

**Submission from the Montenegro Informal Coalition of non-governmental organizations for Children Rights regarding the Universal Periodic Review of Montenegro, 15<sup>th</sup> Session, 21<sup>st</sup> January – February 2013**

Consultation process:

1. This UPR submission has been prepared by the Informal Coalition of NGOs dealing with monitoring, promotion and protection of child rights in Montenegro established in 2009 for the purposes of development of the Alternative report on implementation of UN Convention of the Rights of a Child in Montenegro. It consists of the following NGOs: Centre for Children Rights of Montenegro – Podgorica, Centre for Human and Minority Rights – Podgorica, NGO „Children First“ – Podgorica, Citizens Alliance – Podgorica, NGO „New Chance in Novi“ – Herceg Novi, Legal Centre – Podgorica, NGO Youth Forum and Informal Education – Podgorica, NGO „Beginning“ – Niksic, „Humanitarian“ – Niksic, Union of Associations of Parents of Children and Youth with Disabilities "Our initiative" – Podgorica. The Montenegro Informal NGO Coalition was worked on UPR preparation and submission with Save the Children support.
2. The report presents a review of the status of child rights over a period of five areas. Topics have been selected in accordance with the UPR recommendations from the first cycle and the Concluding Observations of the Committee on the Rights of the Child

## **I BACKGROUND AND FRAMEWORK**

### **A. Scope of international obligations**

3. In October 2010, Montenegro ratified the Council of Europe Convention on Protection of Children against Sexual Abuse and Exploitation (Convention Lanzarote) and started with its implementation.
4. Montenegro signed the Third Optional Protocol to the Convention on the Rights of a Child in February 2012 in Geneva. This Protocol strengthened the UNCRC and its existing protocols. In this way, after 20 years, children are provided with possibility to access justice at international level, through newly adopted appeal procedure.
5. **Recommendation:**

**The Government of Montenegro should ratify the Third Optional Protocol to the Convention on the Rights of the Child by end 2013 and ensure rapid implementation into national legal system.**

### **B. Institutional and human rights infrastructure**

6. For this reporting period, we can speak about certain progress in a part related to the harmonisation of national legislative framework with international standards of human rights and in area of child rights, but there are still some inconsistencies and

failures in a part of implementation of adopted laws and accepted international standards.

7. In July 2010, Montenegro adopted the Law on Protection against Domestic Violence, and in June 2011 it adopted the Strategy on Protection against Domestic Violence (2011-2015).
8. Since the Committee on the Rights of the Child expressed concern about the fact that children in conflict with the law are often treated by the same laws and procedures applicable to adults, due to the absence of a separate juvenile justice system, in December 2011 the Parliament of Montenegro adopted the Law on Treatment of Juveniles in Criminal Proceedings. This Act introduces significant changes in our legal system, such as the institute of protection of minors as victims of crime, the warning as an education measure for a criminal offense which is punishable by fine or imprisonment of up to 3 years. The only obstacle to implementation will be related to the willingness and capacities of relevant institutions to enforce it.
9. At the request of the UN Committee on the Rights of the Child, the Government has increased the capacity of the Council for the Rights of a Child, an inter-sectoral Governmental body, by including three additional members (two representatives of civil society and one representative of children). Also, in accordance with the Committee on the Rights of the Child's recommendation, the Council has initiated the establishment of a Working Group for the development of a new National Action Plan for Children (NPA 2013-2017). This document will be of strategic importance, if it properly recognises priorities, clearly define goals, is realistic, applicable and focused on action, which was not the case with the previous NPA

## **Statistics on Children**

10. The last population census from 2011 has provided precise data on the total number of children in Montenegro. There are 145.126 children, aged from 0-18 years.
11. Thanks to the latest study on child poverty in Montenegro<sup>1</sup>, accurate and reliable data on the number of children who grow up in poverty are available for the first time. Children are more exposed to poverty than adults: 10% of children and 6.1% of adults are living in poverty in Montenegro, with a monthly spending less than 169.13 euro. This means that every 10<sup>th</sup> child in Montenegro lives in poverty (or 14,500 children). Boys and girls are equally exposed to poverty, and the youngest (children under 5 years) are most vulnerable with a poverty rate of 13%. Poverty indicators show that children in the northern municipalities in Montenegro, are much more affected by poverty than their peers in other regions
12. There is a concern that the state will use current global crisis as an excuse for reduction of already low amounts of social assistance for children.

## **13. Recommendations:**

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<sup>1</sup> Study on Child Poverty in Montenegro, November 2011, UNICEF

- **Harmonisation of national legislative with standards of the UN Convention on the Rights of a Child, including the obligation of the Government to, by 2014, allocate budget funds in a way that allocations for children should be visible**
- **The Government of Montenegro should take immediate steps for development of the National Action Plan for Children, including the elaboration of local plans and strategies by the end of 2013, and ensure their implementation, monitoring and reporting**

## **II Implementation of international human rights obligations**

### **A) Legal Status of Children in Montenegro**

14. In spite of the activities of public authorities and some local governments, the situation of Roma in Montenegro has not been significantly improved, as there still are complex problems related to their integration, combating poverty and addressing their social, economic and cultural rights.
15. Adoption of the Strategy for the Improvement of the State of RAE Population in Montenegro<sup>2</sup> (2008-2012) and Strategy for Resolving the issues of refugees and internally displaced persons in Montenegro, with special reference to the area Konik (2011-2015) point out to the enhanced and systematized efforts of the Government of Montenegro in terms of improving socio-economic status of minorities and their integration into society<sup>3</sup>.
16. The regulation of the legal status of refugees and internally displaced persons, as well as normative preconditions necessary for the enjoyment of basic human rights, has been marked as a priority area of the Government work. In this context, the Government, through amendments and modification of the Law on Foreigners<sup>4</sup>, has allowed displaced persons to have privileged access to the status of foreigner with permanent residence as a form of local integration. This law gives the possibility to displaced persons to submit an application for approval of permanent residence until December 31<sup>st</sup>, 2012 and, in this way, to permanently resolve their status in Montenegro.
17. Obtaining personal documents from the country of origin, which are necessary for dealing with legal status and exercise of the rights deriving from the status of displaced persons still remains a serious problem for a number of members of the RAE population, even after many years after they were dispersed. Due to lack of identity papers and problems with the registration of children born outside of health care facilities, objectively it can be expected that a fair number of displaced persons, especially those from the RAE population, will not be able to apply for the status of

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<sup>2</sup> RAE - Roma, Ashkali and Egyptians population

<sup>3</sup> Government of Montenegro – First Report on realisation of measures from the Integrated Action Plan for Implementation of the Strategy for Resolving the issues of refugees and internally displaced persons in Montenegro, with special reference to the area Konik, February 2012

<sup>4</sup> Law on Foreigners ("Official Gazete of MNE", No. 82/08 and 72/09)

the foreigner before the given deadline (31.12.2012). To this fact indicates the data that only about 46% of the total number of 15.483 displaced persons has filed a motion for approval of permanent residence.

18. Results of the research conducted 2011 in the area of Konik camp, the largest Roma settlement in Montenegro<sup>5</sup>, show that only 6% of persons, whose status was confirmed by the government's re-registration done in 2009, has all the documents needed to apply for the status of foreigner with permanent residence in Montenegro, while 430 persons do not possess any personal documents, out of which number 230 are children younger than 18 years. UN Committee on the Rights of the Child<sup>6</sup> with the concern pointed out to the problem of lack of personal documents, and recommended the government *to take immediate action and ensure that children who do not possess identity documents cannot be denied with the access to the basic rights.*
19. The Government has recognized the need to change and harmonize the legal framework when it comes to the Law on Civil Registries, but it has not established yet the legal mechanisms for the subsequent entry in the Register of births for children born outside health care facilities. There has been little progress in terms of recommendations of the UN Committee on the Rights of the Child, that the *State should, through the adoption of administrative and judicial measures, ensure retroactive birth registration and issuing of documents for those children.*
20. The procedure for subsequent entry in the Register of birth of Roma children born outside a medical institution is burdened by a number of formal-legal terms linked to the process of proving the fact of birth. In majority cases the state authorities usually refuse to act upon requests for subsequent entry of the facts of birth, and a person seeking the entry, they usually refer to initiate civil procedure for establishing paternity and maternity, with justification that because of possible abuses and the dangers of child trafficking, the request for enrolment cannot be resolved through administrative proceedings.
21. Lack of personal documents and problems with the registration of children born outside of health institutions, lead to statelessness and are the main obstacles to the access to basic rights. According to data from 2009, 2553 RAE stateless persons (26%) are living in Montenegro<sup>7</sup>. Recently implemented activities of the Ministry of Interior<sup>8</sup> to strike from the Registry of Montenegrin citizens, children who in certain Montenegrin municipalities were enrolled as Montenegrin citizens before the 1<sup>st</sup> January 2009, because their registration was without legal grounds, has led these children into a state of de facto statelessness.
22. The activities that the Government is taking in the field of prevention of statelessness are not sufficient, since the mechanisms for identifying and registering stateless persons or persons at risk of statelessness have not been established yet.

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<sup>5</sup> PhD Saša Gajin "Report on legal status of persons living in Konik Camp with recommendations for their improvement"- November 2011

<sup>6</sup> UNCRC recommendation, October 2010

<sup>7</sup> Statistic Bureau of Montenegro-MONSTAT- Database of RAE population in Montenegro, May 2009

<sup>8</sup> Strategy for Resolving the issues of refugees and internally displaced persons in Montenegro, with special reference to the area

Konik - July 2011

## 23. Recommendations

**The Government of Montenegro should:**

- **Define and simplify procedure for registration of children born outside of health institutions, to ensure that all children have access to birth registration without discrimination by 2014;**
- **Simplify procedures for achieving the status of foreigner with permanent residence and establish mechanisms for identifying and registering stateless persons or persons at risk of statelessness and undertake concrete activities for prevention and elimination of causes that lead to the stateless by 2014.**

## **B) Exercising the right to privacy of the child in the media**

24. **Private lives** of a child is an area in which third parties, including the media, should not interfere or disclose the circumstances related to the home, family, social conditions and other peculiarities of the child. Information that are part of the child's private life should not be available to third parties, and similarly they should not be distributed through the media, since the release of such information would undermine the child and caused his/her mental pain and suffering. **The identity of the child** is related to the child's name and origin: ethnic, religious, cultural and social, and thus the data revealing the identity of the child should be published with a special attention and concern. Revealing the identity of the child can be directly, by disclosing the identity of the child (by publishing the name, photos, initials, family situation, etc..) and indirectly, through dealing with others who are in many ways connected with the child..
25. The Constitution of Montenegro guarantees the protection of personal data and specifies that everyone has the right to respect for private and family life. The Constitution stipulates that the child should enjoy the rights and freedoms appropriate to its age and maturity, the child shall be guaranteed with special protection from all forms of exploitation or abuse. Under the Constitution everyone has the right to be informed about the data collected on his/her personality and the right to judicial protection against misuse. The Convention of the Rights of a Child also guarantees the right to privacy. The Convention states that States Parties shall ensure that the child's privacy should be respected at all stages of the procedure.
26. The Media Law of Montenegro<sup>9</sup> defines that the media must protect the integrity of minors. This implies that the programmatic contents of media, which can endanger health, moral, intellectual, emotional and social development of children, must be previously clearly and visibly marked as such and distributed in a way that is least likely that the child will use it. This law also specifies that the media should not publish the identity of minors involved in criminal acts, either as a victim or a defendant, unless there is an overriding public interest to be informed when the minor is convicted for an offense. The Media Act stipulates that the fine of one

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<sup>9</sup> The Law on Media („Of. Gazette MNE“, No. 51/02 from 23.09.2002, 62/02 from 15.11.2002. and Off. Gazette MNE, No.

46/10 from 06.08.2010, 73/10 from 10.12.2010, 40/11 from 08.08.2011).

thousand to six thousands euro should be imposed, through misdemeanour procedure, to a legal entity that fails to protect the integrity of minors under this Act. Media Law does not clearly state, and the Ministry of Culture as institution responsible for media, has failed to submit us the information which institution is competent to initiate misdemeanour procedure for establishing liability in cases where the media does not respect the right to respect private life of a child.

27. Analyses of daily press show that there are a great number of articles that violate the right to a privacy and protection of the best interest of a child. In period from the beginning of 2011 to April 2012, nine cases of violation of the right to a privacy and disclosure of identity or information that can lead to the disclosure of identity of a child in media have been reported<sup>10</sup>
28. The case of three girls that have reported allegations that they were abused, raped and tortured in a Children's Home in Montenegro by other inmates and starved by employees in the Home is one of the most drastic cases of violation of the right to a privacy of children in the media. Thanks to the media reports, a wide public have found out details of the children's private lives that made them identifiable, leading to revictimization. Another example shows that in the elementary school there was an incident in which a student has been marked as a "bully and repeater." One of the headlines in the media clearly identified the school. The whole case has received considerable media attention. The media have reported about the incident and discovered the identity of a student of the seventh grade, and through the description of the case they have cited the information that the boy has a "criminal history". In the third case of violation of privacy rights of children in the media, which occurred on 14<sup>th</sup> December 2011, media went so far as to reveal information about health conditions. Namely, the daily newspaper "Vijesti", by describing the incident that happened in high school between math teacher and two students, in addition to the initials, grade, full name of the professor and other data that are identifiable, have presented information that the student experienced a traffic accident in which she sustained injuries because of which she was in a coma. This information was completely irrelevant for the context of describing an incident that occurred at the school, and has further jeopardized the right to privacy of the child.
29. The general problem in Montenegro is social irresponsibility of the media in terms of ethical reporting, and violations of children's rights. Journalists when reporting on children's rights, especially when it comes to sensible issues like violence against children, should have awareness and understanding of how much damage their sensational reporting can produce. They can contribute to the fact that children - victims, thanks to the media, will later become even bigger victims, due to the stigmatization.

### **30. Recommendations:**

- **The Government of Montenegro should ensure respect of national and international laws relating to the right of a child to privacy and enact necessary legislation by 2014, to ensure protection of the child's right to privacy and prosecution of violations of this right by the media.**

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<sup>10</sup> Cited according to data from NGO Citizens Alliance

### **C) Exercise of rights of children with developmental disabilities**

31. In 2009 Montenegro ratified the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol. By this, the state of Montenegro has committed itself to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities. Rights of persons with disabilities are also protected by the Constitution of Montenegro, which Article 68 guarantees special protection to persons with disabilities. In Montenegro, there is no official statistics on the number of persons with disabilities but it is estimated that there are about 60,000, out of which about 18,000 are children with development disabilities<sup>11</sup>.
32. Government of Montenegro has adopted the Strategy for the Integration of Persons with Disabilities, Inclusive Education Strategy and the Strategy of Social and Child Protection and, by these documents, provided for a range of measures and activities to improve the position of children with development disabilities. However, despite the adoption of these documents and other laws and regulations pertaining to children with development disabilities, due to poor implementation of regulations and large prejudices towards this population, there are many problems that these categories of people meet every day.
33. The biggest problems stated by children with developmental disabilities and their families are as follows: physical barriers, social rejection, contempt of their personality, lack of practical social care, unsurpassed prejudices, low participation in the processes and issues that are directly related to them, lack of services of support for families of children with developmental disabilities, low social benefits that do not ensure their financial security, restrictive conditions of medical treatment and rehabilitation at home and abroad, and poor dental care.
34. Inclusion of children with special educational needs is not yet done in a way to provide all children with a quality education in line with their psycho-physical capabilities.

#### **35. Recommendations:**

##### **The Government of Montenegro should:**

- **Raise awareness of the needs of children with disabilities and establish an adequate system that provides social and educational inclusion of these children; customize educational institutions, develop a network of day care centres, provide access to public facilities, remove architectural barriers and provide rehabilitation services, by 2015.**
- **Increase social benefits for families with children with disabilities by 2014.**

### **D) Exercise of the right of a child on protection from violence in a family**

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According to World Health Organization (WHO) data

36. In July 2010 Montenegro adopted the Law on Protection against Domestic Violence. The process of development of the Law has ensured the participative approach, which has understood active participation of representatives of civil society sector. By this Montenegro has implemented one of the recommendations of the Committee for Human Rights.
37. Domestic violence is regulated by the Family Law, Criminal Law and Law on Protection against Domestic Violence. Law on Protection against Domestic Violence provides several protective measures against the perpetrator of domestic violence – removal from the apartment; restraining the approach to the victim, harassment and stalking; compulsory treatment and psychosocial treatments. The main objective of this law is to act preventive in order to forestall this phenomenon and to urgently respond to the problem. The law provides that, in situations where it is necessary to take repressive measures, it should be respected the principle of proportionality – to implement measures and at the same time preserve the family as the basic unit of society. The law defines domestic violence, and acts of violence are indicatively enumerated. The family is defined in a way to include a wider circle of persons, the former marital and extramarital spouses, and all who live in the same household. The Law also foresees the duty of the authorities to take coordinated measures aimed at protection against domestic violence, and social protection includes financial and other assistance, housing and social work services for victims of domestic violence. These measures, in addition to their repressive significance, emphasize prevention and the need to forestall further violence in the family and they will be imposed with a penalty. There is also possibility of imposition of these measures as separate sanctions. The law foresees misdemeanour acts, which have a preventive purpose.
38. Unfortunately, this Law has omitted the obligation to establish support services for victims of violence (emergency accommodation, continuous psychosocial support, counselling, etc.) with the excuse that this segment will be determined by the new law on social and child protection.
39. According to the recommendations of the Committee on the Rights of a Child, the State has adopted the Strategy for the prevention of violence, aimed at prevention and reduction of child abuse and neglect, and it also strengthened existing operational multidisciplinary teams for protection children against violence.
40. Various public campaign have been implemented, mostly by the civil society sector ("Stop corporal punishment of children", marking the International Day against violence against children and among children by the Centre for Children's Rights of Montenegro), NGO "Children first" with the support of the European Commission's opened the counselling child line - Confidential Phone. In early March 2012, with the support of the Council of Europe, the Government of Montenegro, in cooperation with numerous partners, has launched a campaign at the national level, "One in Five".
41. In Montenegro there are no clear statistics that would testify on the issue of violence against children and among children, but this certainly does not mean that this problem does not exist. On contrary, the problem is more and more present, and the state must take all measures to prevent and combat all forms of violence against children and among children.



42. In Montenegro, there is a lack of specialized knowledge about protection of children from abuse, which should have all the experts who, in any way, are working with children: teachers, medical staff, social care workers, inspectors and prosecutors. Also, there are no specialized councils, courts for children and young people, which exist in the region and elsewhere, and which allow specialized and urgent action. The procedures of protection of a child against neglect and abuse usually last for a long time due to the inability to provide relevant evidence, and we can say that a very small number of cases have been processed. Delaying the procedure allows the parent and other family members to make the psychological pressure on the child to deny abuse or to refuse to testify. When a child enters into the system of social and criminal-law protection, it often being subjected to secondary victimization due to frequent testing by different persons in order to determine the truth. Since the method for proving the child sexual abuse is very complex, we believe that support for children in court proceedings is inadequate, criminal policy for the abuser should be sharper and the state should provide for child's medical and social treatment.

#### **43. Recommendations**

##### **The Government of Montenegro should:**

- **Develop and implement a comprehensive child protection system, including the establishment of mechanisms for following cases and scope of the abuse, neglect and maltreatment against children, including those in family, school, institutional or other type of care;**
- **Ensure that professionals working with and for children (teachers, social workers, medical staff, police officers, prosecutors and judges) receive adequate trainings and education about appropriate treatment and acting in cases of suspected child abuse and neglect;**
- **Strengthen a psychological support through development adequate services (unique counselling line, shelters for emergency accommodation, counselling and psychological and psychiatric support for child victims of abuse and neglect)**

#### **E) Exercise of the right of a child to a placement in other family**

44. A child who is deprived of family environment is entitled to special protection and assistance from the state. This may involve placement in a foster family, adoption, or exceptionally, in an appropriate institution for the care of children

45. The analysis of the legislation showed that the field of family placement - Foster care is regulated by two laws: the Family Law and the Law on Social and Child Protection, whereby the Family Law defined this field more precisely. There is no bylaw which should specify the area of foster care, the procedure and needed estimations, selection of a foster family and support to children and foster families, so now the entire process and work are based on the provisions of the Family Law. The part related to the cost of accommodation is regulated by a separate secondary legal act: Regulation on the criteria for determining the special benefits for the family in which the person is placed.

46. The total number of children without parental care, who are placed in foster families is 281, out of which number 269 children are placed in kinship families, and 12 in

other families; 173 children are placed in the institutional placement: 144 children are accommodated in the Children Home “Mladost” – Bijela, and 29 children are placed in institutions in Serbia.

47. Fostering, as a protective way of care for children without parental care is not sufficiently developed and promoted in Montenegro. Wider public does not have enough information about the advantages of fostering and disadvantages of institutional placement of children without parental care.
48. Kinship, family fostering has been developed spontaneously in a way that the closest relatives take care of children. In these cases, the eligibility for the provision of accommodation is implied in advance, so the status quo is usually accepted and confirmed. The state does not organize trainings for kinship families for foster care, doesn't make plans for the child protection, nor systematic monitoring or support to foster parents and placed children.
49. Neither the expert public (staff from the centres for social work) makes the promotion of family placement and mostly do not determine this type of protection, unless it is the case of family foster care. From time to time, in a crisis situation, centres for social work provide them counselling support, one-time financial assistances, or refer to other institutions.
50. Because of the above mentioned, the foster families are leaved to themselves. They are mostly foster parents - elderly relatives, who have completed working lives, and insufficiently strengthened parental competences.
51. What is encouraging is that the state, with support from UNICEF, has launched the process of drafting the Law on Social and Child Protection, National Strategy for the development of foster care in Montenegro and the creation of minimum standards for this form of protection of children without parental care.

## **52. Recommendations**

### **The Government of Montenegro should:**

- **Adopt the Law on Social and Child Protection, by the end of 2012 and ensure its proper implementation by supporting the decentralisation process.**
- **To provide support to natural families with damaged family relations;**
- **To ensure all necessary services and professional educations and development of professionals. To ensure on-going, continuous and intensive promotion of the fostering and adoption as a permanent form of care for children without parental care**