



# **MONTENEGRO**

## **AMNESTY INTERNATIONAL SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW 15TH SESSION OF THE UPR WORKING GROUP, JANUARY - FEBRUARY 2013**

### **FOLLOW UP TO THE PREVIOUS REVIEW**

During the first Universal Periodic Review of Montenegro in December 2008, reviewing states made recommendations on a range of issues, including discrimination,<sup>1</sup> impunity,<sup>2</sup> freedom of expression,<sup>3</sup> refugees and migrants,<sup>4</sup> and the national human rights framework.<sup>5</sup>

Since 2008, some progress has been made in the areas of discrimination, the national human rights framework and the rights of the Roma population. Montenegro has also undertaken major reforms, including the introduction of legislation required under the country's accession process towards EU membership. However, much of the legislation aimed at the fuller enjoyment of human rights, such as the Law on Anti-Discrimination and the Law on the ombudsperson, has not been fully implemented.

Some positive measures have been taken to improve the rights of Roma to education and adequate housing,<sup>6</sup> and the outcome of the 2011 census demonstrated improvements in the registration of Roma.<sup>7</sup> However, progress has been slow in ensuring the rights of Roma and Ashkali displaced from Kosovo to adequate housing and to residency status, and Amnesty International is particularly concerned at Montenegro's failure to address obstacles which deny displaced Roma access to residency.<sup>8</sup>

With respect to freedom of expression, Amnesty International welcomes amendments to the Criminal Code in June 2011 to decriminalize defamation. However, recommendations made by other states to safeguard freedom of expression and protect journalists have not been fulfilled.<sup>9</sup> Attacks against journalists continue and the perpetrators of a series of murders and attacks since 2004 continue to enjoy impunity.

Amnesty International is concerned that the previous review did not adequately address the issue of impunity for crimes under international law, despite the fact that this is one of the major human rights concerns in Montenegro. Only one recommendation was made in this respect in 2008 and impunity for past crimes, including war crimes, persists.

### **THE NATIONAL HUMAN RIGHTS FRAMEWORK**

During the process of accession to the European Union, Montenegro has embarked on a programme of legislative reform, including measures to enhance the rule of law and respect for human and minority rights.

Despite these efforts, recently adopted legislation relevant to the protection of human rights has not been fully implemented. As of June 2012, measures to implement the 2011 Anti-Discrimination Law (ADL) are yet to be taken; by December 2011 only 20 cases of discrimination had been received by the Institution of the Human Rights and Freedoms Ombudsman. Amnesty International is concerned that the Institution lacks the competencies and capacity to address such cases. The Institution has itself acknowledged that its budget is insufficient to recruit and retain experienced and qualified staff.<sup>10</sup>

The Institution of the Human Rights and Freedoms Ombudsman has been designated as the National Preventive Mechanism (NPM) in accordance with Article 19 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;<sup>11</sup> however, it lacks the necessary legal framework, resources and staff to discharge its duties. Secondary legislation is still required to implement relevant articles of the Law on the Ombudsperson,<sup>12</sup> including to define the rules of procedure for the NPM.

## THE HUMAN RIGHTS SITUATION ON THE GROUND

Montenegro has taken measures which have the potential to improve the protection and promotion of human rights. In practice, however, long-standing violations of international and human rights law remain to be addressed.

### Impunity for war crimes

Since 2008, Montenegro has opened four prosecutions in cases of crimes under international law, which have been under investigation for many years. However, some of the decisions taken in these proceedings raise serious concerns about their impact on the rights of the victims to justice and reparations, as guaranteed under international law. These concerns include the number of trials carried out in absentia, the length of proceedings, and the failure by the judiciary to respect international humanitarian law, the Montenegrin Criminal Code and sentencing guidelines.

#### The “deportations” case

On 29 March 2011, nine former police officers and government officials in the “deportations” case were acquitted of war crimes against the civilian population on the basis that they could not be convicted on charges of war crimes because there was no armed conflict in Montenegro in 1992. The nine men had been charged with the “deportation” (enforced disappearance) of 83 Bosniak civilians in 1992.<sup>13</sup> However, the prosecution’s charges were based on the wrongful assumption that the armed conflict in Bosnia and Herzegovina was non-international. Hence, the Prosecution failed to indict the accused for crimes committed in the context of an international armed conflict.<sup>14</sup> The Prosecution also failed to indict the accused for crimes against humanity, including deportation and forcible transfer of population, although the Criminal Code of 2003 specifically provides for the prosecution of such crimes as crimes against humanity. Amnesty International’s research indicates that these “deportations” were committed as part of a systematic attack directed at the Bosniak refugees.

An appeal against the acquittal was lodged by the prosecution and the lawyers acting for the mothers of two of the victims.<sup>15</sup> On 17 February 2012, the Appeal Court of Montenegro returned the “deportations” case for retrial on the basis that “the armed conflict in the territory of B & H has the character of [an] international armed conflict”.<sup>16</sup>

Five of the accused in this case were tried in absentia. Amnesty International considers that in order to ensure a fair trial, the Montenegrin authorities should promptly make every effort, including through international cooperation, to ensure that defendants and sentenced persons who remain at large are apprehended, and that a retrial is granted before a different court.

#### The “Morinj” case

In the second case, the “Morinj case”, six former members of the Yugoslav People’s Army<sup>17</sup> were convicted of war crimes in May 2010 having been charged with the torture and inhumane treatment of 169 Croatian prisoners of war and civilians at the Morinj camp near Kotor in 1992. However, charges relating to the civilians were not included in the final judgement. even though more than 160 persons, including civilians detained in Morinj, testified that they were tortured and ill-treated at the camp. Amnesty International is concerned that the sentences imposed by the court were not commensurate with the gravity of the crimes for which the accused had been convicted, and were less than the statutory minimum of five years’ imprisonment.<sup>18</sup>

In December 2010, the appeal court quashed the original verdict and ordered a retrial. Amongst other things, the Court held that the case was “political” and that insufficient evidence had been provided in relation to the charges of torture of civilians.<sup>19</sup> Following the retrial, in January 2012, four defendants were convicted and sentenced to a total of 12 years’

imprisonment for war crimes against Croatian prisoners of war. The sentences imposed were six months shorter than the original sentences.<sup>20</sup> Two defendants were acquitted.

### **The “Bukovica” case**

In the third case, the “Bukovica case”, five former army reservists and two former police officers were charged with the inhuman treatment of Bosniaks. The charges related to alleged war crimes committed in 1992 in the Bosniak village of Bukovica, near Pljevlja, where some 200 families were expelled from the village and surrounding area, and six Bosniaks were killed.<sup>21</sup>

On 31 December 2010 the Bijelo Polje Superior Court acquitted the defendants due to lack of evidence and released them, pending appeals.<sup>22</sup> In June 2011 the acquittal was quashed by the Appellate Court for procedural reasons, and the case returned for retrial.<sup>23</sup> In a second instance hearing in October 2011, the men were again acquitted.

On 23 April 2012, an appeal against the acquittal by the Montenegrin state prosecutor and victims' families was dismissed. The Appeals Court found that at the time of the alleged offences, the defendants' actions “did not constitute a criminal act in the eyes of the law”. The offence of inhuman treatment had been criminalized as a crime against humanity when the Criminal Code of Montenegro was amended in 2003.<sup>24</sup>

### **The “Kaludjerski Laz” case**

The fourth case of crimes under international law to have been brought since 2008 is the “Kaludjerski Laz” case. Proceedings began in 2008 against eight former Yugoslav National Army members and reservists suspected of killing up to 20 Albanian civilians and injuring others as they fled to Montenegro from Kosovo in April and May 1999. After three years in custody, the defendants were released in August 2011. In February 2012, the daily newspaper ‘Pobjeda’ reported the approval of the 2008 extradition request for Predrag Strugar, the commanding officer, who has been tried in absentia.<sup>25</sup> At the time of writing, the proceedings continue.

The shortcomings of these proceedings, including the length of proceedings, the number of acquittals on procedural grounds, and the handing down of sentences incommensurate with the gravity of the crimes committed, mean that the victims of these crimes continue to be denied access to justice and reparations.

## **Freedom of expression and freedom of information**

Amnesty International continues to be concerned about restrictions on the right to freedom of expression, including freedom of information, in Montenegro. Despite the decriminalization of defamation in June 2011, defamation suits continue to be brought against journalists, in many instances by public officials. If journalists are unable to pay civil damages, currently set at a maximum of €14,000, custodial sentences are imposed. This creates a climate of self-censorship for journalists and deters independent investigative journalism.

Journalists also face attacks and threats, especially those investigating “taboo” areas, such as organized crime or alleged links between organized crime and the government. On 7 March 2012, a journalist with the independent daily newspaper Vijesti, Olivera Lakić, was hospitalized after being beaten outside the building where she lives.<sup>26</sup> She had been receiving threats since 2011, when she wrote about allegations relating to fake labels on cigarettes produced at the Tara tobacco plant. Following her reporting a criminal investigation was opened.

In February 2011, Petar Komnenić, editor of the local TV station Vijesti was ordered to pay damages of €3,050. His appeal against the conviction failed and in April 2012 he was ordered to serve a four-month prison sentence.<sup>27</sup>

According to both nongovernmental organizations (NGOs) and journalists, when information is requested from the government under the Law on Information this is rarely provided within the time-limits stated in law. On 12 April 2012, the NGO Human Rights Action received a reply to a request for information, almost two years after the original request was lodged on 12 May 2010. The Supreme State Prosecutor (SSP), supported by the Ministry of Justice, had initially refused to provide the information. On appeal, an administrative court in June 2011 ordered that the information be provided. The NGO had requested information about progress made in investigations of 12 emblematic cases of human rights violations, including unresolved politically motivated murders.<sup>28</sup> The partial information provided revealed little

progress in these cases, including those cited in reports by the European Committee for the Prevention of Torture.<sup>29</sup>

Amnesty International notes that the right to seek and receive information includes the right of access to information held by public bodies. States should establish procedures for effective and timely access to information and proactively make information of public interest available.<sup>30</sup> Any refusal of access must meet the test for permissible restrictions.<sup>31</sup>

### **Discrimination against Roma and Ashkali displaced from Kosovo**

Based on data collected during the 2011 census, the UN refugee agency, UNHCR, estimated in December 2011 that at least 4,312 people were at risk of statelessness. Some 1,600 of these were Roma, predominantly those displaced from Kosovo.

A 2009 amendment to the Law on Foreigners enables any of the 9,367 refugees in Montenegro, including “displaced persons”, to apply for the status of “foreigner with permanent residence”. This effectively prevents them from acquiring the status of refugee as set out in the 1951 Refugee Convention. By 29 December 2011, 1,957 refugees from Bosnia and Herzegovina and Croatia had acquired the status of “foreigner with permanent residence”; only 150 Roma had applied and less than 5 percent were granted status by the end of 2011.

There are obstacles to obtaining such status for the 2,294 Roma and Ashkali displaced from Kosovo. Few possess personal documentation, such as passports, required to obtain residency. To obtain a passport, they are required to travel to Kosovo; however, without travel documents they are unable to cross the border. They also need to acquire and pay for up to 28 different documents in order to obtain a passport. In addition, they may meet obstruction from municipalities in Kosovo, from whom documentation must be obtained. Others were never registered in citizenship registry books. As of December 2012, according to UNHCR, only 150 Kosovo Roma had obtained the necessary documentation and fewer than 40 percent of them had applied for residency.

The government has failed to provide durable solutions for Kosovo Roma and Ashkali, including 1,200 individuals living in the camps in Konik in Podgorica, established in 1999. Plans to demolish the camps and replace them with adequate housing were included in the Action Plan concluded with the European Commission.<sup>32</sup> By June 2012, little progress had been made towards providing housing for the 327 individuals living in Konik 1.

There are currently no procedures in place to ensure consultation with the affected population on the forthcoming resettlement, as international standards provide. Beneficiaries will be selected by UNHCR, rather than through any consultation with the affected population, and the Working Group implementing the plan does not include representatives of the affected population.

## **RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

### **Amnesty International calls on the government of Montenegro to:**

#### *National human rights framework*

- Take measures to implement fully and without further delay the 2011 Anti-Discrimination Law, including by introducing additional enabling legislation and promoting the law;
- Strengthen the Institution of the Human Rights and Freedoms Ombudsman through full implementation of the Law of the Ombudsman and provision of the resources and staff required to discharge its duties;
- Introduce secondary legislation to define the rules of procedure for its designated role as a National Preventive Mechanism, in accordance with Article 19 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

#### *Impunity for war crimes*

- Ensure that proceedings in cases of crimes under international law are conducted in accordance with international standards for fair trial, and with respect for the provisions of international humanitarian law;

- Ensure that victims of crimes under international law are guaranteed access to justice and reparations, including by taking all necessary measures to prosecute and punish perpetrators of violations of international human rights law and humanitarian law.

#### *Freedom of expression*

- Guarantee freedom of expression without discrimination, including by abiding with the obligation of due diligence to protect individuals against abuses by non-state actors;
- Ensure that the civil defamation law is not used with the purpose or effect of inhibiting legitimate criticism of the government;
- Establish procedures for effective and timely access to information requested under the Law on Information and to proactively make available information of public interest, in line with obligations under the ICCPR as set out in General Comment 34 on Article 19.

#### *Roma and Ashkali displaced from Kosovo*

- Ensure displaced Kosovo Roma and Ashkali are provided with every assistance in obtaining documentation required for temporary or permanent residence in Montenegro;
- Guarantee the right to adequate housing of Kosovo Roma and Ashkali, especially those living in the Konik camp, in a resettlement action plan, consulted with the affected communities and consistent with international human rights standards, including the UN Guiding Principles on Internal Displacement and the Basic Principles and Guidelines on Development-Based Evictions and Displacement.

<sup>1</sup> Report of the Working Group on the Universal Periodic Review on Montenegro; 6 January 2009; A/HRC/10/74, recommendations 66.6 (Austria, Slovenia), 66.8 (Canada), 66.15 (Austria, Netherlands), 66.16 (United Kingdom), and 66.17 (Algeria, Luxembourg, Chile, Canada, Croatia).

<sup>2</sup> A/HRC/10/74, recommendation 66.13 (Chile).

<sup>3</sup> A/HRC/10/74, recommendation 66.14 (Sweden, France, Mexico, Ireland, Germany, Czech Republic, Norway).

<sup>4</sup> A/HRC/10/74, recommendations 66.18 (Greece), 66.19 (Slovenia), and 66.20 (China).

<sup>5</sup> A/HRC/10/74, recommendations 66.3 (Turkey), 66.5 (Croatia), 66.11 (Czech Republic), and 66.12 (United Kingdom, Austria, Slovakia, Sweden, Poland).

<sup>6</sup> A/HRC/10/74, recommendation 66.16 (United Kingdom).

<sup>7</sup> A/HRC/10/74, recommendation 66.17 (Canada).

<sup>8</sup> A/HRC/10/74, recommendation 66.17 (Chile, Italy), 66.18 (Greece).

<sup>9</sup> A/HRC/10/74, recommendation 66.14 (Sweden, France, Mexico, Ireland, Germany, Czech Republic, Norway).

<sup>10</sup> Amnesty International interview with Ombudsperson, Podgorica, December 2012.

<sup>11</sup> Signed and ratified by Montenegro on 6 March 2009.

<sup>12</sup> Adopted on 29 July 2011.

<sup>13</sup> Between 19 May 1992 and 27 May 1992, some 83 Bosniak civilians who had fled the armed conflict in Bosnia and Herzegovina (BiH) were arrested in Montenegro by members of the Montenegrin police. They were subsequently transferred, in late May, into the hands of members of the then de facto authorities in the Republika Srpska (RS) in BiH, including to the Republika Srpska Army (Vojska Republike Srpske, VRS) and to the RS police. With the exception of eight survivors, 21 men are believed to have been killed at the "KP Dom" prison camp in Foča in BiH; the remains of six persons were exhumed and identified at Sremska Mitrovica and Miljevina; the fate and whereabouts of at least 34 persons, following their arrest, remains unknown. Amnesty International considers that the enforced disappearance of Bosniak refugees carried out by the Montenegrin authorities in the context of the armed conflict in Bosnia and Herzegovina constituted a war crime. When they are carried out in the context of an armed conflict, enforced disappearances violate international humanitarian law governing armed conflict, which applies concurrently with international human rights law. These enforced disappearances resulted in violations of the prohibitions set out in international humanitarian law against violence to life and person, including the deprivation of liberty, torture and other cruel treatment and murder. Enforced disappearance constitutes a crime under international law and, in certain circumstances defined in international law, a crime against humanity or a war crime. The right not to be subjected to enforced disappearance is enshrined in a number of international human rights treaties, including the

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International Convention for the Protection of All Persons from Enforced Disappearance, the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

<sup>14</sup> *Assessment of The Judgment By The Montenegro's Higher Court Of 29 March 2011*; appendix to letter sent by Amnesty International to the Montenegrin authorities in January 2012.

<sup>15</sup> Appeals were made on the basis of erroneous and incomplete facts, violations of criminal law and substantive violations of the criminal procedure code.

<sup>16</sup> Decision received by Amnesty International, but not currently available at <http://www.apelacionisudcg.gov.me>, The Appeal Court found that the first instance court had incorrectly applied only those provisions of common Article 3 of the Geneva conventions which are applicable to non international armed conflict, and had failed to take into consideration other provisions of common Article 3 and of Article 2 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. Common Article 3 to the Geneva Conventions prohibits the following crimes, all of which were committed against some of the Bosniak civilians: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;(b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

<sup>17</sup> Mladjen Goverdarica, Zlatko Tarle, Ivo Gonjić, Boro Gligić, Spiro Lučić and Ivo Menzalin; the latter, arrested on 2 March 2011 at Podgorica airport, was previously convicted in absentia.

<sup>18</sup> Article 430 (1) Anyone who breaches the rules of international law and orders against prisoners of war the infliction of bodily injuries, torture, inhuman treatment, biological, medical or other research experiments, taking of tissues or body organs for transplantation, or commission of other acts so as to harm health and cause serious suffering or orders coercion to service in armed forces of the enemy, deprivation of right to a just and impartial trial or who commits some of the crimes stated above, shall be punished by imprisonment for a minimum term of five years. Amnesty International considered the "mitigating" circumstances cited by the court - that the defendants had not previously been convicted of any offence - to be inappropriate.

<sup>19</sup> Ksž.br. 20/10, <http://www.apelacionisudcg.gov.me/LinkClick.aspx?fileticket=e-linxQLKk%3d&tabid=79>

<sup>20</sup> Ivo Gojnić was sentenced to two years' imprisonment, Špiro Lučić and Boro Gligić to three years; Ivo Menzalin was sentenced to four years imprisonment.

<sup>21</sup> The majority of the Bosniak families have yet to return to Bukovica, According a statement by to the Minister of Labour and Social Welfare in December 2011, some 43 houses had been built in Bukovica for returnees; only 13 families had returned, <http://www.gamn.org/files/Izvjestaj%20YIHR%202012%20eng.pdf>

<sup>22</sup> Lawyers acting for the victims claimed that relevant video footage was allegedly never shown in proceedings.

<sup>23</sup> According to the Criminal Procedure Code, the court should have been composed of three permanent judges, instead of a five member council.

<sup>24</sup> The amendments introduced two new offences of crimes against humanity (Article 427) and the failure to take measures to prevent crimes against humanity and other values protected under international law (Article 440), and were introduced on the basis that both crimes were prohibited, "pursuant to ratified international treaties during the conflicts in the 1990s".

Criminal Code: Crimes against humanity, Article 427: Anyone who in breaching of the rules of international law, as a part of a wider or systematic attack against civil population, orders: murder, placing entire population or its part under such living conditions so as to bring about their complete or partial extermination; enslavement; forced displacement; torture; rape; coercion to prostitution; coercion to pregnancy or sterilization with a view to changing the ethnic composition of population; persecution or expulsion on political, religious, racial, national, ethnic, cultural, sexual or any other grounds; detention or abduction of persons without disclosing information on it so as to deprive them of legal assistance; oppression of a racial group or establishment of domination of one such group over another; or any other similar inhuman acts intended to cause serious suffering or seriously harm health; or who commits one of the crimes listed above, shall be liable to imprisonment for a minimum term of five years or a prison sentence of thirty years. <http://legislationline.org/documents/section/criminal-codes/country/57>

<sup>25</sup> According to media reports, the lengthy trial was due to the reluctance of the Serbian authorities to submit evidence (relating to command responsibility for the alleged crime), the large number of witnesses, and poor investigation.

<sup>26</sup> In July and August 2011, vehicles belonging to *Vijesti* were set on fire on three occasions.

<sup>27</sup> The case was brought by Ivica Stanković, a Supreme Court judge. Petar Komnenić – also a freelancer for the Reuters news agency and Radio Free Europe - had alleged in a 2007 article in the weekly *Monitor* that state prosecutors had unlawfully put surveillance measures on Ivica Stanković and another judge. A green activist convicted of slandering a national park game warden was similarly given a custodial sentence after decriminalization, due to non-payment of damages, see <http://www.balkaninsight.com/en/article/group-asks-montenegro-to-pardon-green-activist>

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<sup>28</sup> These include the murder in May 2004 of the former editor of the opposition daily, Dan, Duško Jovanović; the October 2006 attack on the writer Jevrem Brković, which resulted in the murder of Srđan Vojičić, his driver at the time; and the beating of journalists Tufik Softić (November 2007), and Mladen Stojović (May 2008).

<sup>29</sup> For full details, see <http://www.hraction.org/?p=1957>; for concerns expressed, for example in connection with the failure to investigate the alleged abuse of more than 30 detainees at Spuž prison in 2005, see [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2005/package/sec\\_1428\\_final\\_progress\\_report\\_cs\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1428_final_progress_report_cs_en.pdf); and *Report to the Government of Montenegro on the visit to Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 22 September 2008*, p. 17, para. 23, <http://www.cpt.coe.int/documents/mne/2010-03-inf-mne.pdf>

<sup>30</sup> *Human Rights Committee General Comment 34 on Article 19*, <http://www2.ohchr.org/english/bodies/hrc/comments.htm>

<sup>31</sup> The exercise of the right to freedom of expression may be subject to certain restrictions but only if they meet all elements of a stringent three-part test: they must be provided by law (which must make clear what is permitted and what is not); and demonstrably necessary and proportionate (the least restrictive measure to achieve the specified purpose) for the purpose of protecting specified public interests (national security, public order, or public health or morals) or the rights or reputations of others. Refusals must be open to appeal, including some form of judicial review, to an independent body which has the right to examine the information withheld and the authority to order disclosure, including where refusal is on national security grounds. Refusing access to information about human rights violations can never be justified, including on grounds of national security.

<sup>32</sup> Agreed under an Action Plan with the European Commission, 17 May 2007, revised December 2012.