents are naturalized and who may acquire citizenship immediately, and the children of a
couple where one of the parents has been naturalized and the other parent has kept his/her foreign nationality, who can acquire
citizenship only when they become 18. It recommended that San Marino amend the law so as to ensure that children are not
discriminated against on the ground of the nationality of any one parent and in particular ensure equal right to acquisition of citizenship,
irrespective of whether both or only one of the parents are naturalized San Marino citizens.

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS
37. CESCR highlighted in 2007 that the right to adequate housing is respected in San Marino and that 80 per cent of the population own
the housing units in which they live. In 2003, CRC noted with appreciation that all children with disabilities were in regular schools with
the exception of severely disabled children.

Stakeholder's Information

I. BACKGROUND AND FRAMEWORK
B. Institutional and human rights infrastructure
4. CoE Commissioner also recommended that San Marino consider setting up a complaint mechanism for children who feel that their
rights have been abused.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND
B. Implementation of international human rights obligations,
2. Right to life, liberty and security of the person
5. The Global Initiative to End All Corporal Punishment of Children (GIEACPC) and CoE Commissioner expressed concerns at the lack
of a criminal domestic law prohibiting corporal punishment in all environments. According to GIEACPC, corporal punishment is still
lawful in the home and not explicitly prohibited in alternative care settings. CoE Commissioner noted that the Criminal Code only
referred to the "abuse of power of correction". He added that this criminal provision was couched in terms that were too vague to
encompass all the situations in which a child can be subject to physical violence.

3. Administration of justice and the rule of law
20. In 2008, CoE Commissioner stressed that San Marino lacked a separate justice system for minors. The Commissioner added that this
could represent a concrete problem as, according to Government statistics, youth crimes have been on the increase in the past few years.
He encouraged San Marino to continue with its plans to adopt a law which would raise the age of criminal liability for minors from 12 to
14 and offer separate procedures for minors above the age of 14. The Commissioner noted with approval the existing practice of using
alternatives to deprivation of liberty for young offenders.

8. Right to education and to participate in the cultural life of the community
31. In 2007, CoE ECRI strongly recommended that San Marino strengthen its efforts to provide teaching of Italian as a second language
to non-Italian mother tongue adults living in the country. CoE ECRI noted the efforts made by San Marino to give additional Italian
language support in schools at all levels to non-Italian mother tongue children and encouraged San Marino in these efforts.

32. CoE ECRI also encouraged San Marino in its efforts to ensure that intercultural education is concretely reflected in everyday
teaching practice. It added that the authorities should consider making human rights a compulsory subject at both primary and secondary
levels.

Final Report and Conclusions - To Follow