Human Rights Committee
115th session

Summary record of the 3203rd (Chamber B) meeting
Held at the Palais des Nations, Geneva, on Monday, 19 October, at 3 p.m.

Chairperson: Ms. Seibert-Fohr (Vice-Chairperson)

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant

Third periodic report of San Marino
In the absence of Mr. Salvioli, Ms. Seibert-Fohr (Vice-Chairperson), took the Chair.

The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant

Third periodic report of San Marino (CCPR/C/SMR/3; CCPR/C/SMR/Q/3)

1. At the invitation of the Chairperson, the delegation of San Marino took places at the Committee table.

2. The Chairperson welcomed the delegation and said that it was the first time that the Committee was working in dual chambers, but that it hoped that the practice would prove useful and could be continued in the future.

3. Mr. Beccari (San Marino) said that, although the country’s legal and administrative system might still show some gaps, the State party attached great importance to human rights issues and endeavoured to fully implement the recommendations of the Committee, despite its limited human and financial resources. Since the submission of its previous report in 2007, San Marino had adopted a series of legislative acts concerning the protection of civil and political rights. Of particular relevance was Law No. 97/2008 on the prevention and punishment of gender violence, the adoption of which had marked the culmination of a movement, involving a range of sectors including schools, health-care institutions and the media, to raise public awareness on that issue. The Law entailed amendments to the Criminal Code, including provisions on the legal protection of victims, and provided for a programme of prevention and awareness-raising measures. The new measures were already having an impact, and the administrative and judicial authorities continued to closely monitor their proper implementation in practice.

4. The Authority for Equal Opportunities had been established under Law No. 97 to promote and support initiatives to prevent violence and grant assistance to victims. The Authority fostered and monitored the activities of civil society organizations, raising awareness of the support and prevention services available. The Authority’s activities included the construction of a network for the coordination of health and social services and the elaboration of procedural protocols for the police, non-governmental organizations (NGOs) and other stakeholders dealing with victims of violence. The Authority also had the capacity to appear as a plaintiff in criminal proceedings, monitored the use and dissemination of images and communications that were damaging to the dignity of persons, and made victims aware of their rights. The Authority monitored and reported on violence statistics, cooperated in the organization of training courses for various stakeholders, and was a member of a technical board to define intervention plans to combat and prevent violence.

5. The State party had adopted additional laws since the submission of the current report, including the framework law of 10 March 2015 on the assistance, social inclusion and rights of persons with disabilities in all areas of life, which had already begun to be applied to ensure the inclusion of children with disabilities in all schools in San Marino. Under Law No. 81 of 5 June 2015, persons with disabilities could be accompanied by a person of trust to support them in making decisions of daily life, under the supervision of a judge. The free legal aid system had been overhauled to give both defendants and claimants the possibility of access to professional legal counsel. Under the new rules, every degree of discretion had been eliminated in the examination of applications and specific criteria had been established.

6. The social and health plan for 2015-2017 had been adopted with seven main objectives: guaranteeing health as a universal right, preventing inequalities, reducing
risk factors for disease and death, improving integration of social and health services, promoting organizational and economic sustainability, avoiding isolation and promoting innovation and knowledge, and enhancing human resources. The Plan was consistent with the European guidelines of the World Health Organization and there were specific interventions for children and young people, persons with disabilities, women, older persons and migrants.

7. **Ms. Pazartzis** said that, although the Committee welcomed the recent accession by San Marino to a number of international instruments, including the Optional Protocol to the International Covenant on Economic, Cultural and Social Rights, it would be interested to hear about the State party’s plans to accede to others. She wished to know what follow-up had been given to the Committee’s previous recommendation that the State party should adopt a comprehensive anti-discrimination legal framework. She commended the State party on its efforts to adopt a large number of important legislative provisions, including the new provision in the Criminal Code, article 179 bis, punishing the dissemination of ideas based on racial or ethnic superiority or hatred and public incitement to discrimination based on racial, ethnic, national, religious or sexual orientation, but would be interested to hear details of how they were implemented in practice. Specifically, she wondered whether there were any examples of recent case law regarding that article. She would also be interested to learn more about article 90 of the Criminal Code on aggravating circumstances, including what circumstances were covered and any relevant case law.

8. She asked what specific measures had been taken to raise awareness of the Committee’s recommendations from its previous concluding observations among civil society, particularly in light of the lack of input received by the Committee from NGOs prior to the dialogue, and to encourage NGO involvement in the implementation of the recommendations. Noting that San Marino still did not have a national human rights institution that complied with the Paris Principles, she wondered whether the State party was still of the view, as stated during the universal periodic review, that existing complaint mechanisms were adequate, or whether it had given any further thought to the creation of a new institution that might incorporate the existing bodies. She would be interested to hear about the work being done by the Authority for Equal Opportunities to boost women’s participation in politics and would welcome specific statistics on the proportion of women in parliament and the executive branch.

9. **Mr. de Frouville** said that the Committee welcomed the clarifications provided in the report concerning the primacy of international human rights treaties, including the Covenant, over domestic legislation in case of conflict. However, he would be interested to know more about how individuals could invoke international standards, particularly the Covenant, before the courts and could request a review of the compliance of specific legislation with those standards in order to ensure that judges did not apply laws that were contrary to treaty provisions. Although the Committee had not yet considered any individual communications under the Optional Protocol to the Covenant involving San Marino, he wondered what procedure would be followed to implement the Committee’s views were such a case to arise. He commended the State party on having addressed the Committee’s concern in its previous concluding observations by passing Law No. 35 of 2012 to ensure that children who had only one naturalized parent were treated equally to those with two naturalized parents when applying for naturalization. He wondered whether there were any plans to add gender identity as one of the prohibited grounds for discrimination under Law No. 66 of 2008 on racial, ethnic, religious and sexual discrimination. Noting the consequences the criminalization of abortion could have on women’s health and private life, he asked whether the State party had any plans to decriminalize abortion and adopt legislation regulating the practice and protecting women’s right to life, health and private life.
10. **Mr. Rodríguez-Rescia** said that, although the Committee had noted many positive aspects of the human rights situation in the State party, it was concerned about the lack of civil society organizations working in that field. He wondered about the reasons for the low level of involvement of NGOs in human rights issues and whether the State party actively promoted their participation. He would be interested to know more about how the Authority for Equal Opportunities operated and about its structure and budget. He asked whether there were any legislative proposals to introduce the crime of femicide into the Criminal Code and whether specific operational protocols aimed at preventing violence against women and supporting victims had actually been concluded. He would also welcome information on the relationship between NGOs working in that area and the Government and whether the shelter for victims was publicly or privately run. Noting that the Authority for Equal Opportunities was responsible for monitoring activities for the prevention of violence and the provision of assistance, he wondered what impact those activities had. He would also be interested to know more about the network of public services for victims of violence and about training and awareness-raising activities, including whether they addressed the issue of masculinity and focused on perpetrators as well as victims.

11. He requested information on the timeline for the drafting and adoption of the new Code of Criminal Procedure and whether it would be in line with the procedural and substantive guarantees provided for in articles 9 and 14 of the Covenant. In that regard, he drew the State party’s attention to the Committee’s general comment No. 35 on liberty and security of person. He welcomed the review of the system of free legal aid, but wondered who was responsible for paying the additional “allowance” received by officially appointed lawyers in criminal matters. He would be interested to know in what kinds of cases the Council of the Twelve might refuse an application for legal aid.

12. **Mr. Fathalla** asked whether San Marino had adopted the special procedures regarding consent of persons with disabilities for health interventions mentioned in the report. If so, he would welcome information on how those procedures guaranteed the free and informed consent of persons with disabilities, and, if not, on when the State party planned to do so. Noting that, although valid and informed consent was required for diagnostic tests, treatment and rehabilitation of mental disorders under Law No. 57 of 2009, and that such consent was not required for “serious” mental disorders, he asked how serious mental disorders were defined and whether that concept was in conformity with the State party’s obligations under the Covenant. He was not convinced by the arguments given for the State party not granting asylum or refugee status, namely that doing so would be problematic for the authorities, especially due to the lack of border control between Italy and San Marino, because by that logic the members of the Schengen area could also refuse to provide for asylum or refugee procedures. He asked why the State party was willing to deliver extraordinary “stay permits” for humanitarian and social protection reasons but not refugee status.

13. **Mr. Iwasawa** said that it was impressive that the State party had been able to provide examples of four cases in which the provisions of the Covenant had been applied by the courts between 2005 and 2009. He would welcome details of how the Covenant had been applied; for example, had the court relied solely on the Covenant to draw concrete conclusions or had it simply referred to it to reinforce the conclusions it had already reached on the basis of domestic laws?

*The meeting was suspended at 3.55 p.m. and resumed at 4.10 p.m.*

14. **Ms. Bigi** (San Marino) said that, despite having limited human resources, San Marino was committed to ratifying international human rights instruments. On 4 August 2015, it had acceded to the Optional Protocol to the International Covenant on
Economic, Social and Cultural Rights. National media outlets were highly attentive to the recommendations made to San Marino by international treaty bodies, and efforts were made to translate reports into Italian so that they could be understood by all citizens. Although no decision had yet been taken to establish a national human rights institution in line with the Paris Principles, a number of existing bodies worked to facilitate the enjoyment by citizens of their rights under national and international laws.

15. As San Marino was not a party to the Convention relating to the Status of Refugees, its legal system did not provide for the granting of asylum or refugee status. National legislation did, however, provide for the issuance of extraordinary residence permits for humanitarian and social protection reasons, including to victims of trafficking and violence as defined in the international human rights treaties to which San Marino was a party. San Marino maintained open borders with other Schengen member countries, some of which had requested the Government to ensure that the entry of persons into San Marino complied with Schengen rules.

16. Ms. Michelotti (San Marino) said that Act No. 97 of 20 June 2008, which had been informed by recommendations from the Council of Europe, covered both violence against women and gender-based violence. With regard to the role of the Authority for Equal Opportunities, she drew the Committee’s attention to paragraph 8 of the periodic report (CCPR/C/SMR/3). The Authority had signed conventions and agreements with shelters near San Marino in order to respond appropriately to victims’ needs and guarantee respect for their privacy. It had also developed several operational protocols for urgent and non-urgent cases in collaboration with the police and health services, with which it met regularly.

17. A consultation centre had been set up within the Women’s Health Unit to handle requests for information and/or assistance. In 2014, it had received 20 such requests from victims. Since 2012, in accordance with Delegated Decree No. 60 of 31 May 2012, the Authority had been coordinating training programmes for public officials tasked with caring for victims of violence. Although the Authority’s annual budget for information and training was relatively modest, additional support was provided by the University of the Republic of San Marino and by the Lawyers’ Association, which had disseminated information on Act No. 97 free of charge.

18. Between January and October 2015, the Authority had received 27 reports of violence, the majority of which had been passed on by the police, reflecting a growing trust in national law enforcement bodies among victims. Most of the reports involved physical and psychological violence, including economic violence, which, though not defined as a specific offence under national legislation, was treated as such by judges. Of the 25 cases of violence currently before domestic courts, 9 were pending and 2 were at the appeal stage.

19. The Authority, which cooperated with associations and private individuals on public initiatives, intended to launch a project to combat violence that was based on consultation with men. It also worked closely with the Equal Opportunities Commission to promote women’s participation in politics. There were 11 women members of parliament and, in the past, 9 women had been elected to the office of Capitano di Castello (mayor).

20. Mr. Beccari (San Marino) said that one of the two Captains Regent (heads of state) of San Marino who had been invested on 1 October 2015 was a woman.

21. Mr. Canti (San Marino) said that, under article 4 of the Declaration of Citizens’ Rights, all persons were equal before the law. Pursuant to article 1 of the Declaration, which formally incorporated international human rights treaties into domestic law, the provision was to be interpreted in the light of articles 2 and 26 of the Covenant.
Similarly, national provisions on abortion were to be read in conjunction with relevant international provisions, including those of article 8 of the Convention on Human Rights and Biomedicine, which provided for the carrying out of medically necessary interventions without consent in emergency situations. At the request of parliament, which had been petitioned by citizens, the Government had undertaken to review article 153 of the Criminal Code, related to abortion, and to strengthen health services accordingly.

22. It was important to draw a distinction between legal assistance in criminal matters and free legal aid, both of which were provided for under domestic law. The former consisted of technical assistance from an officially appointed lawyer and was granted to all persons standing trial who did not have access to a lawyer of their choice, regardless of their financial means. Officially appointed lawyers were entitled to an allowance, set by the judge, for any proceedings in which they worked as defence lawyers, and could be replaced once a lawyer of the defendant’s choice had been designated. Free legal aid, meanwhile, was means-tested and recipients were not required to pay compensation for legal services. Pursuant to a recent legislative amendment, the power to grant legal aid in civil and criminal proceedings had been transferred from the Council of the Twelve — an institutional and political body — to a high-level technical panel composed of legal and other experts.

23. In 2013, a working group had been set up to draft a new Code of Criminal Procedure with the help of recommendations and guidelines from the Government. Although it had not yet completed its mandate, it had already drafted provisions on fast-track proceedings for minor offences aimed at reducing the judiciary’s workload and ensuring that resources were available to deal with more serious offences. In 2008, the Government had adopted a law on the rights of defendants in criminal proceedings that was in line with international standards. The law set a time limit for the conclusion of criminal investigations, after which cases had to be dismissed or referred to court.

24. Mr. Ferroni (San Marino) said that, in accordance with article 1 of the Declaration of Citizens’ Rights, the international treaties ratified by San Marino were incorporated into domestic law. The legal system in San Marino was conducive to the direct application of the provisions of such treaties by judges, in that, at least in civil proceedings, it had for centuries been inspired by *jus commune*, which gave judges more flexibility and freedom of interpretation than a civil law system. It was not necessary for judges to refer to the Constitutional Court of San Marino in order to set aside a legal provision. Rather, they could act of their own motion if the provision in question was clearly incompatible with international agreements on the protection of human rights and freedoms to which San Marino was a party. Questions of constitutionality could be submitted to the Constitutional Court either indirectly by a party to legal proceedings, a prosecutor or a judge, who would then be tasked with conducting an initial assessment of the grounds for unconstitutionality, or directly by at least 20 parliamentarians, the Congress of State, at least 5 communal councils or at least 1.5 per cent of the electorate.

25. A law adopted in 2003 provided for the review of sentences deemed by the European Court of Human Rights to be in violation of the European Convention on Human Rights. It was likely that, by extension, judgements could be reviewed in the event that concerns were raised by the Committee over their compatibility with the Covenant, even though the Committee was not a judicial body like the European Court.

26. He was not aware of cases in which articles 90 and 179 bis of the Criminal Code had been applied. In the interests of consistency, however, it seemed logical that the articles would be interpreted in the light of Act No. 97 of 20 June 2008, which
explicitly included gender in the list of prohibited grounds of discrimination. In any event, there seemed to be no impediment to the future amendment of the articles to remove any doubt and obviate the need for such an interpretation.

27. **Mr. Fiorini** (San Marino) said that information on national legislation and the international obligations of San Marino relating to the informed consent of persons with mental disorders for testing could be found in paragraphs 33 to 41 of the State party’s report. The model and criteria for informed consent for testing were based on good clinical practices and could be consulted by the public on the website of the San Marino Bioethics Committee. The national public mental health service followed World Health Organization (WHO)-approved protocols and guidelines on the definition of serious mental illness. Furthermore, the Commission for the protection of mental health, composed of a magistrate, a psychiatrist and a social worker, had been set up to protect the rights of persons subjected to compulsory health treatment.

28. **Mr. de Frouville** asked under what specific circumstances abortion was legal in San Marino. The procedure should be decriminalized and regulated in the State party, in order to ensure that women wishing to terminate a pregnancy neither suffered stigmatization, nor had to travel abroad, nor were forced to turn to unqualified practitioners.

29. **Ms. Jelić** asked what measures had been taken or were being planned to tackle gender stereotyping among schoolchildren of all ages. In the light of the report of the Commissioner for Human Rights of the Council of Europe on his visit to San Marino in June 2015, she asked what the State party intended to do to improve the situation of foreign women, in particular, private carers and domestic workers, in order to ensure that they had access to integration measures and adequate support against exploitation.

30. **Mr. Ben Achour** asked for clarification relating to the competences of the Authority for Equal Opportunities. He wished to know whether that body had a mandate to “repress” violence against women, as stated in paragraph 17 of the State party’s report.

31. **Mr. de Frouville** asked for additional information on the international conventions and types of cases and charges, with regard to which the safeguards relating to the right to privacy contained in Decree-Law No. 83 and set out in paragraph 61 of the State party’s report had been applied. He asked whether there were any additional safeguards in place in that respect, whether anti-terrorism legislation made provision for restrictions to investigations in terms of the protection of the home and correspondence, including emails, whether legislation had been introduced or was being drawn up relating to the interception of electronic communications and whether Law No. 98 on wiretapping contained any specific measures designed to protect the right to privacy.

32. Turning to the issue of freedom of expression and opinion, he asked for information on the application and compatibility with the Covenant of articles 183, 184, 185, 192 bis, 342 and 344 of the Criminal Code and the corresponding criminal sanctions. He recalled that the Committee’s general comment No. 34 on article 19: Freedoms of opinion and expression stipulated that States parties should consider the decriminalization of defamation, that the application of the criminal law should only be countenanced in the most serious of cases and that imprisonment was never an appropriate penalty. He asked whether the State party had any plans to bring its legislation into line with the Covenant in that regard.

33. **Mr. Fathalla**, turning to the issue of the right to liberty and security of the person and right to a fair trial and equality before the law, asked whether the State party had changed the age of recruitment in case of general mobilization. If not, he asked when it would do so and what obstacles had arisen in that regard. He asked how
the concept of general mobilization referred to in article 4 of Law No. 15 of 26 January 1990 could be deemed to be compatible with the Covenant and whether it was related to article 4, paragraph 1, of the Covenant.

34. As to the issue of participation in public life, he asked for clarification of paragraph 79 of the State party’s report on the exclusion from voting of persons interdicted for mental infirmity but not of persons incapacitated due to mental infirmity. Turning to paragraph 86 of the State party’s report, he asked for confirmation that foreigners were no longer required to present a guarantee as a condition for starting a civil action before the courts.

35. Ms. Pazartzis, turning to paragraph 75 of the State party report, asked whether the existence of the provision contained in article 234 of the Criminal Code, under which parents and other authorities could not use corporal punishment if it endangered the body or mind or caused an illness in a person under their authority or entrusted to them, meant that there were circumstances in which corporal punishment could be used in the State party. She asked what that provision actually meant, which authorities were competent to interpret it and how they performed that task.

36. Mr. Rodríguez-Rescia asked whether the State party intended to put in place procedural regulations specifically protecting the rights of minors in all legal spheres. He asked how the Code of Criminal Procedure provided for the protection of minors in conflict with the law and child victims of crime and what training was offered to judges hearing criminal or civil cases involving minors. He asked whether such cases were distributed evenly among the judiciary, or were dealt with by specialized judges, in order to ensure that children and minors received differentiated treatment. Additional details on the gathering of evidence related to cases, sentencing, the imposition of protection and re-education measures and juvenile re-education centres would be welcome. He asked what training was provided to judges on the application of the principle of the best interest of the child, what alternatives to custody had been introduced for minors, under what circumstances they could be applied and how they were supervised, what the mandatory biopsychic examination of children actually involved, what the goal, underlying methodology and impact of that procedure was, who performed it and what channels were open to persons wishing to contest its outcome. He expressed concern that the examination might result in the further victimization of children. He asked what the criteria were for the reduction of sentences for persons aged over 14 years but under 18 years, on what date the recent law on free legal aid had been adopted and what its reference number was.

37. The 25-year period of continuous residence in the State party that was a precondition for citizenship was overly long. He asked how the authorities verified that applicants for citizenship had “lived exclusively” in San Marino for the required period of time, what that requirement actually entailed and how the provision stating that applicants must not have established direct and stronger relations with another State was applied in practice. Was dual nationality recognized in the State party?

38. Mr. Ferroni (San Marino) said that the provisions of the Criminal Code relating to exceptions to the prohibition of abortion were insufficient, outdated and did not guarantee the right of women to choose to interrupt or continue a pregnancy. However, San Marino was a traditional, Catholic society and it would be extremely difficult to build consensus support for legislative change in that regard. The authorities were currently working to raise public awareness of the issues arising from the criminalization of abortion.
39. **Ms. Michelotti** (San Marino) said that the Authority for Equal Opportunities was responsible for eliminating violence against women and gender violence through training, monitoring, data collection and the preparation of prevention plans. The youth and gender equality monitoring unit at the University of San Marino had carried out research on gender stereotyping in schools and a number of initiatives for school-age children had been launched to tackle the issue. On several occasions, the Authority had successfully requested the Law Commissioner to prevent the broadcast of derogatory images of women. A number of conferences on gender violence, the language of violence and related stereotypes had been held for high-ranking public and judicial officials, in order to raise awareness in that regard and encourage a unified approach to the problem. The Authority also worked with civil society organizations offering violence-prevention training and provided victims of violence with support.

*The meeting rose at 6 p.m.*