

QUICK GUIDE TO ADDRESS WOMEN'S ISSUES DURING THE UNIVERSAL PERIODIC REVIEW ON SAN MARINO

These Guides include:

- A list of issues mentioned in the National Report, the Compilation of official UN Documents and the Summary of Other Stakeholders Submissions, with references to the particular paragraphs in which they can be found.
- A reference to “gaps”, that is, issues on which the National Report should/could have applied a gender perspective but failed to do so.
- In those cases in which the Sexual Rights Initiative has submitted reports, we have included an Annex with our recommendations.
- In some cases we have included suggested questions and recommendations

References in the two working languages of the Council (English and French) have been kept in their original language.

Issues are highlighted. References from the National Report are *in Italics*.

Recommendations - including those from UN treaty-monitoring bodies, are at the end of the document.

All women’s rights issues (included sexual rights’ issues related specifically to women) are referred to in this Guide. Other sexual rights issues are referred to in the Sexual Rights Guides for each state under review

CEDAW ratified. OP-CEDAW ratified. Rome Statute ratified. Palermo Protocol not ratified.

Gaps

The National Report should/could have applied a gender perspective -that is, make reference to how the issue affects women and men in particular ways- but failed to do so in the following sections: Integration of human rights (17-25), Equality, non-discrimination and individuals enjoying specific rights (29-31), Persons with disabilities (51-61), The elderly (62-69), Racism (70-78), Right to life, prohibition of slavery and torture (82-90), The judicial system and the right to a fair trial (91-100), Freedom of movement, of residence and right of asylum (101-107), Right to a family (108-111), Freedom of thought, conscience, religion, opinion and expression (112-115), Freedom of assembly and association (116-120), Right to take part in the political life of the Country (121-123), Right to social security (124-127), Right to work (128-133), Right to an adequate standard of living (134-136), Right to take part in cultural life (137-139)

ISSUE	N Report	Compilation	Summary
Abortion	Criminalization (82)		Criminalization except to save mother's life (30)
Early / forced marriage	Naturalized and unreported forced and early marriages (92)		
Equality and Non discrimination	Legal equality. Non discrimination based on sex (33) Law prohibits discrimination based on sexual orientation (79)	Non discrimination grounds subsumed under notion of "personal status" (11) Discriminatory definition of family (19)	
Gender mainstreaming			No special entity ensuring women's rights (3)
Maternal mortality /maternal health	No cases over the last ten years. Access to trained personnel and		

	health facilities of pregnant women. (125)		
Non traditional families			Not recognized. Unequal rights on inheritance and residency (21)
Participation in public and political life	Participation in all institutional bodies (34)	Decreasing rates in parliament (24)	
Patriarchal attitudes/stereotypes	Increased participation in political and social life. Many changes in traditional social model (21)		
Right to education	Free primary and secondary education. Free transport, catering and books (44) Compulsory until the age of 16. Can be carried in professional training system (45)	Free, compulsory schooling until the age of 16. (32)	
Right to marry	Discriminatory definition of family. Minors or persons under judgment for disqualification cannot marry (Para 108)		
Right to social security	Maternity benefits. Working fathers can also be entitled to leave maternity (127) Special hiring contracts for reinsertion of women and women aged over 50 (Para 130)		
Right to work	42% of workforce. Benefits for proprietorships or companies owners. Provisions on maternity (35)	Not clear criteria to determine remuneration rates (26)	Risk of exploitation, unequal conditions for migrant private career (28)
Violence against Women /Gender Violence	Provisions in Criminal Code against slavery, violence, mobbing and trafficking. Protections of victims (39) Authority for equal opportunities (40)	Legislation. Penal code amendment to increase penalties. Protection framework including legal assistance for victims (15)	

Abortion

*Right to life is protected by several provisions of San Marino legislation. () The **Criminal Code protects the right to life both of born people** (criminalizing homicide and injury, both intentional*

and negligent, infanticide for honor or mercy, instigation or assistance to commit suicide, beating) and of the unborn (criminalising abortion) (Para 82, NR)

In 2008, the Commissioner for Human Rights of the Council of Europe (CoE Commissioner) noted that under the Criminal Code, abortion is criminalised except if performed to save the life of the mother. Thus, women who want to terminate an unwanted pregnancy for any other reason (including, for instance, if the foetus has a severe anomaly or if the pregnancy is the result of a rape) have to go abroad for such treatment. The fact that such a step is regarded as criminal can place individual women in difficult circumstances, not least if there is any medical complication after the abortion is performed (Para 30, Summary)

Equality and non-discrimination

Legal equality between men and women is expressly guaranteed by Article 4 of the Declaration, which prohibits any discrimination based on sex () (Para 33, NR). 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 (Para 79, NR)

In 2007, the Committee on Economic, Social and Cultural Rights (CESCR) highlighted the absence of a well-structured legal framework that provides protection against discrimination in all its forms. The HR Committee was concerned that such non discrimination grounds as sexual orientation (among others) were subsumed under the notion of 'personal status' in article 4 of the Declaration of Citizens' Rights. It observed that such subsuming of grounds made it difficult to ensure their equal and comprehensive application (Para 11, Compilation)

In 2007, CESCR expressed concern at the definition of the family provided in San Marino's report. According to the Committee, that type of definition excluded single-parent families and impaired their access to the various forms of support granted by the State, including family allowances. (Para 19, Compilation)

See Recommendations, HR Committee (11, 38)

Gender mainstreaming

CoE Commissioner noted in 2008 that there was no special entity in the Government in charge of ensuring the rights of women. He stressed the importance of having a platform at a high level to monitor the situation of women comprehensively, to advise on the impact of policies on women and to help formulate new policies with a view to mainstreaming a gender-based approach (Para 3, Summary)

Maternal mortality/maternal health

() 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 (Para 125, NR)

Non-traditional families

In 2009, Joint Submission 1 (JS1)¹ reported that non-conventional family models such as unmarried partners, cohabitants and same-sex civil partners are not recognised and therefore do not have the same rights when it comes to inheritance or residency (Para 21, Summary)

See Recommendations, JS1 (21)

Participation in public and political life

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 (Para 34, NR)

A 2009 United Nations Statistics Division source indicated that the proportion of seats held by women in the national parliament decreased from 16.7 per cent in 2005 to 15.0 per cent in 2009 (Para 24, Compilation)

Patriarchal attitudes/stereotypes

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 (Para 21, NR)

Ratification of other treaty bodies

See Recommendations, CRC (1)

Right to education

Primary and secondary education is completely free of charge (). The State guarantees free transport, catering and books (Para 44, NR). 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 (Para 45, NR)

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

Right to marry

Within San Marino society, great importance is attached to the family institution, which is conceived as a union between a man and a woman () 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 (Para 108, NR)

¹ Associazione Culturale Don Chisciotte; Associazione LGBT San Marino; Associazione Oasiverde; and Associazione Probimbi; San Marino

Right to social security

In San Marino all **eligible people** are provided with the following services: () **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** (Para 127, NR) () Special attention has been given to the employment or reallocation of special categories of workers **more liable to be socially excluded**, such as () 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** (Para 130, NR)

Right to work

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 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** (Para 35, NR)

In 2009, the ILO Committee of Experts noted San Marino's indication that Law No. 40 of 1981 requires the adoption of **common criteria** for women and men under the job classification systems used to determine remuneration rates. The ILO Committee of Experts, considered, however, that **it was not clear whether these common criteria would also be applied when comparing jobs of a different nature** (Para 26, Compilation).

In 2007, Council of Europe - European Commission against Racism and Intolerance (CoE ECRI) was concerned that women who come to San Marino to work as **private carers** remained exposed to a risk of **exploitation due to the precarious nature of their employment** and the situation of isolation in which they sometimes find themselves. It also noted that the carers were only allowed to work in San Marino for ten consecutive months per calendar year and were not entitled to family reunification (Para 28, Summary)

See Recommendations, the ILO Committee of Experts (26); CoE ECRI (28)

Violence against Women/Gender Violence

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** (Para 39, NR). 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 (Para 40, NR)

A 2008 report by the United Nations Population Fund (UNFPA) indicated that San Marino approved the **law on the prevention and punishment of violence against women, including domestic violence**, on 20 June 2008. The law **amends the Penal Code** to, inter alia, **increase the penalties** for the crimes of homicide, violation of sexual freedom, and causing personal injuries when the perpetrator is a spouse or cohabitant. According to the HR Committee, the law establishes a framework for **State protection and assistance** to the **victims and their families in all civil, criminal or administrative proceedings**, including through **free legal assistance** (Para 15, Compilation)

See Recommendations, HR Committee (15)

Suggested Questions and Recommendations

CRC

To ratify and implement **OP-CRC-SC and OP-CRC-AC** (Para 1, Compilation)

HR Committee

- § The adoption of a comprehensive **antidiscrimination legal framework** which expressly indicates all those grounds of discrimination that are presently subsumed under the notion of "personal status" (Para 11, Compilation)
- § To adopt programmes and practical measures to combat all forms of **gender-based violence**, including **training police** to receive complaints of domestic violence, to provide **material and psychological relief** to the victims and to **make women aware of their rights** (Para 15, Compilation)
- § That San Marino provide, within one year, relevant information on the implementation of the recommendations of the Committee regarding () the adoption of a comprehensive **anti-discrimination legal framework**. As of 17 November 2009, the Committee had not received the follow-up report (Para 38, Compilation)

The ILO Committee of Experts

- § Asked San Marino to indicate any judicial or administrative decisions applying Law No. 40 in line with the principle of the ILO Equal Remuneration Convention. It also asked about the job classification methods used in accordance with the Law and the manner whereby it ensures that the criteria followed are **not intrinsically discriminatory and do not undervalue jobs traditionally performed by women**. (Para 26, Compilation)

CoE ECRI

- § To review the legislation on stay and work permits so as to **reduce the precariousness of employment** for these women (private carers) and ensure respect for their private and family life (Para 28, Summary)

JS1

- § To take all necessary legislative, administrative and other measures to ensure that **no family maybe subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members**, including with regard to family- related social welfare and other public benefits, employment and immigration (Para 21, Summary)

SRI

- § To amend legislation in order to expand the current scope of therapeutic abortion, and decriminalize this practice in case of severe anomalies in fetus or when pregnancy is the result of sexual abuse or rape.
- § Take the necessary steps to promote the access of women and adolescents to adequate reproductive health-care services, and to increase access to sexuality education, contraceptives methods and affordable means of family planning.