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**NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 15 (A)  
OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1\***

**San Marino**

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\* The present document was not edited before being sent to the United Nations translation services.

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## **I. METHODOLOGY AND PROCESS FOLLOWED FOR THE PREPARATION OF THE REPORT**

1. San Marino presents its first national report on human rights situations in accordance with General Assembly Resolution 60/251 adopted on 15 March 2006 and with the General Guidelines for the preparation of the national report.
2. This report is based on the reports submitted by San Marino to the various United Nations monitoring bodies, on the recommendations of these bodies and on the answers to the questionnaires requested by the various international organisations in the field of human rights.
3. The following national institutions have been consulted during the elaboration of this national report: the Secretariat of State (Ministry) for Foreign and Political Affairs; the Secretariat of State for Education, Culture, University and Youth Policies; the Secretariat of State for Health and Social Security, National Insurance, Family and Social Affairs, Gender Equality; the Secretariat of State for Labour; the Office of the State Lawyers; the Health Authority; the Office for Economic Planning and Data Processing Centre and Statistics.

## **II. BACKGROUND AND FRAMEWORK**

### **A. Country background**

4. The Republic of San Marino is a sovereign State, which is geographically situated within the territory of the Italian Republic. Its territory covers an area of 61.19 square kilometres on the slopes of Mount Titano and has a perimeter of 39.03 kilometres.
5. As of August 2009, the San Marino population was equal to 31,517 inhabitants, with a density of about 515 inhabitants per square kilometre. Around 4,600 inhabitants are citizens of other countries, mainly Italians. More than 12,000 San Marino citizens reside abroad; the largest communities are located in Italy, in the Northern regions of the United States, in France and in Argentina.

### **B. Institutional and legal structure**

6. The institutional organisation of the Republic of San Marino rests upon Law No. 59 of 8 July 1974 (*Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order* – hereinafter the Declaration), as amended by Law No. 95 of 19 September 2000 and Law No. 36 of 26 February 2002.
7. This Declaration is equal to a constitution and regulates the country's institutional framework. Moreover, it sanctions the fundamental civil, political and social rights and the main freedoms recognized by the Republic of San Marino.
8. The Declaration sets forth the main features of the bodies vested with the three main institutional functions, which act in mutual respect for their autonomy and competence.

9. Under the Declaration, the Captains Regent (Heads of State), appointed by the Great and General Council (Parliament), shall represent the State in its unity and be the guarantors of the constitutional order. They preside over the Great and General Council, the Congress of State (Government) and over other bodies, on the basis of law provisions and in compliance with the principle of separation of powers.

10. The Great and General Council, made up of 60 members, shall exercise the legislative power, and direct and control the Government policy.

11. By virtue of its legislative power, the Great and General Council approves new bills and ratifies the decrees issued by the Captains Regent according to Government's proposal. It also ratifies international Conventions.

12. The function of directing the Government policy takes on concrete form, in particular, in the appointment of the Government and approval of its programme, in controlling the Government activity, in particular through the submission of motions, questions and interpellations, and in the annual approval of the State budget and subsequent adjustments.

13. The Congress of State is vested with the executive power according to the principles of collegiality and responsibility, according to the Declaration. The members of the Congress of State are appointed by the Great and General Council, to which they are politically responsible, both individually and jointly.

14. The Congress of State – in implementing the guidelines of the Great and General Council – directs the international policy. It implements the political line specified in the electoral programme of the parties forming the majority coalition, it is responsible for the administrative activity and adopts decrees having force of law, to be subsequently ratified by the Great and General Council.

15. Based on the principle of separation of powers, the Declaration guarantees to the judicial bodies, established by constitutional law, full independence and freedom of judgement in the fulfilment of their functions.

16. Under the Declaration, the judicial bodies are exclusively subject to the law and shall strictly interpret and apply the existing laws. A Single Court exercises ordinary and administrative jurisdiction. This Court consists of two specialised sections, corresponding to administrative and ordinary jurisdiction, the latter being subdivided in relation to civil and criminal matters.

### **III. PROMOTION AND PROTECTION OF HUMAN RIGHTS**

#### **A. Integration of human rights in San Marino**

17. San Marino foreign policy has undergone a great expansion and development beginning from the 1980s. At the same time, the Country has experienced significant changes affecting its economic and social structures, as well as a cultural growth and opening to the outside world that have contributed to raising San Marino people's awareness of human rights, which are part of San Marino heritage of values.

18. By preserving its tradition of neutrality and being manifestly against any policy of power, the Country became a member of the United Nations in 1992, whereas in November 1988 it had already adhered to the Council of Europe. Moreover, the European unification process and the increased economic and political interdependence at international level have triggered intense debate in the Country over the opportunities and ways of increasing integration of San Marino with the European Union, to which it is already linked through a cooperation agreement concerning various sectors, signed in 1991.

19. The social fabric has changed in a short time. Firstly, the relation between population ageing, improvement of living standards and constant birth rates have considerably changed the general demography of the Country: at the end of 1945, 15,000 people lived in the Republic of San Marino, while today the population has doubled.

20. The economic structure has undergone a rapid restructuring process; therefore, besides the traditional role played by industry and manufacturing, the service sector has developed. This transition has been characterised by high overall employment rates and significant hiring of foreign labour force to meet the labour demand from the key sectors driving San Marino economy. Today, nearly 6,600 cross-border workers cross the San Marino borders everyday.

21. As a result of the high literacy rates, the growth and strengthening of the middle class and increased opening to the outside world, the spread of the Internet and IT technologies has rapidly changed households' needs, life style and consumption patterns. Moreover, due to the increased participation of women in the political and social life of the Country, many families have shown new needs that are different from the traditional social model.

22. Thanks to the increased porousness of the borders in an interconnected world, increasing expansion of transport and communication means and the state of being an *enclave*, San Marino society has started to consider global phenomena, such as global warming, terrorism, trafficking in human beings, paying attention to any possible consequences of these challenges and their potential impact on the Country.

23. Thanks to this new awareness of a large part of society and the above-mentioned rapid changes, together with the accession to the major international instruments related to human rights, also in San Marino respect for fundamental rights is now considered a *sine qua non* condition and a starting point to take political initiatives able to address the new circumstances in the best way possible.

24. The great importance attached by the Republic of San Marino to the promotion of human rights is demonstrated by the fact that the Country has ratified, as mentioned above, many International Conventions on human rights, by incorporating, where necessary (see chapter "B" hereunder), their provisions into its national legislation. Unfortunately, given the limited dimensions of its administration, it has delayed submitting the reports requested by monitoring bodies responsible for the protection and promotion of human rights.

25. In order to demonstrate the Country's willingness to protect human rights and enhance its cooperation with international bodies, in April 2003 San Marino extended a standing invitation to all thematic special procedures envisaged by the United Nations system.

## **B. Human rights in the national legislative framework**

26. Under Article 1 of the Declaration, generally recognised rules of international law are integral part of the Republic's constitutional order. The Republic of San Marino shall conform its acts and conduct to these rules. It also commits to complying with the rules contained in the international declarations on human rights and fundamental freedoms, as well as with the principles enshrined in the United Nations Statute in relation to its international activities.

27. San Marino constitutional order "recognises, guarantees and enforces the rights and fundamental freedoms set forth by the European Convention for the Protection of Human Rights and Fundamental Freedoms", whereas "regularly signed and enforced international agreements on the protection of human rights and freedoms shall prevail over domestic legislation in case of conflict". Therefore, the Declaration confirms that, in case of conflict with domestic law, international agreements on the protection of human rights and freedoms to which San Marino is part shall prevail.

28. This means that they are recognised not only as interpretative criteria of domestic legislation or criteria used to adopt legislative provisions, but they are also and mainly directly applicable even in the absence of a specific domestic implementing law.

## **C. Application of international provisions on human rights**

### **1. Equality, non-discrimination and individuals enjoying specific rights**

29. Legal equality without any distinction based on sex or personal, economic, social, political and religious status is ensured by the Declaration, which also states that all San Marino citizens shall have access to public services and elective posts.

30. To ensure human rights recognised firstly by the Declaration and consequently by implementing provisions, the San Marino legal system provides for three forms of protection: criminal, civil and administrative. Moreover, by virtue of the Republic's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR), any individual complaining of a violation of his rights, having exhausted all domestic jurisdictional remedies, have the possibility to bring their case to the European Court of Human Rights.

31. With a view to eradicating any inconsistency with the principles of equality and non-discrimination, or to addressing any legislative deficiency, San Marino established the Commission for Equal Opportunities in 2004. The Commission acts to ensure full legal equality and equal opportunities to all citizens, by collaborating with the bodies to which the law recognises the power of legislative initiative.

#### **a) Women**

32. According to the August 2009 estimates, women represent 51 percent of the San Marino population: 16,058 women out of a total of 31,517 inhabitants.

33. Legal equality between men and women is expressly guaranteed by Article 4 of the Declaration, which prohibits any discrimination based on sex. This principle has subsequently

been included in greater detail into numerous laws regulating different sectors of daily life, ranging from the political to the electoral, working and educational contexts.

34. Men and women enjoy equal access to the exercise of the right to vote and to be elected and have the opportunity to hold offices, posts and public positions. Women's participation in the institutional bodies of the Country is quite significant: at present, two women sit on the Congress of State out of ten Secretaries of State, that is to say the Secretary of State for Foreign Affairs and the Secretary of State for Internal Affairs; within the Great and General Council women represent 16.6 percent of the members (10 out of 60), whereas within the Township Councils (local administrations), 2 women (out of 9) hold the position of Head of the Township Council and within these bodies they account for 25 percent of the overall composition.

35. With regard to labour, Law No. 40 of 25 May 1981 prohibits any discrimination based on sex at all career levels. Today, the overall number of working women in San Marino accounts for about 42 percent of the total workforce. In the last 30 years, a widespread economic welfare and several provisions aimed at supporting women have enabled San Marino women to rapidly increase their participation in the social life of the Country. In addition, a relatively high number of women holds middle and middle-high ranking positions both in the public and the private sector. Different benefits (financial, tax benefits and real services) are envisaged for female proprietorships or companies owned by women or whose corporate capital is owned for 2/3 by women not exceeding 42 years of age (Law No. 134 of 24 November 1997). Finally, equal treatment in the field of work is also ensured by many provisions protecting maternity.

36. The Republic of San Marino is a State Party to the Convention on the Elimination of all Forms of Discrimination against Women and its Optional Protocol and to the ILO Conventions No. 100 on Equal Remuneration for Men and Women Workers for Work of Equal Value, No. 103 on Maternity Rights, No. 111 concerning Discrimination in respect of Employment and Occupation and No. 156 concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities.

37. In the field of cooperation with International Organisations, San Marino participates in the works of the United Nations Commission on the Status of Women and of the Council of Europe Steering Committee for Equality between Women and Men.

38. San Marino has actively participated in the Pan-European Campaign to Prevent and Combat Violence Against Women, including Domestic Violence, promoted by the Council of Europe (November 2006 – June 2008), and has joined the Campaign on violence against women launched by the United Nations on 25 February 2008.

39. In the context of these campaigns, San Marino has strengthened and introduced measures aimed at combating the social phenomenon of violence. One of the main results of the Council of Europe Campaign was the approval of Law No. 97 of 20 June 2008, "Prevention and Repression of Violence against Women and Gender Violence". The new Law punishes any act resulting in physical, sexual or psychological harm or suffering to the victim, including threats of such acts, coercion or arbitrary deprivation of liberty. It introduces important new elements in San Marino constitutional order: besides respect for victims' integrity and confidentiality, it also sets forth specific provisions in the Criminal Code concerning reducing or holding in slavery or servitude, gang violence, stalking, mobbing and human trafficking, as well as protection measures for victims in criminal proceedings, namely protection and reporting orders.



40. This Law has also established the Authority for Equal Opportunities, which is responsible for collecting data on violence against women and gender violence on a six-month basis. The Authority consists of three members appointed by the Great and General Council chosen among legal experts, representatives of non-governmental organisations active in the field of gender equality, experts in communication and psychology.

**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.

**c) Persons with disabilities**

51. In preventing and removing the disabling conditions which hinder the development of human beings, San Marino is engaged in promoting the highest possible autonomy of disabled people and their participation in the community life, as well as the possibility for them to exercise their fundamental rights.

52. With Law No. 141 of 21 November 1990 "Framework Law on the protection of rights and social integration of disabled people", San Marino, implementing the fundamental principles enshrined in the Declaration and in international conventions to which the Republic is part, has introduced some policies to guarantee and protect human dignity and the rights to freedom and autonomy of disabled people.

53. In the 2007/2009 State Budget, San Marino has planned a multiyear project supporting people with disabilities to promote adequate information and awareness-raising campaigns, remove architectural barriers and verify the existing legislation on employment.
54. On the occasion of the appointment in 2007 of the first disabled Captain Regent in the history of San Marino, the Country also promoted a series of interventions to the infrastructures of the Historic Centre and institutional buildings aimed at removing architectural barriers.
55. San Marino legal system promotes and guarantees services and interventions for the prevention, treatment and rehabilitation of physical, psychological and sensory disabilities and for the encouragement of social, school and work integration of people with disabilities.
56. By adopting Law No. 24 of 12 February 1998, aimed at improving social and health care structures, both residential and semi-residential, San Marino has intended to guarantee adequate social and health assistance in favour of disabled people, encouraging the prevention of potential forms of marginalisation.
57. The Disabled Centre “Il Colore del Grano” is a care facility giving hospitality, even temporarily, to disabled adult people with serious or semi-serious psychological and physical disabilities, unable to live in a family context. Care and therapeutic interventions aim at meeting the educational, rehabilitation, care, relational, emotional and social needs of the guests. It also offers a support, during the day, to the families of disabled people.
58. In relation to the above-mentioned centre, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, stated in his report <sup>1</sup>: “This institute was set up for day care and residency for children and adults suffering from intellectual disabilities. The environment was truly accommodated to the needs of the patients. All the technical equipment such as therapeutic bathing facilities, exercise rooms and activities were provided for. The positive physical environment was corroborated by quality technical aid and services. Educators, doctors and social workers worked hand in hand to provide the best assistance possible to these people with disabilities. [...] The Commissioner hopes that such an institute could be replicated in other European States”.
59. Disabled people’s right to education is guaranteed through integration and support programs, carried out, if necessary, by assistance teachers relying on the technical advice of experts and under the aegis of the Minors’ Service.
60. Employment of persons with disabilities is envisaged by Law No. 71 of 29 May 1991. This Law reaffirms the right to work of people with disabilities and sets forth the conditions to exercise such a right and promote the professional advancement and employment of persons affected by serious disabilities or mental problems for training, therapeutic and social purposes.
61. At an international level, the Republic of San Marino has acceded to ILO Convention No. 159 on vocational rehabilitation and employment of disabled persons and has ratified the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol on 29 January 2008.

**d) The elderly**

62. As of August 2009, people aged 65 and more resident in the Republic of San Marino were 5,471 and accounted for 17.36 percent of the total population.

63. San Marino society recognises and attaches great importance to the elderly, since they represent a heritage in terms of experience, knowledge and culture. For this reason, the Republic of San Marino has implemented provisions and positive actions in order to encourage the elderly to play an active part both in the family context and in the wider social environment.

64. The right of the elderly to health is guaranteed through adequate health care services, which equally allocate economic resources on the basis of their real needs.

65. Through the guidelines established in the multiyear program of the Social Security Institute, the State intends to prevent or limit the risks of malaise of the elderly by adopting a network of social, medical and care services in favour of old-aged people and to support their families in terms of care and assistance.

66. The Elderly Service within the Social and Health Service, established with Law No. 21 of 3 May 1977, deals with old-aged people no longer able to completely look after themselves by intervening through domiciliary assistance, daily hospital assistance and night or complete assistance in appropriate structures.

67. Interventions are implemented by providing social and care assistance at home, according to a tailored project. They are aimed at contributing to the best conditions for non self-sufficient or disabled people, in particular in order to enable them to stay at their houses while being assisted and without risks. At the same time, they are targeted to avoid the alienation of people compromised at a functional and/or cognitive level and of their families. In this regard, the Territorial Domiciliary Service, cooperating with the Social Transport Service, the Day Centre for the Elderly and the Recreational Centre for the Elderly, aims, on the one hand, at improving the quality of life and access to the various services on the territory and, on the other hand, at supporting and motivating families, as primary reference networks in the management of these people's daily life activities.

68. Through Law No. 1 of 7 January 2008, the "Charter on old-aged people's rights, safeguard and improvement of their role in the society" was adopted. This Charter aims at protecting the old-aged people's rights, recognising their value and increasingly integrating them in the society. While recognising the positive value of the family context and trying to avoid eradication from the original environment, this Law lists a series of residential housing interventions aimed at making houses functional to the needs of old-aged people and their families.

69. Finally, a technological literacy project for elderly people was established in 2006. The aim is to expand the skills necessary to know and use new technological devices within the group of society less familiar with these instruments, namely people over 60.

e) **Racism**

70. Although no cases of racism and racial discrimination have been reported in San Marino until today, the increasing complexity of social phenomena characterising and affecting society have required cultural and legal efforts for prevention and surveillance, so that San Marino could be provided with the instruments necessary to prevent forms of racism from developing and strengthen tolerance and non-discrimination among people.

71. Therefore, on 28 April 2008, the Great and General Council approved Law No. 66 “Provisions against racial, ethnic and religious discrimination”. This Law represents an important provision confirming the commitment of San Marino Government and Parliament to promoting the principle of non-discrimination. It also implements the international commitments undertaken by San Marino by adopting the main international legal instruments in this regard, such as Protocol No. 12 to the ECHR and the International Convention on the Elimination of All Forms of Racial Discrimination.

72. This Law, concretely implementing the fundamental principle of equality, expressed in Article 4 of the Declaration, introduces the offence of racial discrimination in the San Marino Criminal Code. It punishes, in particular, the divulgation, by any means, of ideas based on superiority or racial or ethnic hatred, as well as the incitement to perpetrate or the perpetration of acts of discrimination on racial, ethnic or religious grounds.

73. Both public institutions and private associations in San Marino have undertaken several initiatives to raise citizens’ awareness on important issues, such as discrimination and intolerance, and to promote increasing social cohesion.

74. Foreigners are involved in associations, together with San Marino citizens, since they can take part in cultural associations constituting the Consulta (Council) of Cultural Associations and Cooperatives. This territorial social and cultural agency is coordinated by the Secretariat of State for Education and Culture, University and Youth Policies, responsible for encouraging and promoting cultural policies.

75. In order to help foreign workers and their employers in complying with bureaucratic procedures, Trade Unions offer an information service supporting both workers and employers. This service is expressly provided for persons employed in home assistance, mainly to take care of old and ill people.

76. A positive experience is represented by a group of volunteers who have founded an association for the so-called “caretakers” - people, mainly foreign women, hired to assist the elderly and non self-sufficient persons or as cleaners - called “Le amiche di Ruth” (Ruth’s friends). This association promotes courses (language, computer, cooking, etc.) for foreign women, coming especially from Eastern Europe, who live in San Marino. The aim is not only to facilitate their integration into the local society and culture, but also to establish a closer relationship with people having different cultures and to encourage cultural exchanges for mutual enriching.

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.

78. Finally, worth recalling is that San Marino six-month Chairmanship of the Committee of Ministers – characterised, among its priorities, by the promotion of intercultural and interreligious dialogue – was also useful to raise the awareness of the general public on the importance of tolerance and intercultural dialogue.

#### **f) Sexual orientation**

79. Prohibition of discrimination on the grounds of sex is stated by the Declaration as modified by Law No. 95 of 19 September 2000. By reforming Article 4, this Law has explicitly introduced sex as a possible element for discrimination. The Declaration also excludes any discriminatory behaviour towards a person on the basis of his/her sexual orientation, which falls under the definition of “personal status” referred to in Article 4. This expression, which avoids any misunderstanding or misapplication of the principle of equality set forth in Article 4, has been used in order to recognise the illegitimacy of any discrimination based on the status or characteristics of a person.

80. The above is confirmed by the already mentioned Law No. 66 of 28 April 2008. This Law, supplementing the provisions of the Criminal Code in force, has introduced Article 179 bis that punishes, among the other factors of discrimination, anyone encouraging to commit or committing discriminatory acts on the grounds of sex. This offence can be prosecuted *ex officio*. Under this Law, the perpetration of an offence for purposes related, among other aggravating circumstances, to sexual orientation is an aggravating circumstance.

81. In December 2008, San Marino signed, together with other 65 States belonging to all regional groups, the General Assembly Declaration on Sexual Orientation and Gender Identity.

### **2. Right to life, prohibition of slavery and torture**

82. Right to life is protected by several provisions of San Marino legislation. Article 5 of the Declaration stipulates the inviolability of human rights, and as such they must be given priority as opposed to the other rights recognised in the same Declaration. The Criminal Code protects the right to life both of born people (criminalising homicide and injury, both intentional and negligent, infanticide for honour or mercy, instigation or assistance to commit suicide, beating) and of the unborn (criminalising abortion).

83. The Republic of San Marino was the first country in Europe and the third in the world to abolish the death penalty, which was completely abolished in 1865, although it had last been applied in 1648. In 1865, the intangible character of the primary value of human life was recognised and therefore it was declared as prevailing over the power of the State to punish. For this reason, the death penalty was excluded from the range of criminal sanctions. Moreover, the existing San Marino Criminal Code does not provide for life imprisonment since it deprives the

convicted of any hope to regain freedom and achieve social reintegration. For these reasons, life imprisonment is contrary to the rehabilitation purpose referred to in Article 15 of the Declaration.

84. Always with regard to the death penalty, San Marino is a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty, and to the main regional instruments of the Council of Europe in this field, namely, Protocols No. 6 and No. 13 to the ECHR.

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.

86. With regard to the new forms of slavery, having no external borders and being an enclave within the Italian territory, San Marino is not affected by illegal immigration and trafficking in human beings, although it is not immune from the influence of migration flows. Only in extremely rare cases have individuals involved in such activities been able to enter San Marino by eluding police controls at the main Italian entry ports or the specific Schengen provisions.

87. Also with a view to effectively facing these phenomena, the State organises training courses on the respect and protection of human rights destined to judges, lawyers and all San Marino law enforcement agencies.

88. In San Marino, cases of torture or maltreatment and the existence of secret prisons have never been reported. Article 15 of the Declaration, besides providing for the jurisdictional protection of subjective rights and legitimate interests before the competent ordinary and administrative courts and before the Guarantors' Panel for the Constitutionality of Rules and affirming the right of defence at any stage of the judicial proceedings, establishes that the only permissible punitive measures are humane and rehabilitation punishments inflicted only by judges authorised by law to exercise judicial power.

89. In 1989 San Marino ratified the ECHR, Articles 3 and 4 of which categorically prohibit torture, reduction in slavery, inhuman and degrading treatment. It is also a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. A delegation of the Committee for the Prevention of Torture (CPT) of the Council of Europe visited San Marino three times and could rely on the utmost collaboration by San Marino Authorities. In November 2006, San Marino became a party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

90. Finally, the treatment of prisoners shall comply with the principles of humanity and dignity and shall be absolutely impartial, that is to say without any discrimination on grounds of nationality, race, social and economic conditions, political opinion and religious belief. It shall be aimed at the prisoners' social reintegration and meet their individual needs.

### **3. The judicial system and the right to a fair trial**

91. Under the San Marino law, all individuals enjoy legal capacity, that is to say they have rights and duties. Such capacity is acquired at birth and lasts throughout life.

92. Personal freedom is expressly recognised by Article 6 of the Declaration and constitutes the logical and juridical basis for all freedoms mentioned in the Declaration itself. This Article mandates the legislative power, through a specific legal reservation, to determine the terms and circumstances under which personal freedom may be legitimately restricted.

93. In the San Marino legal system, limitations to personal freedom are precautionary measures involving imprisonment or detention in care institutions, house arrest, the obligation or the prohibition to stay in the Republic or part of its territory, the prohibition to expatriate. Precautionary measures are generally governed by the principles of legality, absolute necessity and proportionality of the measure to the crime perpetrated.

94. Nobody can be subject to coercive measures in the absence of adequate evidence leading to believe that the defendant is responsible for the facts for which he/she is being prosecuted and that such facts constitute a crime punishable, according to the law, by terms of any of these measures. Coercive measures are ordered by the Judicial Authority only if there is a risk of tampering with the evidence, defendant's escape or the need to protect the community.

95. Public order requirements which, under particular circumstances, can entail limitations to personal freedom include the stop and holding by the judiciary police.

96. The adoption of any such precautionary measures must fully respect the right of the defendant to be assisted by an advocate of his/her choosing or, failing this, by a public defender.

97. Limitations and restrictions to the enjoyment of civil and political rights are allowed only under the law and more specifically derive from an order of disqualification or from a conviction entailing disqualification from public offices or political rights, or from the starting of judicial bankruptcy proceedings.

98. According to Article 15, everyone shall be entitled to jurisdictional protection of subjective rights and legitimate interests before the competent ordinary and administrative courts and before the Guarantors' Panel for the Constitutionality of Rules. This Article also establishes that everyone shall be entitled to defend himself/herself at any stage of the judicial proceedings and that everyone charged with an offence shall be presumed innocent until convicted. In particular, the second and third paragraphs of this Article establish that everyone shall be entitled to defend himself/herself at any stage of the judicial proceedings, all judgements shall be pronounced by independent courts within a reasonable time and shall not be subject to undue financial burden and such judgements shall be made public.

99. The law on "fair trial" (Law No. 93 of 17 June 2008), which has significantly modified the previous system in preparation for the overall reform of the Criminal Code, ensures that the fundamental protection rights of the person are safeguarded from the very beginning of the proceedings and therefore already during preliminary investigations. These rights are the right to publicity, which means that a person under investigation or the defendant, should the case not be



filed, shall be informed about the investigations being carried out, as well as the rights to cross-examination and defence.

100. Article 6 of the above mentioned Law, which is modelled on Article 15 of the Declaration, establishes that criminal trials shall be carried out within a reasonable time both during preliminary investigations and during the actual hearing and that judgements shall be made public within the time limits set by the law. The judge shall be held responsible (civil liability) for any delays in the implementation of said procedures if the conditions set forth in Constitutional Law No. 144 of 30 October 2003 also apply.

#### **4. Freedom of movement, of residence and right of asylum**

101. The rights of establishment and expatriation include freedom of movement on the whole national territory, freedom to fix one's domicile in any place of the national territory, freedom to expatriate, either temporarily or permanently, and to re-enter the national territory.

102. The right of establishment is limited by the provisions concerning the stay of foreigners on the territory of the Republic. Any foreigner may freely enter and circulate within the national territory. However, for those wishing to stay in the Republic, a stay permit is required by law.

103. Law No. 95 of 4 September 1997 and subsequent implementing rules have amended past provisions on the granting of stay and residence permits to foreigners. Besides tourist purposes, the various stay permits are granted under special circumstances, such as study or professional reasons, to undergo health treatment or receive assistance, for religious reasons and in specific family circumstances expressly indicated.

104. Residence permits are issued to foreigners having been granted an ordinary or special stay permit for at least five years, provided that there have been no interruptions and that the applicant is not involved in any criminal proceedings for felonies, has not been convicted for any of such felonies and there are no major public order reasons that hinder such issue. Foreign spouses of San Marino citizens are granted residence ex officio upon request submitted to the competent offices.

105. Although the Republic of San Marino has granted hospitality and refuge to several individuals over the centuries, as stated in Article 1 of the Declaration, existing legislation does not regulate political asylum; it is, in fact, the Congress of State that, after a thorough evaluation of every single case, determines if a stay permit for humanitarian reasons should be granted. Over the last years, the Congress of State has granted such permits in certain cases.

#### **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.

107. Citizenship is acquired by naturalisation, following an extraordinary legislative provision, in case of continued residence or stay in the Republic for at least 30 years. Foreign spouses of San Marino citizens are granted citizenship in case of continued residence in the Republic for at least 15 years. Under the same Law, naturalisation is automatic for minor children of naturalised parents or of a naturalised father, the mother already being a San Marino citizen. Where citizenship is acquired by naturalisation by only one parent with the other remaining a foreigner, minor children are naturalised only when reaching full age and provided that they are residents.

## **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.

110. Under Art. 28 of the Law reforming Family Law, both spouses assume with marriage the same rights and duties. Their duties, in particular, include mutual respect, moral and material assistance, cohabitation, fidelity and co-operation in the interest of the family. Both spouses are entitled to a gainful occupation outside the family and have the duty to contribute to the household work and to the needs of the family according to their resources and capabilities.

111. San Marino legislation provides for several social incentives and types of financial help aimed at supporting the family. By envisaging subsidised loans, these provisions also safeguard the right to housing for individuals who find themselves under severe economic and social conditions.

## **7. Freedom of thought, conscience, religion, opinion and expression**

112. Freedom of thought, sanctioned by Art. 6 of the Declaration, means that any individual can express and disseminate his/her thoughts by any means (orally, or through press, radio, images, billboards, etc.). Freedom of thought also includes the right to report information and news, the right to express views, comments and criticism and the right to propaganda.

113. Under Art. 6 of the Declaration, freedom of thought may be limited only for reasons of public interest or to protect the subjective rights of individuals or other interests equally guaranteed by the Declaration.

114. Freedom of religion and worship, meaning that anyone is free to profess any religious faith, either alone or in community with others, is fully recognised by Article 6 of the Declaration and by Article 9 of the ECHR, the latter forming integral part – as already stated above – of San Marino legal system.

115. During San Marino Chairmanship of the Committee of Ministers of the Council of Europe, a place destined to personal meditation and prayer was opened in San Marino and is now available to people of any religious faith.

## **8. Freedom of assembly and association**

116. Freedom of assembly, guaranteed by Art. 6 of the Declaration, consists in the right to meet or gather, temporarily and voluntarily, in a given place, following prior agreement among the parties. The assembly may be either public or private and have various purposes: religious, political, cultural etc. The constraint generally placed on freedom of assembly is that any meeting or gathering has to take place peacefully and participants are not allowed to carry weapons.

117. Freedom of association includes the liberty to form, join or not an association and to withdraw from it. Freedom of association may be limited by law only in exceptional cases and for serious reasons of public order and interest. The setting up of associations is regulated by Art. 4 of Law No. 68 of 13 June 1990. Under said Article more persons, wishing to jointly pursue an objective and the majority of whom being residents, may form a non-profit association, the organisation and management of which is to be agreed upon by the associates. Where a non-profit association pursues broader objectives than the personal interest of the associates and has articles of association similar to those of a partnership, such non-profit association may obtain formal recognition as legal person by the Court.

118. Article 8 of the Declaration recognises the freedom to form trade unions. Under Law No. 7 of 17 February 1961, Trade Unions must be registered with the Court. Registration, by which a Trade Union acquires legal personality, is subject to prior verification of the democratic nature of the internal organisation. Trade Unions are free, workers have the right to join them freely and also to set up company unions. Under no circumstances shall the Government interfere with the said trade union activities. Trade Unions Confederations are fully entitled to set up federations and to join international trade unions.

119. In San Marino there are three legally recognised Trade Unions, two of which have joined the European Trade Union Confederation.

120. The several International Conventions promoted by the International Labour Organization, to which San Marino has adhered, include Convention No. 87 regarding trade union freedom and the safeguarding of union rights.

## **9. Right to take part in the political life of the Country**

121. The participation of citizens in the political life of the Country is fully ensured by Art. 2 of the Declaration, which states that the Republic's sovereignty is vested in its people and exercised by the people through the statutory forms of representative democracy and the other institutions of direct democracy. The right to be elected is provided for by Art. 4 of the Declaration, which recognises that all citizens have access to public services and elective posts.

122. Art. 7 of the Declaration provides for universal, secret and direct suffrage. Under Law No. 6 of 31 January 1996 and subsequent amendments, every San Marino citizen aged 18 or older who has not been disqualified for mental infirmity and holds political rights is eligible to vote.

123. Moreover, under Law No. 72 of 24 May 1995, the electorate can exercise the power of popular petition through an institution established centuries ago and called "*Istanza d'Arengo*".

These petitions, concerning issues of public interest, must be voted by the Great and General Council. Petitions so approved impose on the Government the obligation to comply with them, in line with the will expressed by the people. Law No. 101 of 28 November 1994 regulates, instead, popular legislative initiative.

### **10. Right to social security**

124. A compulsory public social security system, which guarantees all residents free health care, is in force in San Marino since 1955. Patients requiring treatment not provided by San Marino health structures are referred to foreign centres free of charge. The entire population has access to trained personnel for the treatment of common diseases and injuries, with free supply of essential drugs.

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.

126. In 2004 the Health and Social Authority was set up, a body entrusted with the task of providing technical support to governmental bodies responsible for planning the activity of health and social services. As of 2005, this Authority also draws up the National Health and Social Plan, which describes the health status of San Marino, lays out the health needs, sets the health objectives to be achieved and suggests the action to be taken to do so.

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

- free health care;
- sickness benefits: sick workers (both dependant and self-employed) receive a temporary benefit ranging from 86 percent to 100 percent of their remuneration. Such benefits are financed through the social contributions paid by employers in case of employees and by the self-employed themselves in case of self-employment;
- 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;

- old-age benefits: following the 2005 pension reform, pensions are paid to all workers at the attainment of their 65th year of age and with a minimum contribution period of twenty years. In case of dependent workers, social contributions are paid partly by the employer and partly by the worker himself/herself;
- invalidity benefits: in case of disabled or elderly people, an invalidity benefit guarantees a minimum monthly income. Such benefits are financed through general income taxation;
- survivors' benefits: surviving spouses and children until 18 years of age, or under specific circumstances, until 26 years of age receive survivors' benefits;
- employment injury benefits: in case of temporary invalidity, sickness benefits equal to 100 percent of the remuneration are guaranteed. In case of permanent invalidity and reduction of working capacity of at least 15 percent, a life-long benefit is granted;
- family allowances: 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;
- unemployment benefits: see chapter 11 hereunder.

## **11. Right to work**

128. Article 9 of the Declaration stipulates that each citizen has both the right and duty to work and that fair remuneration, annual holidays, weekly rest and the right to strike are secured by law.

129. The last twenty years have been characterised by a significant and ongoing growth in employment; in the last few months, however, the global economic crisis is taking its toll even in San Marino and a rise in unemployment rates is to be expected. In June 2009 unemployment stood at 3.67 percent. The overall employment rate currently stands at 102.20 percent, while domestic employment rate is equal to 71.28 percent. The 6,600 cross-border workers employed in San Marino significantly contribute to both rates.

130. The activities aimed at guaranteeing the employment of people looking for a job are carried out by the Labour Office, a public office to which all kinds of workers can have access. Any other mediation activity, including free and in any case organised activities, are prohibited. New services for employment have recently been devised, such as services providing information and guidelines, as well as a series of new employment and training incentives granted under new contracts for the purpose of training or hiring young people, especially high school or university graduates. Special attention has been given to the employment or reallocation of special categories of workers more liable to be socially excluded, such as long-term jobless or idle workers, women to be re-inserted in the labour market, men and women aged over 50, through the introduction of special hiring contracts allowing for exemption from social security contributions. Thanks to these interventions, until today the system has always been able to reallocate in reasonable times all long-term jobless and idle workers.

131. The method used for fixing wages is through collective bargaining. Law n. 7 of 17 February 1961, “Law on labour and workers’ protection”, establishes that the labour agreement is collectively concluded between the registered trade unions and the registered employers’ organisations and has “erga omnes” validity, that is it mandatorily applies to all categories of workers covered by the agreement.

132. There are no categories of workers excluded from the enjoyment of rights such as periodic holidays with pay, rest, reasonable limitations of working hours and remuneration for public holidays. On the contrary, the enjoyment and protection of workers’ rights have been enhanced over the years thanks to the good cooperation relations existing among the parties.

133. Social Security benefits include the following interventions: wage supplementation fund for temporarily laid off employees or people working reduced hours, because of a reduction in or interruption of productive activities, which is jointly financed by the employer and the State; special economic benefits for all employees who have lost their jobs following the closing down of a company, which are also jointly financed by the employer and the State; unemployment benefits, paid by the employer, the worker and the State.

## **12. Right to an adequate standard of living**

134. Life expectancy in San Marino is very high: 78.57 years for men and 84.95 years for women. The birth rate is equal to 10.6 new births out of 1,000 inhabitants and the mortality rate is equal to 6.9 deaths out of 1,000 inhabitants (time period 2004-2006).

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.

136. Decree No. 42 of 26 March 2003, “Single Text and Reform of Provisions on Subsidised Housing”, protects the right to adequate housing and provides housing to singles or households who are in real and evidenced need for a home. Moreover, the State grants subsidised loans to young couples or individuals, not forming a cooperative, who intend to buy or restore a house. The General Town Planning Scheme defines the needs for residential houses, as well as productive, commercial and service buildings, indicates the intended public and private uses of the territory and takes into account the environmental impact of works on the territory.

## **13. Right to take part in cultural life**

137. The State guarantees participation in the cultural life to all citizens, without limitations. Although the Declaration does not contain a specific article on culture, the right of all citizens to participate in the cultural life and progress can be inferred from Article 6 of the same Declaration, which states that arts, science and education, strictly connected with this right, shall be free.

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.

#### **IV. CONCLUSIONS**

##### **A. Contribution by the civil society**

140. The Government has involved the civil society in the preparation of the national report through San Marino Cultural Associations and Cooperatives, which were invited by the Department of Foreign Affairs, both collectively as the Consulta of Cultural Associations and Cooperatives (see paragraph 74) and individually, to take part in an informative meeting held on 2 July 2009.

141. During this meeting, in which the representatives of 30 associations took part, the officials of the Department of Foreign Affairs illustrated how the universal periodic review mechanism works and provided an overview of the Human Rights Council. They handed out informative material and, referring to the OHCHR website, they explained the two ways in which the Associations could contribute to San Marino assessment: by reporting directly to the UPR Secretariat or by sending observations and comments to the Secretariat of State for Foreign Affairs, which was preparing the report.

142. On 9 September 2009, on behalf of 24 associations, the President of the Consulta of the Cultural Associations and Cooperatives sent to the Secretary of State for Foreign Affairs a text indicating some areas in which the human rights situation in San Marino can be improved.

143. In brief, the associations call upon the Government to:

- a) adopt comprehensive legislation on civil and social volunteer work;
- b) pay more attention to the needs of the tertiary sector, especially by involving and consulting Organisations;
- c) offer fellowships and/or other instruments to allow the best students to work abroad for a period of time;
- d) update San Marino legislation on the professional training required for people who mostly deal with children, the elderly, ill and disabled people;
- e) allocate more resources for refresher courses destined to high-level professionals;

- f) adopt legislation on patients' rights, focusing on the patients' right to privacy;
- g) provide full implementation to the Optional Protocol to the Convention on the Rights of Disabled People.

### **B. Final remarks**

144. Ensuring national high standards of promotion and protection of the fundamental human rights set forth by the Universal Declaration of Human Rights, on which this text is modelled, represents and will represent one of the primary policy objectives of the Republic of San Marino.

145. San Marino is, in fact, perfectly aware that by promoting and protecting to a great extent human rights on its territory, it will ensure lasting peace and well-being, lack of criminality and corruption, strengthening of democracy and rule of law and prevention of crisis situations.

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### *Notes*

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<sup>1</sup> Cfr. CommDH(2008)12, Strasbourg, 21 April 2008.