

**COMMITTEE ON THE  
RIGHTS OF THE CHILD**

WRITTEN REPLIES BY THE GOVERNMENT OF SAN MARINO CONCERNING  
THE LIST OF ISSUES (CRC/C/Q/SMR/1) RECEIVED BY THE COMMITTEE ON  
THE RIGHTS OF THE CHILD RELATING TO THE CONSIDERATION OF THE  
INITIAL REPORT OF SAN MARINO (CRC/C/8/Add.46)

[Received on 22 August 2003]

**CRC/C/RESP/39**

# List of issues to be taken up in connection with the consideration of the initial report of San Marino

## PART I

### **A. Data and Statistics, if available**

#### *1) The under 18 population:*

Residing population aged 18 or less

	2000	2001	2002
Male	2.668	2.750	2.795
Female	2.436	2.519	2.535
<b>Total</b>	<b>5.104</b>	<b>5.269</b>	<b>5.330</b>

#### *2) National and local budgetary allocation and spending for social needs:*

##### *a) education:*

#### **Spending for education**

	<b>2000 (*)</b>	<b>2001(*)</b>	<b>2002 (**)</b>
Kindergarten	€ 7.165.899,09	€ 7.874.466,05	
Elementary school	€ 12.689.031,37	€ 13.510.982,58	
Junior high school	€ 7.460.755,79	€ 7.749.032,32	
High school	€ 3.960.527,03	€ 4.221.170,10	
Total	€ 31.276.213,27	€ 33.355.651,05	€ 36.188.842,24
Preservation of school buildings	€ 2.209.049,43	€ 1.462.576,34	€ 1.450.965,30
General total	€ 33.485.262,70	€ 34.818.227,39	€ 37.639.807,54
Total expenditures (State Budget)	€ 455.900.198,49	€ 580.808.871,32	€ 509.159.819,00
<i>% of expenditures for education on the total State Budget</i>	<i>7,34%</i>	<i>5,99%</i>	<i>7,39%</i>

(\*) Balance sheet

(\*\*) Budget

b), c), e): health, child protection and other social services:

Public Social and Health Care Services

	2000 (*)	2001 (*)	2002 (*) (**)
<b>SOCIAL ASSISTANCE</b>	<b>€ 10.748.791,90</b>	<b>€ 12.337.618,97</b>	<b>€ 10.886.459,00</b>
Elderly service	€ 4.479.615,63	€ 5.416.918,20	€ 4.530.649,00
Minor service	€ 6.232.362,22	€ 6.871.734,90	€ 6.355.810,00
General expenditures for other social services	€ 36.814,06	€ 48.965,87	...
<b>HEALTH CARE</b>	<b>€ 54.318.475,32</b>	<b>€ 57.709.387,19</b>	<b>€ 55.493.682,00</b>
Basic medical care	€ 4.147.251,68	€ 4.557.122,89	€ 4.564.345,00
Hospital and specialised care (***)		€ 28.035.381,54	€ 27.520.727,00
Pharmaceutical care	€ 8.274.976,93	€ 8.470.385,73	€ 9.215.390,00
Environmental hygiene service	€ 1.881.297,93	€ 2.282.570,36	€ 2.116.538,00
Health care in structures situated outside the territory	€ 9.427.497,96	€ 9.917.075,83	€ 10.035.440,00
Legal and fiscal medicine service	€ 265.960,05	€ 298.463,39	€ 292.045,00
Neuropsychiatry service	€ 1.956.779,16	€ 2.032.904,56	€ 1.749.197,00
General expenditures for other health care services	€ 2.411.915,50	€ 2.115.482,88	...
<b>Total spending for social and health care services</b>	<b>€ 65.067.267,23</b>	<b>€ 70.047.006,17</b>	<b>€ 66.380.141,00</b>
(*) Income statement by cost centres			
(**) Partial and provisional data			
(***) of which paediatric service	€ 1.204.794,00	€ 1.293.617,00	€ 1.325.506,00

The amount relative to vaccinations for 2002 concerning children under 14 years of age is equal to € 46.712.

3) Adolescent health, including sexually transmitted infections (STIs), HIV/AIDS, mental health, suicides, drug and alcohol abuse:

- STIs: 0
- HIV/AIDS: 0
- Mental health: on the basis of internationally recognised diagnostic criteria, this category includes the following data:

Pathology type	2000	2001	2002
Syndromes and mental deficits	12	10	11
Discomfort and pathologies in age of development (serious)	6	8	10
Developmental crisis (slight)	10	16	14
<b>Total</b>	<b>28</b>	<b>34</b>	<b>35</b>

- Suicides: during the years 2000, 2001 and 2002, no cases of suicide, which also belongs to the category of violent mortality, were reported in San Marino. However, the cases of attempted suicide, in particular those connected with syndromes such as anorexia, must be considered. Two such cases were reported in 2001. Also in San Marino the world trend to zero for suicide among minors is confirmed.

4) Number of:

a) children separated from their parents:

	2000	2001	2002
Children whose parents separated	31	34	29

*b) children placed with relatives and in welfare institutions:*

Please note that, for the following cases, the Minor Service has always preferred institutions situated outside the territory of the Republic, which are deemed more suitable to the needs of providing minors with a solid family environment.

		2000	2001	2002
Children separated from their parents	M	3	3	2
	F	2	2	2
	Total	5	5	4
Children placed with relatives and in welfare institutions	M	3	3	2
	F	2	2	2
	Total	5	5	4
<b>Total</b>		<b>10</b>	<b>10</b>	<b>8</b>

*5) The enrolment and completion rates, according to type of school:*

School population by type of school

		1998/99	1999/00	2000/01	2001/02	2002/03
Kindergarten	M	481	507	529	542	562
	F	451	455	462	462	508
	<b>Total</b>	<b>932</b>	<b>962</b>	<b>991</b>	<b>1004</b>	<b>1070</b>
Elementary school	M	641	649	664	673	709
	F	586	600	633	623	634
	<b>Total</b>	<b>1227</b>	<b>1249</b>	<b>1297</b>	<b>1296</b>	<b>1343</b>
Junior high school	M	358	370	387	406	399
	F	344	336	342	363	389
	<b>Total</b>	<b>702</b>	<b>706</b>	<b>729</b>	<b>769</b>	<b>788</b>
High school and vocational training	M	657	676	636	670	707
	F	636	626	613	580	667
	<b>Total</b>	<b>1293</b>	<b>1302</b>	<b>1249</b>	<b>1250</b>	<b>1374</b>
(*) of which on the territory	M	236	245	240	281	247
	F	209	212	222	190	232
	<i>Total</i>	445	457	462	471	479
University and para-university courses	M	392	397	401	394	397
	F	509	545	560	562	553
	<b>Total</b>	<b>901</b>	<b>942</b>	<b>961</b>	<b>956</b>	<b>950</b>
(*) of which on the territory	M	.	.	12	15	17
	F	.	10	32	42	36
	<i>Total</i>	.	10	44	57	53
<b>General total</b>		<b>5.055</b>	<b>5.161</b>	<b>5.227</b>	<b>5.275</b>	<b>5.525</b>

6) *Number of children with disabilities:*

	2000	2001	2002
Children with disabilities:			
a) living with their families	89	93	123
b) in institutions	0	0	0
c) attending regular schools	89	93	123
d) attending special schools	0	0	0
<b>Total</b>	<b>89</b>	<b>93</b>	<b>123</b>

The Minor Service is responsible for providing assistance to subjects from 0 to 18 years of age and, by virtue of 1977 Law establishing such body, its main purpose and function is to “provide the minor with prevention, care and rehabilitation services in order to guarantee him the highest degree of well-being, adequate psychophysical development and social integration”.

7) *Number of children:*

a) *who allegedly committed a crime which was reported by the police:*

12 in 2000, 2 in 2001, 12 in 2002.

b) *who were sentenced by courts to sanctions, and the nature of the sanctions imposed:*

1 in 2002. Sanction imposed: administrative pecuniary sanction.

**B. General measures of implementation**

1) *Please provide further information on legislative measures taken to review existing laws in order to ensure compliance with the Convention on the Rights of the Child.*

In addition to the legislative measures already specified in the report CRC/C/8/Add.46, please see Part III of this document.

2) *Please explain the State party’s child rights policy. Please provide information explaining the mechanisms through which State policy with regard to children’s rights is formulated and the means through which policy implementation is coordinated. Please also indicate whether the State party has a human rights plan of action.*

The general policy pursued by the Republic of San Marino in the field of child rights covers all sectors of public life. Such policy is mainly carried out by the Great and General Council, which performs the legislative function and the task of political guidance. The Great and General Council is responsible for adopting any legislative measure in this field. The Congress of State is then responsible for jointly determining the general policy with regard to administrative measures on the basis of the political guidance of the Great and

General Council. Therefore, the Congress of State adopts ad hoc administrative measures (decisions) within the respective fields of competence of the single Secretariats of State.

*3) Please explain the mechanism that exist for monitoring the State party's implementation of the Convention. In particular, please provide information on any independent human rights monitoring mechanism that may exist.*

Through the Minor Service, the Republic of San Marino continuously monitors the implementation of the Convention on the Rights of the Child. More specifically, all citizens shall first report to the Minor Service any act perpetrated against minors. By means of a network of operators active on the territory, the Service can intervene:

- preventively: by organising awareness raising campaigns, meetings and training courses directed to the various age groups of the population (for example, meetings with psychologists specialised in the relationship between parents and children in the respect for an adequate development of children themselves);
- seasonably: following a report, in case of violation of minors' rights, by means of investigations and subsequent reports to the Court (for example, in case of violence against minors or school abandonment).

*4) Please indicate whether the Convention on the Rights of the Child has invoked directly in domestic courts, and if it has, please provide examples of such cases.*

Despite the absence in San Marino Constitutional Order of a legislation expressly governing the juvenile process, the Judges have frequently ordered that the hearing be closed, especially if the minor is the victim of the offence, with a view to guaranteeing his privacy and to avoiding any form of publicity with a negative impact on the minor's personality. The Judges have taken this decision by directly invoking the Convention on the Rights of the Child.

In some cases, again by directly implementing the Convention, children under 14 years of age were heard, although by virtue of San Marino Family Law only children older than 14 years of age can be heard. In case of separation of the parents, such hearings allowed the children to express their opinion as to whether they preferred to live with the father or the mother. In the decisions concerning the minor's custody, this latter's opinion was taken in due consideration, obviously together with other aspects relative to the father's or the mother's greater suitability, whenever such custody could cause a detachment from the places and the social context in which the minor had lived until that moment.

In some cases, again by directly invoking the Convention, the adoption of two brothers/sisters by the same adopters was ordered, despite one of them did not comply with all requirements envisaged by the law. Obviously, the aim was to avoid that the separation of the two brothers/sisters caused trauma and affective disturbances with a negative impact on the adequate growth of both children.

Despite the absence in San Marino of an ad hoc law on this matter, a number of decisions included some measures protecting the minor's privacy and his right to personal identity. Also in these cases the Convention was directly implemented.

*5) Please provide further information on State party's efforts to disseminate the Convention to all sectors of the population.*

Soon after its adhesion to the Convention, the Republic of San Marino deemed it extremely important to widely disseminate the text of the Convention, which was published in Italian as a brochure and distributed to all San Marino families and schools, with the collaboration of San Marino National Commission for Unicef.

For the other initiatives carried out to disseminate the Convention among all population groups, see Part II, paragraph 13 of the report CRC/C/8/Add.46.

The Convention is constantly implemented in school programs, in particular by the elementary school and the junior high school. Within their specific curricula, all schools are committed to reinterpreting values and principles which have to bring changes to the cognitive and behavioural pattern of pupils and students. Curricula include the teaching and learning of human rights in order to actively contribute to the development in any individual, irrespective of age, sex and nationality, of concepts based on the values of solidarity, active citizenship and democratic participation.

*6) Please describe how disaggregated data of persons under 18 is collected.*

Disaggregated data of persons under 18 are collected through the Registry Office of the Republic of San Marino.

*7) Please indicate the issues affecting children that the State party considers to be the priorities requiring the most urgent attention with regard to the implementation of the convention.*

In the Republic of San Marino, the most urgent priorities in this field can be inferred through the analysis of the draft law recently submitted to the Great and General Council for its approval (Rules on social and educational services for the infancy – see Part III, page 10 of this document), as well from the study and works started by an ad hoc Commission responsible for drafting a possible legislative measure aimed at introducing some legislative institutions in the field of labour law and support to families (see Part III, page 10 of this document).

## PART II

*Please provide the Committee with copies of the text of the Convention on the Rights of the Child in all official languages of the State party as well as in other languages or dialects spoken, when available. If possible, please submit these texts in electronic form.*

Floppy disk attached.

## PART III

*Under this section, States parties are invited, whenever appropriate, to briefly up-date the information provided in their report with regard to: new bills or enacted legislation; new institutions; newly implemented policies; newly implemented programmes.*

With reference to the initial report transmitted by San Marino, the following changes have been introduced through subsequent legislative measures.

As regards the judicial power, Law n. 36 of 26 February 2002, amending Law n. 59 of 8 July 1974 “Declaration on the Citizens’ Rights and Fundamental Principles of San Marino Constitutional Order” has eliminated the prohibition for San Marino nationals to be appointed as judges of the Republic (Article 15). Previously, San Marino nationals could only hold the positions of Conciliating Judge and Law Commissioner’s Clerk. Moreover, Law n. 96 of 10 October 2002 has reduced the initial mandate of all magistrates from four to two years, with the possibility to be reconfirmed for an indefinite period of time.

Article 7 of Law n. 36 of 26 February 2002 has established a Guarantors’ Panel responsible for ensuring the constitutionality of rules. The Panel is composed of three effective members and three substitute members, elected for an initial period of four years by a two-thirds majority of the Great and General Council (Parliament), from among university professors of legal subjects, magistrates and law graduates with at least 20 years of experience in the field of law. The Panel’s members are partially renewed every two years. The Guarantors’ Panel verifies the conformity of laws, of regulations having force of law, as well as of customary rules having force of law, with the fundamental principles of the constitutional order set forth or mentioned in the Declaration. Moreover, it decides on the acceptability of referenda proposals and in case of conflicts between constitutional bodies. Finally, it acts as “Regency Syndicate”.

Under Article 9 of Law n. 36/2002, the Guarantors’ Panel, pending the entry into force of the new judicial system, is temporarily responsible for deciding on jurisdictional conflicts in proceedings initiated in the courts of the Republic; on the abstention and challenge of the Judges and of the *Procuratore del Fisco*; in the last instance, on the appeals submitted in criminal proceedings concerning the legitimacy of precautionary measures adopted in the course of the proceedings or on the execution of penalties; on the appeals of the interested parties when the civil and administrative sentences of first and second degree differ; on appeals for review of criminal sentences, on *querela nullitatis* and *restitutio in integrum*.

The functions referred to in Article 9 are assigned by the President of the Panel individually to single members, effective or substitute, according to predetermined criteria and taking into account any reason for incompatibility. In compliance with Article 7 of the same Law, constitutional Law n. 67 of 27 May 2003 regulates the responsibilities of the Panel’s members with regard to their constitutional and jurisdictional functions, including those temporarily fulfilled until the entry into force of the new judicial system. Law n. 55 of 25 April 2003, passed by a qualified majority, also disciplines the operation and incompatibilities of the Guarantors’ Panel.

With regard to jurisdictional remedies against criminal judgments, Law n. 89 of 27 June 2003 “Provisions regulating the criminal process – Amendments to Law n. 20 of 24 February 2000” has introduced the possibility to appeal for review of criminal judgments not only in the cases already envisaged by Law n. 20/2000, but also whenever the European Court of Human Rights has declared that such decisions violate the European Convention on Human Rights and Fundamental Freedoms and its Protocols and the relevant serious negative effects can be removed exclusively by means of this extraordinary judicial instrument.

Moreover, with regard to the constitutional protection of human rights, Law n. 95 of 19 September 2000 has supplemented Article 4 of the Declaration by explicitly sanctioning that all are equal before the law, without any distinction based on sex. However, this principle was already set forth in the original text, which excluded any distinction on grounds of personal status.

Law n. 36 of 26 February 2002 has introduced significant changes to the system of the sources of law illustrated in the Report. Indeed, by virtue of Article 2, the Republic of San Marino receives generally recognized rules of international law as integral part of its constitutional order, to which it conforms its acts and conduct and it recognizes the provisions set forth in the international declarations on human rights and fundamental freedoms.

Under the same Article, the Republic of San Marino has also committed to recognizing, guaranteeing and enforcing the rights and fundamental freedoms envisaged by the European Convention for the Protection of Human Rights and Fundamental Freedoms. Moreover, regularly signed and implemented international agreements on the protection of human rights and freedoms prevail over domestic legislation in case of conflict. In addition, Article 4 of the above mentioned Law has made a distinction among constitutional laws, laws passed by a qualified majority, ordinary laws and decrees, having force of law, adopted by the Congress of State (Government) upon delegation of the Great and General Council.

Constitutional laws, implementing the fundamental principles contained in the Declaration on the Citizens’ Rights, must be approved by a two-thirds majority of the members of the Great and General Council or by absolute majority followed by a referendum for their confirmation within 90 days since their approval.

Laws passed by a qualified majority discipline the operation of all constitutional bodies, as well as of the institutions of direct democracy.

Ordinary laws and decrees are approved by the Great and General Council by simple majority.

Besides the decrees of urgent nature that the Captains Regent (Heads of State) may issue, after receiving the favourable opinion of the Congress of State and subject to parliamentary ratification, already envisaged in the original text, by virtue of Law n. 36 of 26 February 2002, the Great and General Council can delegate to the Congress of State the adoption of decrees having force of law and subject to ratification by the Great and General Council.

With regard to sexual exploitation and abuse, Article 177 of the Criminal Code, criminalizing inducement of a child under 18 to sexual corruption, has been integrated with

Articles 177 bis, 177 ter and 177 quarter (Law n. 61 of 30 April 2002 on the suppression of the sexual exploitation of minors).

Without prejudice to the provisions in the Criminal Code, Article 177 bis has introduced the offence of exploitation of child prostitution. Under this Article, anyone engaging in sex acts with a child under 18 years of age paying a sum of money or offering any other economic advantage is punished. Punishments are increased if the fact has been committed to the detriment of a child under 14 years of age or of a child under 18 who is physically or mentally disabled.

Article 177 ter criminalizes child pornography and has a very broad scope. Indeed, it punishes not only anyone exploiting a child under the age of 18 for the purpose of producing child pornography performances, works or material, showing a minor having a sexually explicit conduct aimed at sexual incitement, but also anyone trading in or providing, upon payment or for free, child pornography material. It also punishes anyone disseminating, advertising, distributing or circulating, also by means of information technology systems, child pornography material or information aimed at enticing or sexually exploiting children under the age of 18.

Art. 177 quarter criminalizes the organisation, promotion or advertising of travels, meetings and transfers abroad aimed at facilitating the sexual activities mentioned in the preceding articles to the detriment of minors.

All the provisions introduced by the above mentioned Law apply in case of a crime perpetrated to the detriment of a child under 18 years of age, also when the fact has been committed abroad by a San Marino national or to the detriment of a San Marino national.

Law n. 61 of 30 April 2002 has substantially extended the competence of both judicial and administrative Authorities responsible for the suppression of sexual exploitation of minors. Obviously, such powers supplement and complete those already envisaged by the preceding criminal provisions.

To this end, Article 7 of the same Law provides that, in the framework of the investigating activities aimed at detecting and suppressing such crimes or at collecting the relevant evidence, the Law Commissioner can authorise the specialised personnel of law enforcement bodies to simulate the purchase of pornographic material, to intervene in intermediation activities, to take part in tourist initiatives also abroad involving the sexual exploitation of minors, to use fictitious references to have access to web sites and to participate in exchanges on the Internet.

In case of conviction for the offence of child pornography, the confiscation of child pornography material is always ordered by the Judge.

The above mentioned Law also establishes the subjects, procedures and instruments necessary to the protection, assistance and rehabilitation of the child victim of one of the offences indicated above.

In particular, a public officer who knows that a minor is engaged in prostitution on the territory of the Republic is obliged to immediately inform, among others, the Law Commissioner in his capacity as Tutelary Judge.

The Law Commissioner - Tutelary Judge, in agreement with the Minor Service (the public service employing social workers specialized in the psychological and sociological assistance of minors) and safeguarding the identity of the minor and his image, orders the relevant investigations and adopts all measures necessary to the child's protection,

assistance and rehabilitation. He can appoint a curator with the task of controlling and facilitating the effective social reintegration of the minor.

The same procedure applies also in case of a foreigner under 18 years of age who has no other assistance on the territory of the Republic and, to the extent possible, also to a San Marino national under the age of 18 who is engaged in prostitution abroad.

With a view to guaranteeing the privacy of the minor, the Law provides that the same be examined, when confronted with the accused or the witnesses, by means of a mirror glass, interphone systems or any other suitable technical device. Moreover, the hearing shall be closed and conducted in such a way as to ensure the highest psychophysical protection of the minor. In addition, the disclosure of the name and address and of the image of the offended minor shall always be prohibited.

With regard to adoption, Law n. 83 of 20 July 1999 provides that the age difference between adopter and adoptee, already established for both spouses in Article 62.c of Law n. 49 of 26 April 1986, be calculated considering the youngest spouse. Moreover, Law n. 83/1999 establishes that the adoptee's maximum age of twelve years indicated in Article 63 of Law n. 49/1986 be waived in case of adoption of brothers, provided that such limit is respected at least for one of them.

Law n. 83/1999, in applying Article 2 of Law n. 83 of 28 October 1992 on the judicial system, has established the Juvenile Court within San Marino Civil and Criminal Court. The Juvenile Court is now composed of the Law Commissioner in his capacity as Juvenile Judge.

The decisions of the Juvenile Court can be appealed against before the Judge of Civil Appeals. However, the provisions regulating the relevant responsibilities and procedures are still being drafted.

Moreover, in July 2003 a draft law entitled "Rules on social and educational services for the infancy" was submitted to the Great and General Council for its approval. This draft law, explicitly aimed at meeting the increasing needs of families in the field of assistance and education of children, is a legislative framework on the social and educational structures for the infancy promoted and supported by the State (from nursery schools to other institutions such as centres destined to children and parents, as well as nursery schools or similar smaller structures in the workplace and the introduction of the family educator), contemplating the possibility that such services be run also by private individuals.

This law, listing the different services with their purposes and characteristics, pays special attention to personnel's qualification, educational projects and structural and organisational features, thus complying with the principles enshrined in the Convention on the Rights of the Child and specifically with Article 3, paragraph 3, and Article 18, paragraph 3.

Moreover, an ad-hoc Commission is preparing a draft law to supplement present legislation in the field of labour law and support to families. The aim of this project is to strengthen institutions guaranteeing and safeguarding maternity (such as the right to maternity leave after the delivery and parental leaves in case of illness of the child).

In addition to what specified in Part VIII of report CRC/C/8/Add.46, please note that also the economic lyceum has been established. Therefore, San Marino high schools are now the following: classical lyceum, economic lyceum, modern language lyceum, scientific lyceum, technical school (only the first two years) and vocational training centre. Moreover, Law n. 73 of 10 June 2003 introduced English as compulsory language since the first year of elementary school, while in junior high school the two community languages (French and English) were introduced as compulsory languages with Law n. 96 of 16 September 1986.