
**Shadow report to the Committee on economic, social and
cultural rights in connection with the consideration of the
initial report of Montenegro**

Podgorica,
October 2014

Shadow report to the Committee on economic, social and cultural rights in connection with
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Dear Mr. Chairman,
Dear members of the Committee,

With regard to the Initial report on implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of Montenegro, which will be discussed at the Committee on Economic, Social and Cultural Rights (CESCR)'s 53rd Session in Geneva from 10 to 28 November 2014, please consider this alternative report which has been put together by NGO Human Rights Action (HRA) with significant help of NGO Centre for Democracy and Human Rights (CEDEM). Contributions to this report were made by the following 14 Montenegrin NGOs dealing with rights under the ICESCR as part of their regular work:

1. **AYDM - Association of Youth with Disabilities of Montenegro** (Udruženje mladih sa hendikepom Crne Gore), <http://umhcg.com/>
2. **CA – Civic Alliance** (Građanska alijansa), <http://www.gamn.org/>
3. **CCE – Centre for Civic Education** (Centar za građansko obrazovanje), <http://cgo-cce.org>
4. **CEDEM - Centre for Democracy and Human Rights** (Centar za demokratiju i ljudska prava), www.cedem.me
5. **CeMI - The Centre for Monitoring and Research** (Centar za monitoring i istraživanje), <http://www.cemi.org.me>
6. **CRC - Child Rights Centre** (Centar za prava djeteta Crne Gore)
7. **FPA - FIRST PARENT'S ASSOCIATION FOR CHILDREN WITH SPECIAL NEEDS** (Prvo udruženje roditelja djece i omladine sa posebnim potrebama-Podgorica), www.rastimozajedno.me
8. **HRA - Human Rights Action** (Akcija za ljudska prava), www.hraction.org
9. **MANS – The Network for Affirmation of NGO Sector** (Mreža za afirmaciju nevladinog sektora), <http://www.mans.co.me/>
10. **MWL - Montenegrin Women's Lobby** (Crnogorski ženski lobi), <http://crnagora.tripod.com/lobi.htm>
11. **PRIMA – Prima**, <http://www.nvoprima.org/>
12. **UFTUM – Union of Free Trade Unions of Montenegro** (Unija slobodnih sindikata Crne Gore), <http://www.usscg.me/me>
13. **WRC - Women's Rights Center** (Centar za ženska prava) www.wrcentre.com
14. **WSH - Women's Safe House** (Sigurna ženska kuća), <http://www.szk.me/>

This alternative report includes reasoned conclusions and recommendations of the above stated NGOs on the implementation of the ICESCR by Montenegro. It also recommends the Committee to forward also to the Montenegrin Government some of its recommendations from the Concluding observations to the Second Periodic Report of Serbia. Please note that some observations from the European Commission's 2014 Progress report on Montenegro¹ have also been included in this report.

¹ Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-montenegro-progress_report_en.pdf

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EXECUTIVE SUMMARY

Montenegro established policy and implementation framework for enjoyment of economic, social and cultural rights. However, serious normative shortcomings and implementation gaps persist, ranging from lack of independence and capacities of human rights institutions to ineffective means to protect these rights. Insufficient amounts of social welfare, as well as their ineffective distribution marred with political discrimination are some of major causes of concern. Lack of personal documents and registered residence limit enjoyment of economic, social and cultural rights especially of the Roma and Egyptian population. even concerning their access to basic services.

There are insufficient guarantees of independence of the Ombudsman, as well as insufficient funds and human resources to fulfil its broad mandate, relating to both anti-discrimination and torture-prevention. Some important posts in this institution remain vacant, including two of four deputy posts, although the number of cases Ombudsman deals with raises over years. Participation of NGOs in the NPM (national torture-prevention mechanism) set up by the Ombudsman is missing (**Article 1**).

Measures for combating corruption in spatial planning and construction still do not provide specific results, due to imprecise procedures and weak inspection control. Development of planning documents in not transparent enough and not enough citizens participate in it. Ineffective corruption countermeasures have been noticed in the area of healthcare as well - direct payments to doctors are common practice among patients, while doctors' salaries remain low. There is no effective control over public procurement procedures for the purchase of medicines (**Article 2, paragraph 1**).

Although anti-discrimination policy is in place, its effective implementation is missing. Domestic anti-discrimination decision-making rarely relies on relevant international human rights documents and practice of international bodies competent for supervision. Lack of precise records on registered and processed discrimination cases is evident. According to public polling, there is no improvement in changing mainstream attitudes toward Roma – they remain the most discriminated group in the country, along with LGBT persons. Roma also remain underrepresented in politics, as there are no lower electoral thresholds for them unlike for other minorities. Courts do not provide effective protection against discrimination of persons with disabilities (**Article 2, paragraph 2**).

Despite the State introduced a range of gender equality mechanisms, allocated financial and human resources are hindering their effective and continuous functioning at all levels. Stronger efforts are needed to support political participation of women by encouraging female members of the parties to enter politics. (**Article 3**).

High unemployment rate and serious shortcomings in practice are noticed in relation to labour rights. The most common violations of the Labour Act relate to blank contractual termination of employment; non-transformation of contract of employment from fixed-term contract to contract for an indefinite period of time; insufficient safety at work and violations of workers' right to a day off on state and other holidays. Labour inspection is not effective enough in suppressing grey economy and sanctioning employers who

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are opposing the Labour Act. Stronger efforts are needed to protect whistle-blowers who report these violations. Despite active employment policy measures targeting, inter alia, people with disabilities and Roma and Egyptians as harder-to-employ persons, labour market integration remains very difficult for most of them due to discrimination, poor qualifications and the lack of personal documents. Law on professional rehabilitation and employment of persons with disabilities is still ineffective in practice, as the Fund for Professional Rehabilitation and Employment does not operate as an independent legal body (**Article 6**). Gross violations of the workers' rights to remuneration and regular payment of their social and health insurance contributions have been noticed as well, while the amount of the minimum wage is obviously insufficient (**Article 7**).

Anti-union discrimination has been observed, including through discrimination against trade union representatives and the lack of prosecuted reported cases involving union activists. There are too broad restrictions of the right to strike of the army, police and state administration staff. The new Law on Strike which should be aligned with international standards in this field is still in the parliamentary procedure, from May 2013 and needs to be adopted as soon as possible (**Article 8**).

Concerning the conditions for retirement, the State raised the age limit and equalized conditions required from men and women, while reducing, at the same time, the right to family pension in case of death of a spouse or a parent. In addition, minimum pensions itself cannot provide for livelihood. Financial compensation for bodily injury as well as financial compensation in case of unemployment is far too low. The social welfare benefits are also far beyond the adequate living standard. They are not based on clear needs assessment and are limited up to only 9 months per year. Furthermore, they are often used for purposes of political gain, most notably during time of elections.

Systematic and stable financing of the support for social services is still missing given that the bylaws that should closely regulate the manner of implementation of the Law on Social and Child Care have not yet been adopted. The availability of social services and the coverage of users with these services largely differ among municipalities. On the other hand, there are no clear-cut criteria based on which the performance of these centers can be easily assessed and their results compared. Non-final judgments on violations of the right to one-off financial assistance have been observed as well as social work centers do not apply precise and unique criteria when calculating the amounts of this assistance. Roma and Egyptian people, especially those with non - regulated legal status, are having particular difficulties in accessing social rights, due to restrictive legal clauses, frequent migrations and low awareness of social welfare (**Article 9**).

Violations of the Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence have been reported. Discriminatory treatment of employed women whose salary is higher than two average salaries during maternity leave is of serious concern. New protective measures to combat domestic violence, introduced by the Criminal Code amendments, are not being promoted and applied enough. A single database on gender-based violence, classified by gender, age, relationship between victim and perpetrator has not been yet established. Protection of victims of trafficking is also showing shortcomings in recognizing the potential victims, as according to official data, the official records suggest number of victims is decreasing from year to year, although the data from the victims' shelter suggest otherwise.

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Despite legal framework prescribing adjustment of public buildings to persons with reduced mobility, little progress has been made so far. A single database on children with disabilities at the level of all social institutions and service providers is still missing. Non-institutional services for children with disabilities and their families are not developed enough. A need for opening new day care centres and equipping teaching and personal assistants with updated skills and information is evident so as to allow them to assume their tasks in accordance with child's best interest. Grave violations of the rights of Roma and Egyptian (RE) children have been noticed as a consequence of children being forced into begging and other forms of the street work. There is no improvement in preventing and sanctioning the practice of forced marriages between minors among RE population. Despite these problems, the budgeting process that the Government applies does not allow for allocations relating to children to be clearly identified (**Article 10**).

The state has no information on the number of persons who are homeless or inadequately housed and without access to basic infrastructures and services such as water, heating, waste disposal, sanitation, and electricity, as well as the number of persons living in over-crowded or structurally unsafe housing. Even the Capital City of Podgorica does not have a shelter for homeless people. Persons without Montenegrin citizenship still do not have the right to a free meal in the public kitchen in Podgorica. Exercising the right to adequate standard of living represents a significant problem for the RE population, especially for those living in slums and substandard informal settlements with very limited access to infrastructure that is essential for health, safe housing, sanitation, comfort and nutrition (**Article 11**).

Citizens are still paying for medical procedures and medicaments that should be covered by mandatory health insurance, partly because these medicaments are available in private pharmacies only. The Law on the restriction of the use of tobacco products is still not fully implemented. No organized education about sexual and reproductive health exists in Montenegrin schools. As for the right to highest attainable standards of mental health, please note that close to half of patients in Dobrota Special Psychiatric Hospital in Kotor are persons whose mental state does not require hospitalization, but in the absence of any other way to be placed, remain in that hospital. Persons with disabilities are still facing inaccessibility of health institutions, lack of adequate equipment and well-educated medical staff working with these persons. The Children's Hospital is not adjusted to child wheelchair users and does not provide appropriate placement of children with severe disabilities and their companions. Roma and Egyptians without regulated personal documents also face difficulties to effectively access the health system (**Article 12**).

Barriers to the right to education are mostly present among people with disabilities and RE children. Most of the educational institutions at all levels of the education are not physically accessible for children and students with disabilities, neither are the teaching processes, programs and materials. High drop-out rates, especially among girls, segregation in education and low educational outcomes constitute the most concerning problems for effective access of RE population to education. In addition, there is no systematic and certified education for civic education teachers neither in the pre-service nor in service. Certain topics are purposefully neglected in civic education textbooks, such as the topics related to the rights of sexual minorities. The elementary education, as guaranteed by the Constitution of Montenegro, is not free of charge. Further, education institutions are still not truly depoliticized, as almost all directors of schools are members of the ruling political party. In addition, salaries of teaching staff have consistently been lower than the state average since 2008 (**Article 13**).

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The Culture Act permits space for political influence regarding appointing members to the National Council for Culture and for appointing and selecting management bodies of public cultural institutions. Investments in culture are beyond legal threshold and insufficient also in scientific development. The Fund for Minorities is not acting in accordance with the law, dominantly because of the noticed conflict of interest and non-compliance with the audit regulations in allocating funds, as stated by the decisions of the Administrative Court and reports of the National Audit Institution (**Article 15**).

GENERAL INFORMATION

- The Constitution of Montenegro, as well as laws, do not explicitly provide some of the economic, social and cultural rights guaranteed under the ICESCR, such as the right for protection from hunger.
- The CSOs welcome the ratification of the Optional Protocol to the ICESCR by Montenegro. It provides a valuable international venue for protection of economic, social and cultural rights given the limited jurisdiction of the Constitutional Court of Montenegro (which can only revoke decisions of state bodies, but not replace them with a decision ordering e.g. access to water, food, shelter, etc.) and the fact that Montenegro never endorsed the right to collective applications to the European Committee of Social Rights under the European Social Charter.
- Please note that the NGOs were not invited to contribute to the initial State report of Montenegro (List of issues, paragraph 1).
- With regard to the information requested in the List of issues paragraph 3:
 - a) Cases of violations of economic, social and cultural rights considered by the Protector of Human Rights and Freedoms (Ombudsman),
 - b) Amendments to the Law on the Ombudsman currently under discussion, and whether they are in line with the Principles relating to the Status of National Institutions (The Paris Principles).

HRA: Ombudsman does not appear as proactive, independent body for protection of human rights, but a rather passive organ that appears as part of the state administration. Lack of funding and insufficient capacity of employees is only part of the problem. Significant problem lies in the mechanism for appointing the Ombudsman by simple parliamentary majority, which does not provide sufficient guarantees in Montenegro that a person independent from the Government would become Ombudsman (Ombudsperson). The Venice Commission of the Council of Europe also criticized such mechanism of election but to no avail.² The recent changes of the Constitution regarding change in majority vote for appointments in the judiciary did not address the appointment of Ombudsman.

Regarding recently adopted amendments to the Law on the Ombudsman (July, 2014) please note that those do not fully correspond to the Paris principles because:

- the Ombudsman still does not have full financial independence;

² For more information please consult report Human Rights in Montenegro 2010-2011, HRA, page 73, available at: http://www.hracion.org/wp-content/uploads/Human_Rights_in_Montenegro_2010-2011.pdf.

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- the Ombudsman handles the budget according to the dynamics determined by the Ministry of Finance, the executive authority;
 - the suggestion that representatives of NGOs should become a part of the National torture prevention mechanism for the protection of persons deprived of liberty against torture was not adopted, but this remains to be regulated by a bylaw;
 - the proposal that the Ombudsman should have authority to initiate legal proceedings or intervene during the proceedings was not adopted.³

As to the protection of social rights, the Ombudsman supported HRA initiative for review of legality and constitutionality of the rule of the city of Podgorica to provide services of its soup kitchen only to Montenegrin citizens in August 2011 and filed it as a request for review with the Constitutional Court. Nevertheless, the Constitutional Court did not decide on this request to date (please see page 39).

Although Ombudsman was recognized as the National Prevention Mechanism from Torture, in accordance with the OPCAT, in spite of previous plans and announcements, Ombudsman did not involve NGOs to act as part of a wider NPM team serving under his coordination, as was done in some other states. This was not insured by the law nor did Ombudsman himself decide to include NGOs.⁴ HRA believes that participation of experienced NGO representatives could have significantly contributed to the effectiveness of this establishment.

CEDEM: Capacities of the Ombudsman are weak and its involvement in enabling better protection of economic, social and cultural rights of vulnerable groups is not at the satisfactory level. As the Act on Internal Organization and Systematization of Working Positions at the Ombudsman office is going to be adopted within 60 days from the date of adopting the Amendments to the Law on Ombudsman, the Institution of the Ombudsman is expected to announce vacancies and enlarge their capacities during September/October 2014. Considering the fact that the process of drafting Amendments to this Law started in 2012 and that there were no possibilities for the Institution of the Ombudsman to enlarge its capacities before adopting the Amendments, it seems that Ombudsman has been functioning almost three years with lack of human resources and reduced capacities.

Recommendation: The Constitution should be changed to allow for a qualified Parliamentary majority for the appointment of Ombudsman in order to provide that this person is an independent, impartial and proactive actor in human rights protection. The capacities and competencies of the institution should be increased in line with the Paris principles. Participation of NGOs in the NPM (national torture prevention mechanism) under the competence of the Ombudsman office should be insured.

³ For more details please see: http://www.hraction.org/wp-content/uploads/HRA_Predlozi_za_Zakon_o_Ombudsmanu_5.8.2013..pdf.

⁴ Odluka o obrazovanju savjetodavnog tijela Zaštitnika/ce ljudskih prava i sloboda Crne Gore za sagledavanje stanja u organima, organizacijama i ustanovama u kojima se nalaze lica lišena slobode ili kojima je ograničeno kretanje, Zaštitnik ljudskih prava i sloboda, br. 01-875/12, 23.10.2012 (*Decision of the Ombudsman on the observation of the state of bodies, organizations and institutions where reside persons deprived of liberty or with persons whose movement is restricted*).

ARTICLE 2 (paragraph 1)

MAXIMUM AVAILABLE RESOURCES AND INTERNATIONAL COOPERATION

We believe that the same recommendation provided by the Committee to Serbia in 2014, should be provided to Montenegro as well:

The Committee recommends that the State party should regularly evaluate the impact of the measures taken, including against corruption, and the budget allocations made for the implementation of the Covenant in order to assess whether the maximum available resources have been used in achieving progressively the full realization of the rights recognized in the Covenant, taking into account the Committee's general comment No. 3 (1990) on the nature of States parties' obligations and its statement of 2007 on the obligation to take steps to the maximum of available resources.

The recently published European Commission's Montenegro 2014 Progress report⁵, highlighted:

"In the area of anticorruption, progress has been limited. The legislative framework remains to be strengthened. Pending the establishment of a new anticorruption agency, the capacity of existing institutions in the area of prevention of corruption needs to be improved and they need to take a more proactive approach. The system of checks for conflicts of interest and asset declarations is not effective" (page 10).

With regard to the List of issues, paragraph 4, please note:

a) Measures for combating corruption in areas of spatial planning and construction still do not provide enough specific results

MANS: Measures for combating corruption in area of spatial planning and construction still do not provide enough specific results. After criminalization of constructing objects without construction permits in 2008, very little was done to put this provision into force. Although collecting of evidence in this area should not represent a problem, predominately Police Directorate fails to adequately perform its role, so court cases are rare and frequently not successful. Several years ago, a memorandum was signed between the Ministry of Interior, Judiciary and Ministry of Urban Development on joining the forces to stop and process illegal construction, but there are a very few data available to what extent this memorandum was put into force. On the other side, MANS as a non-governmental association of citizens investigated plenty of cases of corruption and organized crime in this area, in connection with abuse of office and alleged money laundering.⁶ At this time, there is at least a dozen criminal appeals submitted

⁵ http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-montenegro-progress-report_en.pdf

⁶ More details available at: <http://www.mans.co.me/en/about-mans/publications/urban-planning-captured-by-corruption/> and <http://www.mans.co.me/en/about-mans/publications/public-works-and-secret-deals/> <https://reportingproject.net/unholy-alliances/>.

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by MANS to the Supreme State Prosecutor's Office that are still pending due to lack of political will to process high level corruption.

CeMI: Despite the fact that the State took certain steps in ensuring the state's proper spatial development there are no positive impacts of state policy in this area.⁷ Unofficial data show that there are more than 100,000 structures which were illegally constructed in Montenegro lately. Intensive legislative and institutional reforms which were performed in the last couple of years only increased the scope of corruption and created an atmosphere of systematic insecurity in this area. Lack of systematic harmonization of the normative framework in the field of spatial planning and construction and imprecise procedural rules in the Law on Spatial Development and Construction of Structures are still present⁸ The introduction of the "one stop shop" method for obtaining construction permits has improved the efficiency of procedure for obtaining building permits and positively affected decision making in a reasonable timeframe. Transparency of the process of creation of planning documents at the local level is limited due to the lack of greater participation of public in this process. Municipalities have not developed the practice of e-publishing of requests for issuing of urban-technical requirement, requests for issuing construction permits and issued construction permits, requests for issuing occupancy permits and issued occupancy permits, in accordance with the provisions of the Law on Spatial Development and Construction of Structures on their websites (improvement in this area was achieved in the last couple of months). The Ministry of Sustainable Development and Tourism fulfils its duty of regular publishing of its decisions and supporting documents on its website. Insufficient human capacities of the Administration for Inspections Affairs represent one of the main obstacles for greater efficiency of this institution in activities relating to inspection control in the area of spatial development and construction.⁹ This is especially presented in the case of "inspection for construction" which currently has only 3 inspectors including the chief state inspector for construction of structures. Also, there are numerous criminal cases pending before the Montenegrin courts which are being prosecuted due to abuse of office and illegal activities in the area of spatial planning and construction.

Recommendation: The State should combat corruption in the area of spatial planning and construction more efficiently, improve normative framework and imprecise procedural rules, transparency of the process of creation of planning documents, as well as increase human capacities of inspection control.

b) Quality of healthcare services is not on the high level. Direct payments of patients are common practice. Salaries of health practitioners employed in public health sector are low. Insufficiently effective control over procedures of public procurement in healthcare is one of the major problems.

⁷ As it was stated in the last 2014 Progress Report on Montenegro's advancement towards the EU, "area of spatial planning and construction continues to be extremely vulnerable to corruption."

⁸ Policy Study: "Spatial Planning and Construction – Risks of corruption", Center for Monitoring and Research CeMI, 2014, available at: http://cemi.org.me/images/dokumenti/studije/Study_risks_of_corruption.pdf

⁹ "Report on administrative procedures in the field of spatial development and construction", Center for Monitoring and Research CeMI, 2014, available at: http://cemi.org.me/images/dokumenti/report_administrative_procedures.pdf

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CeMI: Despite undertaken reforms, Montenegrin healthcare system still suffers from inherited deficiencies. There still exists discrepancy between rights granted by the healthcare insurance and financial possibilities to satisfy them. In accordance with results of conducted public opinion surveys, informal payments are to a great extent present in Montenegro. Total of 44% interviewees have stated that they have “given a gift” to a healthcare practitioner at least once, even though they were not requested to do so. Out of those who, in the last year (2012/13) made an unofficial, additional payment for healthcare service (7.6%), 53.3% was paid with money and 21.1% gave smaller gifts.¹⁰ Inconsistency and ambiguity of certain legal norms in the area of healthcare and public procurement, underdeveloped function of internal audit and insufficient number of inspectors decreases the possibility for effective control of the processes of public procurement in healthcare sector.

Recommendation: State should increase salaries of healthcare practitioners and provide more effective control of the healthcare system as well as over procedures of the public procurement in healthcare.

CEDEM also believes that key challenges in the area of fighting corruption in public procurement, health, education and spatial planning relate to weak capacities of the competent law enforcement bodies and insufficient citizens’ participation in reporting cases of corruption. “The main obstacle for achieving concrete results in this field is a large number of institutions controlling this area, none of which has significant powers or the necessary independence to do this job. Another problem is the lack of coordination amongst these institutions, which do not share information and have no joint initiatives. All of the aforementioned problems result from the limited political will to achieve results in this area.”¹¹

Recommendation: The State should (in addition to other measures) further encourage the citizens to report cases of corruption.

¹⁰ See more: Policy Study: “Corruption Risk Assessment in the Healthcare System of Montenegro”, Center for Monitoring and Research CeMI, 2013, available at: http://cemi.org.me/images/dokumenti/studije/corruption_risk_assessment.pdf

¹¹ Third Shadow Report on Implementing Action Plan for Negotiation Chapter 23, NGOs Coalition, May 2014

ARTICLE 2 (paragraph 2)
NON-DISCRIMINATION

a) Strategy for Development of the Social and Child Protection System 2013 - 2017 has serious flaws

Regarding the List of issues, paragraph 6, as well as the Reply to the List of issues, paragraph 6:

“The Government of Montenegro adopted on 27 June 2013 the Strategy for Development of a Social and Child Protection System for the period from 2013 to 2017 with the purpose of taking necessary actions towards the improvement of the socio-economic situation of citizens, in particular of persons who require support and services of social and child protection“, please note¹²:

- The Strategy was developed prior to the adoption and entry into force of the Law on Social and Child Protection, which led to it not being in compliance with the Law and the important issues that became clear during the process of adoption of the Law – such as the issue of abuse of rights – were not covered or dealt with appropriately;
- An analysis of compliance of measures and aims defined by the previous Strategy for the development of social and child protection had not been conducted prior to development of this Strategy. It is logical and in line with good democratic practice to thoroughly analyse and publish the extent to which the previously set aims were fulfilled, prior to the adoption of new strategies, but this is not the practice of the Montenegrin government in general;
- The Strategy contains outdated and inaccurate data, as well as contradictory statements about key issues, such as the issue of equitable distribution of social benefits;
- The Action Plan for implementation of the Strategy provides deadlines for applying the measures that are too long and need to be shortened, having in mind the urgency of the situation;
- Strategy did not plan for adequate care of the so-called social patients who currently reside in the Special Psychiatric Hospital in Kotor, although their mental state does not require further hospitalization (please see page 40).

Recommendation: The State should prevent flaws observed in Strategy for Development of the Social and Child Protection System 2013 – 2017 during its implementation. The State should urgently provide for social housing for persons currently residing in the psychiatric hospital.

¹² For more detail please see: <http://www.hraction.org/?p=3445>.

ARTICLE 3 EQUAL RIGHTS OF MEN AND WOMEN

We believe that the same recommendation provided by the Committee to Serbia in 2014, should be provided to Montenegro as well:

The Committee recommends that: the State party should assess whether the gender equality mechanisms are adequate, and provide the national machinery in the field of gender equality with the necessary human and financial resources to improve its effective and regular functioning.

a) Selective abortions- statistics showed significant imbalance between the number of newborn male and female babies.

Women's safe house, WRC, HRA: According to the UN data from 2013, some 100 girls are born for every 110 boys in Montenegro, while the usual ratio is 100 to 102-104.¹³ Regarding the Council of Europe's Commissioner for Human Rights, Nils Muižnieks, he said that sex-selective abortions are discriminatory and should be banned.¹⁴ In the same comment he recommended a number of actions that the governments and civil society need to engage in:

- Reliable data need to be collected.
- Guidelines on the ethical use of the relevant technologies should be developed and promoted through associations of health professionals.
- Support measures for girls and should be put in place.
- States should develop legislation and policy frameworks to address the root causes of the inequalities that drive sex-selection.
- States should support the equal value of girls and boys.

Recommendation: The State should implement actions recommended by the Commissioner for Human Rights.

b) Lack of essential support for gender equality when it comes to the political participation of women.

European Commission's 2014 Montenegro Progress report, page 45: "Progress regarding women's rights and gender equality remains limited. "

¹³Sex imbalances at birth in Armenia, Demographic evidence and analysis, Christophe Z. Guilmoto IRD/CEPED Paris, available at: http://unfpa.am/sites/default/files/Sex_Imbalance_report_Eng_final.pdf.

¹⁴More detail available at: <http://www.coe.int/web/commissioner/-/sex-selective-abortion-are-discriminatory-and-should-be-banned-1>.

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WSH, WRC: In addition to the information stated in the Reply to the List of Issues (paragraph 54), please note that the percentage of women in decision making positions in local government is also low. From total number of 21 municipalities, a woman is the President of municipality only in one, and only two women are in the position of Vice-President. In practice, the data show that women predominantly work in state institutions (over 50%), while their number decreases in managerial positions.¹⁵

Recommendation: The State should encourage political parties to nominate an equal number of men and women as their candidates, to create an enabling environment for women's political participation, through adequate funding of campaigns of female candidates, the education of young women in leadership positions, and empowering the female part of the political parties.

WRC, CCE: With regard to the State report, paragraphs 24, 25, 26 and 27, please note:

A group of Montenegrin NGOs led by the WRC has proposed that a new Law on Election of Councillors and Members of the Parliament should include a provision according to which every third place on the election list would go to a woman, but to no avail. This would have allowed that, by the principle of allocation of mandates in order of candidates from the election list, a larger number of women would enter parliamentary benches. According to this initiative, in the event of termination of the mandate, a parliamentary seat which was occupied by a representative of the less represented gender shall be replaced by first next female candidate and not a male one from the election list¹⁶. This proposal was meant to be an amendment and improvement of existing legal solution from 2011 which prescribes a norm that election lists should have at least 30% of women, but without specifying the order of candidates, which has given a vast space to party actors for manipulation when creating lists and later caucuses. As a result of this "imprecision" in previous parliamentary elections, certain parties had 30% of women on their lists but most female candidates were at the bottom of the list, which ultimately led to the fact that today in the Parliament of Montenegro we have only 14% of female MPs, which is the lowest rate in Europe. The State neglected recommendations of CEDAW and Council of Europe Venice Commission by not passing the amendments mentioned above.

Recommendation: The State should reconsider existing law and undertake all the necessary measures to create the possibilities for implementation of gender equality in decision making process at all levels since it has committed itself to that by adopting numerous international documents and being member of international organizations.

Please note that further chapters on ARTICLES 6, 7 and 8 have been prepared jointly by UFTUM and HRA.

¹⁵ Report for implementation the Action Plan for Achievement of Gender Equality (2013-2017) for 2013.

¹⁶ For more information please see: http://cgo-cce.org/2013/10/11/zajednicko-saopstenje-za-javnost-nevladinih-organizacija/#.VDLXu_mSxC0; <http://cgo-cce.org/en/2014/03/07/politicka-podzastupljenost-zena-ostaje-problem-u-crnoj-gori/#.VDLZEvmSxC0>; <http://cgo-cce.org/en/2014/03/07/politicka-podzastupljenost-zena-ostaje-problem-u-crnoj-gori/>

ARTICLE 6 RIGHT TO WORK

We believe that the same recommendation provided in 2014 by the Committee to Serbia, should be provided to Montenegro as well:

The Committee urges the State party to intensify its efforts to reduce the unemployment rate through effective measures of active employment policy, including requalification, local employment initiatives, placement incentives and tax benefits for employers, in order to promote the employment of persons from marginalized groups, in particular in rural areas. The Committee also urges the State party to establish objectives on an annual basis for the employment of persons with disabilities and to collect reliable data on the extent of their unemployment.

a) *Higher unemployment rate than in EU countries*

Regarding the State report, paragraph 64, please note:

Montenegro has higher unemployment rate than the EU countries. According to data for the first quarter of 2014, the unemployment rate in Montenegro was 19.1%.¹⁷ According to the data for 2013, the unemployment rate in Montenegro was 19.5%.¹⁸ According to the data for 2012, the unemployment rate in Montenegro was 19.7%.¹⁹ The euro area (seasonally-adjusted) unemployment rate was 11.8% in March 2014.²⁰

“Unemployment remains very high at nearly 20%, practically unchanged since 2010 according to the Labour Force Surveys. In 2012, labour market participation improved marginally to 50% compared to 49% a year before. Regional disparities are significant. In the coastal and central regions the unemployment rate is 10% and 15.6% respectively, but it rises to 36.7% in northern Montenegro. At national level, both the number of employed and the number of unemployed persons increased by 2.6% year-on-year in 2012. Long term unemployment remains a serious concern, since 68% of unemployed persons have been out of work for more than two years. Unemployment particularly affects the young (15-24 years), who account for more than 40% of the total. Poor labour market dynamics have also been reflected in wage moderation. Average gross wages contracted in real terms by 3% in 2012 and by 1% in the first half of 2013. Overall, a poorly performing labour market with low participation and high

¹⁷More detail available at:

<http://www.monstat.org/userfiles/file/ars/2014/I%20kvartal/Saopstenje%20ARS%20I%20KVARTAL%202014.pdf>.

¹⁸More detail available at:

<http://www.monstat.org/userfiles/file/ars/2013/godisnje/ARS%20%20Godisnje%20saopstenje,%202013.pdf>.

¹⁹More information available at:

http://www.monstat.org/userfiles/file/ars/2012/zamj/ARS%20%20Godisnje%20saopstenje,%202012_zamjena.pdf.

²⁰More information available at: http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-02052014-AP/EN/3-02052014-APEN.PDF.

unemployment rates, particularly among the young and the long - term unemployed, remain a serious challenge.”²¹

Recommendation: The State should undertake concrete measures to reduce the unemployment rate.

b) ***Non-implementation of legal provision on transformation of employment contract from a fixed-term contract to contract for an indefinite period***

With regard to the State report, paragraph 66, please note:

The Labour Act²² prescribes permanent employment contracts as a rule and fixed term employment contracts as exception with duration for a maximum of two years²³. Also, the Act prescribes a situation when a contract of employment may be concluded for a fixed term²⁴ but for no longer than 24 months with the same employee. If a fixed-term contract of employment is concluded contrary to this provision, or if the employee continued working for the employer after the expiry of the period for which the contract had originally been made, the employee shall be considered to have concluded a contract of employment for an indefinite period of time if he/she accepts such employment, and an employer may not conclude one or more fixed term contracts of employment with the same employee if their duration, continuously or with interruptions, lasts for longer than 24 months²⁵. According to unofficial data obtained from UFTUM, please note:

- The provision referring to transformation of contract of employment from fixed-term contract to an indefinite period of time is generally respected by employees in the public sector, while the situation in private sector is quite different and depends on whether the employer is a large or a small company. In the case of small private companies, UFTUM noted concerning conduct. Namely, a number of those employers used the institute of the Agency for temporary assignment of employees (which was also established for the first time in the 2011), in order to avoid the obligation to transform fixed term contract to permanent employment contract. In practice, employers did not conclude a permanent employment contract with employees who have been employed for 24 months (or longer), but cancelled the fixed term contract and referred employees to one (out of seven existing) agencies. In the next step, through the Agency, the employees have concluded fixed term contracts for the same jobs with the same

²¹ European Commission, Montenegro 2013 Progress Report, page 13, available at:http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/montenegro_2013.pdf.

²²“Official Gazette of Montenegro“, 49/2008, 26/2009, 59/2011 and 66/2012.

²³Article 24: (1) A contract of employment shall, as a rule, be concluded for an indefinite period of time.

(2) A contract of employment for an indefinite period of time shall be binding for the contractual parties until one of them terminates it or until it terminates on other grounds prescribed by this law.

(3) A contract of employment that does not specify the time period of duration of employment shall be considered a contract for an indefinite period of time.

²⁴ for the purpose of performing certain jobs whose duration is predetermined for objective reasons or due to occurrence of unforeseeable circumstances or events (art. 25, para. 1)

²⁵Article 26: Transformation of contract of employment from fixed-term contract to contract for an indefinite period of time.

employers. In this manner, the intent of the provision-concluding permanent employment contract has been avoided.

- Also, UFTUM noted some statements of employers who said that issues of obligated transformation of contract could be simply solved by opening a new company with a different name, and engaging the same employees for the same work (which is, basically, continuation of the same work for the same company - just under a new name).²⁶
- Also, UFTUM noted that private employers forced employees to sign blank agreements on termination of employment.

Recommendation:

- **The State should thoroughly see that legal provision prescribing transformation of contract of employment from fixed-term contract to contract for an indefinite period of time is implemented, and control performance of agencies (in order to prevent abuses by employers).**
- **The State should prevent employers from violating the Labour Act by employing workers through an Agency for temporary assignment of workers.**
- **The State should review the provisions prescribing that a company could be established with the amount of 1 EUR so that the founders are liable with their entire property (including personal property) for the commitments to employees and third parties arising from the operations of the company.**
- **The State should increase activities for combating and eradicating blank contractual termination of employment to which employers force their employees and thus bypass provision on employment on indefinite time. Given that it is a criminal offence²⁷ the State must encourage employees to report employers who force them to such illegal actions whereby all the reported employers (for which is proven that they have committed this offence) would have to be subject to strong sanctions, primarily imprisonment, in accordance with the Law.**

c) ***Inefficient performance of Labour Inspection***

With regard to the State party's report, paragraph 48, please note:

“Montenegro has a large undeclared economy relative to the EU27. Although comparative data are not available on the size of its undeclared economy relative to the EU27, it has been estimated that 22.6%

²⁶With regard to this, please note that according to our legislation, a company (LLC- Limited Liability Company) may be established with amount of 1 EUR, and that the founder of a company is accountable for obligation arising from operations only to the amount of the initial deposit (and not also with his own property). This is why employers rather change the company in order to avoid obligations to employees and third parties.

²⁷Criminal Code, articles 165 and 224.

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of all jobs are informal, of which 77% are in formal sector enterprises and 23% are in informal sector enterprises. In addition to this, many formal employees receive an undeclared 'envelope wage' from their employer as well as their official declared salary. The Institute for Strategic Studies and Prognoses (ISSP) found that a further 17.5% of registered employed people receive such an envelope wage and that their overall net wage is some 30% higher than their declared salary."²⁸

Cited data are similar to the Analysis developed by the Faculty of Economics in Podgorica, which has shown that 30% of employees in Montenegro absolutely or partially work illegally. Within that percentage: 14% of employees work absolutely illegally (with no taxes and contributions to the state) as well as 16% of employees officially receive the minimum wage of 193 Euros (according to which the employer pays taxes and contributions), while unofficially receives an additional not taxed amount ("cash in hand").²⁹ It is estimated that the budget deficit on this basis amounted to 90 million Euros per year.

UFTUM believes that the number of workers who officially receive only 193 Euros and the rest as a not-taxed amount is higher and that more accurate information are available at the Tax Administration (who refused to reveal this data with the explanation that these data are confidential).

Beside the name "envelope wage" UFTUM, also, noted that the employer in the individual contracts of employment for the same work contracted different salaries, which represents violation of provision that an employee, male or female, shall be guaranteed the same salary for the same work or work of the same value³⁰).

Although the Labour Act allows both the workers and the employers to propose amendments to the working conditions set by the contract in an annex to the contract, which, if both parties agree, constitutes an integral part of the employment contract, amendments from 2011 introduced one change. Namely, in the event that the employee does not accept the amendments proposed in the annex, the employment contract may be unilaterally broken in all cases (only in case of non-acceptance to modify the wage, the employee is entitled to severance pay). With this regard, UFTUM noticed that employers, however, have been abusing this institute to unilaterally break off permanent employment contracts frequently.

Regarding the cases of violations of economic, social and cultural rights considered by the Protector of Human Rights and Freedoms (Ombudsman) from List of issues (paragraph 3), and State party's Reply to List of issues (paragraph 3), please note:

²⁸ Tackling Undeclared Work in Montenegro, Colin C. Williams, Marijana Baric, Piet Renooy, 2013. Eurofound, Dublin, Forthcoming, page 1.

²⁹ „ANALIZA: 24.000 radnikaradinacрно, manjak u budžetupo tom osnovučak 90 milionaeura“, portal Analtika, 9 April 2014: <http://www.portalanalitika.me/ekonomija/vijesti/141706-analiza-24000-radnika-radi-na-crno-manjak-u-budetu-po-tom-osnovu-ak-90-miliona-eura>.

³⁰Article 77, para. 3: „Work of the same value shall include work for which the same level of professional education, or the level of their education, or professional qualification, responsibility, skills, working conditions and work results are required“.

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In addition to statistic data obtained from the State regarding violations of right to work and employment rights considered by Ombudsman³¹, please note the following recommendation from the same report (**HRA translation**):

“Ombudsman considers that authorities should act decisively and take the prescribed measures against employers who do not perform its legal obligations, as well as act more efficient in the exercise of control of legality of employers and take measures timely in order to eliminate identified irregularities and impose sanctions to employers who do not fulfil their obligations.”

Labour Fund

The Labour Fund has the task to enable the workers whose employment was terminated due to the bankruptcy the employer to exercise their right to payment of outstanding claims.

Pursuant to the Labour Fund Act³², the proceedings for exercising this right can be initiated upon the request of the workers or the bankruptcy manager, and it can be submitted to the Fund Management Board within 30 days from the day the final decision establishing the right to the claim has been submitted.

UFTUM received numerous complaints of their members on the lack of transparency in work and decision making of the Labour Fund.³³

According to data from MANS, the "Audio Recording" affair³⁴ revealed that disbursements of workers' severance pay by the Labour Fund represent one of the important mechanisms used by the ruling Democratic Party of Socialists (DPS) during election periods as a means to influence voters in order to stay in power.³⁵ Such practice of the Labour Fund continued before May 2014 local elections, but in a

³¹ According to: Annual Report for 2013. submitted by the Ombudsman of Montenegro to the Parliament of Montenegro.

³² „Official Gazette No 88/2009“

³³ The key remark is that severance payments are not paid upon arrival of the requests and it is a common situation that workers who applied for the benefits much later receive severance payment before their colleagues who applied earlier; also, it was noted that when a group of workers collectively submit a claim for severance pay, it happens that some of the workers receive the severance payment sooner while their colleagues are still waiting for the payment; also, upon rendering a decision on right to payment, it is noted that in some cases the severance is paid immediately upon delivery of the decision while in other cases waiting on payment lasts for even several years.

³⁴ For more information please see: <http://www.hracion.org/?p=3031>.

³⁵ “During the first three months of this year the Labour Fund disbursed 3.7 million Euros for severance packages, or as many as 87 percent of total funds allocated from the Budget for the whole of 2014. In this period 1,944 workers received severance pay, of which 260 thousand Euros was spent in January to pay 135 employees, about 1.5 million was provided in February for 755 workers, while in March, a month in which the local elections were scheduled, additional 2 million Euros was disbursed, thanks to which 1,054 workers received their severance pay. Given the fact that 4.3 million Euros has been allocated in the 2014 Budget for severance payments to the Labour Fund, a simple calculation proves that for the remaining nine months of the same year this institution has only 550 thousand Euros left for severance pay disbursements. Furthermore, there has been a threefold increase in the Labour Fund's budget for 2014 as compared to 2013, when 1.3 million was allocated for severance benefits. The same amount had been planned by the Budget Proposal, however, the sum increased to 4.3 million Euros thanks to the amendments of DPS MPs, who at the time kept in mind local elections held in a number of municipalities in Montenegro. On the other hand - despite chronic problems with closing the gaps in the state

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way that bypassed the Law on the Financing of Political Parties, since majority of the funds allocated for workers' severance packages were disbursed just before the announcement of local elections. According to same source, similar mechanisms had been used for the previous elections.³⁶

Recommendation: The State should increase efficiency of Labour Inspection in order to: suppress grey economy, prevent violations of Labour Act and provide for its full implementation, provide more efficient performance of the Labour Fund including proper investigation of the alleged abuses of the Fund.

d) Violations of workers' right to a day off on state and other holidays

The Law on State and Other Holidays has been amended in 2013 and it prescribes that Labour inspection is competent for its implementation.³⁷ However, those provisions are not being implemented to date due to the lack of a bylaw (that should have been enacted by the Ministry of Economy by 3 October 2013 at the latest). Please note that UFTUM appealed to the Ministry several times in this regard, but unfortunately with no result.

Recommendation: The State should urgently provide for full implementation of the Law on State and other Holidays and effectively prevent violations of workers' right.

ARTICLE 7 - RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

We believe that the following recommendation provided by the Committee to Serbia in 2014, should be provided to Montenegro as well: The Committee calls on the State party to take measures to ensure that the minimum wage is established with due account of the cost of living and of views of the social partners, and to periodically review its level to provide all workers and their families with an adequate standard of living, in accordance with article 7 (a) (ii) of the Covenant. The Committee also calls on the State party to combat low income among employed persons with disabilities through special measures.

budget, especially at the beginning of the fiscal year -the Ministry of Finance rushed to immediately allocate funds for the Labour Fund for severance pay disbursements."

³⁶ "Preceding the early parliamentary elections of 2012, the government borrowed as many as 6 million Euros in order to disburse a large number of severance pays, even though 2.1 million had been allocated for the said purpose in that year's budget. Also, prior to April 2013 presidential elections, the Labour Fund paid the greatest number of severance benefits, disbursing 970 thousand Euros in the first four months, or 75 percent of the projected budget amount for the entire year.

Affair "Audio Recording" revealed that workers' severance pays had been disbursed ahead of the early parliamentary elections at the direct request of certain DPS officials, such as Dejan Medojević, the mayor of Mojkovac, who asked for their disbursement in favour of the members of that party, while the then political director of the party, Branimir Gvozdenović, stated that "expectations of the Labour Fund are serious".

³⁷ Previously, Labour inspection argued that it is not competent for supervising the respect of the workers' right to a day off on a state and other holidays.

a) *Insufficient amount of the minimum wage*

The minimum wage in Montenegro stood at 193 euros in 2014³⁸. According to Statistical Office data the total value of minimal consumer basket for July 2014 amounted 791 euros.³⁹ Please note that the minimum wage amount covers less than 24% of total value of the minimal consumer basket.

Recommendation: The State should increase the amount of the minimum wage.

b) *Gross violations of the workers' rights to remuneration and regular payment of their social and health insurance contributions*

With regard to the right to fair and just working conditions the greatest problem present gross violations of the workers' rights to remuneration and regular payment of their social and health insurance contributions. In a number of cases, the state i.e. the local governments are the debtors,⁴⁰ which gives rise to particular concern and represents the most severe violation of the right to work. Owners of private companies, out of which some are foreigners, have also reneged on their obligations laid down in privatisation contracts, the industrial giants: "Montevar Metalac", "Aluminium Plant Podgorica", and others. The case of the erstwhile industrial giant "Radoje Dakic" AD Podgorca is a good illustration of years-long violations of the workers' fundamental right to remuneration. The workers of this company, 1,650 of them, have been periodically protesting for over six years now in an effort to be paid the money owed them after the Podgorica Basic Court rendered final and enforceable decisions upholding their claims. The state's inability to pay them 77 wage arrears amounting to around 37 million Euros, 7 million of which are interest rates, led the workers to file an application with the ECtHR in 2010.

The rights of workers in commercial establishments and small and medium sized enterprises are particularly jeopardized because the vast majority of them are not union members and have no collective agreements with their employers. Some of the workers have sued the companies and the courts have rendered final and enforceable decisions upholding their claims, others have not even though the claims are basically indisputable.

Recommendation: The State should stop with gross violations of workers' rights, and ensure that private companies fulfil their obligations according to law and privatization contracts.

³⁸ Decision on establishing the minimum wage ("Official Gazette", No. 18/2013).

³⁹ More details available at: http://www.monstat.org/userfiles/file/min%20potrosacka/2014/7/MCB-July-2014eng_.pdf.

⁴⁰ According to data obtained from UFTUM, those municipalities are: Berane, Nikšić and Budva.

ARTICLE 8 TRADE UNION FREEDOMS

We believe that the following recommendation provided by the Committee to Serbia in 2014, should be provided to Montenegro as well:

The Committee urges the State party to ensure to the employees in both the private and public sectors the effective exercise of the right to freely form and join trade unions, as well as the right to strike.

a) Anti-union discrimination has been observed

With regard to the State report, paragraph 88, please note:

According to UFTUM, a high degree of anti-union discrimination, i.e. obstruction of trade union activities and organizing (by private employers and certain state institutions) has been observed. According to the same source, although this practice has been prohibited⁴¹, the competent institutions have not prosecuted a single charge yet.

Recommendation: The State should prevent discrimination on the grounds of union activities as well as prosecuted reported cases.

RIGHT TO STRIKE

With regard to the State report, paragraph 95, as well as the List of Issues, paragraph 9, please note:

According to the Law on Strike⁴² a special strike regime applies to strikes in activities of public interest (Art. 9).⁴³

In terms of this Law, activities of public interest entail activities of particular relevance to the defence and security of Montenegro established in accordance with the law. Workers in these areas may start a strike, if minimum service is established to ensure the safety of people and property or if this is essential for the life and work of citizens, or work of other employer, i.e. legal entity or entrepreneur carrying out an economic or other activity or providing services (Art. 10). The list of activities of public interest is identical to the one in the 1996 Law on Strike of the Federal Republic of Yugoslavia, criticized by the CESCR in its

⁴¹ Criminal Code, article 182.

⁴² „Official Gazzete“, No. 43/2003, 49/2008.

⁴³ In terms of this Article, such activities are performed in the following areas: electric power industry, water management, traffic, PTT services, information (radio and TV), public utility services (water, production and supply, waste disposal, production, distribution and supply, waste disposal, production, distribution and supply of energy-generation products, etc), fire protection, production of basic foodstuffs, health and veterinary care, education, culture, childcare and social welfare).

Concluding Observations on Serbia and Montenegro in 2005.⁴⁴ The definition of the special regime in legislation related to strikes is so extensive that the question arises whether a strike could be staged at all, i.e. whether it could be at all effective. Moreover, broad formulations, such as “fulfilment of international obligations” allow for prohibition of the strike in specific situations, e.g. if a company is fully export-oriented. The current strike regime also restrains the right to strike.⁴⁵

However, the Government proposed a new Law on Strike, resulting out of a social dialogue in May 2013. The Proposal amends almost all of the concerns highlighted above in relation to the current law, and the main problem is that it had not yet been adopted by the Parliament.

Restrictions of the right to strike of the army, police and state administration staff

It is laid down in the Montenegrin Constitution that the right to strike of the Army, police, state administration and public service staff may be restricted in order to protect the public interest (Art. 66(2)). The Law Amending the Law on Strike⁴⁶ lays down that, for the purpose of protecting public interests, persons employed in the Army of Montenegro, Police and state authorities cannot organize a strike if they would thus jeopardize general public interest, national security, safety of people and property or the functioning of the authorities. The employment of an employee of the Army, police or state administration shall terminate if established that he/she organized or participated in a strike in contravention of the cited protected interests (Art. 16(1)). The provisions on minimum services and on strike in other activities of public interest apply to strikes in these state authorities. The greatest discrimination of the constitutionally protected right to strike prescribed by the Law affects employees of the Montenegrin Army, police and state authorities, because the definition in Article 8a, for the protection of public interest, actually prohibits organization of a strike if it endangers the general interests of citizens, national security, security of persons and property, as well as the functioning of the Government. The legislator avoided to specify what is meant by the public interest and left the employer (the Government) to interpret it itself, thus directly preventing persons employed in the Army, police and state authorities to protect their professional and economic interests by the right to strike guaranteed by the Constitution.

With regard to this please note that Proposal of Law on Strike has been in parliamentary procedure since May 2013, and UFTUM appealed several times for its adoption.

⁴⁴ CESCR, Concluding Observations, doc. UN E/C.12/1/Add.108, of 23 June 2005.

⁴⁵ The founder i.e. employer defines the minimum services and the way in which they are ensured and is duty-bound to take into account the opinion of the competent authority of the authorized trade union or over 50% of the workers with a view to concluding an agreement (Art. 10). If they fail to reach an agreement, the minimum services are defined by the founder i.e. director of the employer (Art. 10a). This enables employers to mitigate the negative effects of a strike. As a rule, they subsume the minimum work process under the maximum amount of work that enables them to maintain continuity of normal business. In such circumstances it is impossible to organize a strike, because while strikers suffer consequences due to non-payment of wages and various sanctions, the employer maintains the continuity of work and does not suffer economic consequences.

⁴⁶ Art. 8a, Law Amending the Law on Strike ("Official Gazette", No. 49/2008).

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Recommendation: The State should amend the Law on Strike and substantially limit the list of activities of public interest, which are subject to a special strike regime and also narrow the need for achieving the minimum work process. Also, the amendments should limit arbitrariness by the employers determining the minimum work process by providing for an impartial body to decide in case of disagreement between the employer and employees. Regarding this, please note that the Proposal of a new Law on Strike has been in parliamentary procedure since May 2013, and should be adopted as soon as possible.

ARTICLE 9

RIGHT TO SOCIAL SECURITY

Please note that the following chapter has been prepared by HRA.

The same recommendation provided by the Committee to Serbia in 2014, should be provided to Montenegro as well:

The Committee calls upon the State party to:

- (a) Increase the social assistance benefits, taking into account the Committee's general comment No. 19 (2007) on the right to social security, in order to assist all concerned individuals and families throughout the State party, including persons with disabilities, older persons, children, low-income families and those in a situation of long-term unemployment, to enjoy an adequate standard of living;
- (b) Consider the introduction of a minimum-income benefit that would bring together all the existing social assistance benefits in order to ensure an adequate standard of living for all, in particular disadvantaged and marginalized individuals and families;
- (c) Prevent any unjustified interruptions in the allocation of social security benefits, such as benefits to those who are unable to work, which are recognized only for a period of up to nine months per calendar year.

Regarding the State report, paragraph 96, please note that the right to social security comprises the rights to social insurance and to social welfare⁴⁷ and not only the right to family benefits (child allowance) as stated in the state report. Social insurance involves pension, disability, health and unemployment insurance.

⁴⁷ For more detail regarding whole social security system, please see HUMAN RIGHTS IN MONTENEGRO 2010-2011, HRA, page 511, at: http://www.hraction.org/wp-content/uploads/Human_Rights_in_Montenegro_2010-2011.pdf.

Pursuant to the Pension and Disability Insurance Act of Montenegro⁴⁸, social security against old age and disability (pension and disability insurance) in Montenegro involves: mandatory pension and disability insurance funded from current revenues, mandatory pension insurance based on individual capitalised savings and voluntary pension insurance based on individual capitalised savings.⁴⁹

a) In terms of conditions for retirement, Montenegro raised the age limit and equalised conditions required from men and women

With regard to the State report, paragraph 117, please note that changes introduced in the 2010 amendments to the Pension and Disability Insurance Act, raising the age level and required years of service for retirement, represent deterioration of the level of previously attained social rights.

Recommendation: Montenegro should avoid deteriorating the level of acquired social rights.

b) Minimum pension itself cannot provide for livelihood

Regarding the State report, paragraph 112, please note:

The Pension and Disability Insurance Act includes provisions on the minimum old-age and disability pensions, which are protective in character and aim at securing minimum livelihood to those who did not accumulate many years of service and/or had low wages (Arts. 29 and 41). A minimum old-age or disability pension should not fall under 45 Euros. The minimum old-age or disability pension is further aligned in accordance with the pension alignment provisions. However, such a low amount of pension is far below actual living costs in Montenegro and certainly cannot provide an adequate standard of living (please see the table below).

c) Reduction of the right to family pension in case of death of a spouse or a parent

Regarding the State report, paragraph 96, please note:

The 2010 amendments to the Pension and Disability Insurance Act prescribed more restrictive *conditions for exercising the right to family pension in case of death of spouse or a parent*. A widow or widower is entitled to a family pension if he/she was at least 52 (originally 50) years old at the time of death of his/her spouse, while his/her children are entitled to a family pension until they turn 24 (originally 26) if they are at university studies.

⁴⁸ "Official Gazette of Montenegro No. 54/03, 39/04, 61/04, 79/04, 81/04, 14/07 and 47/07, and „Official Gazette of Montenegro “, No. 79/08, 14/10, 78/10, 34/11, 66/12.

⁴⁹ Pension and Disability insurance Act, article 1.

Recommendation: *The state should increase the amount of minimal pension and return original conditions for entitlement to family pension.*

d) Financial compensation for bodily injury as well as financial compensation in case of unemployment is far too low

Regarding the State report, paragraph 96, please note:

Financial compensation for bodily injury is financial compensation for bodily damage caused by a work-related injury or occupational disease, if it resulted in at least 50% of damage. Bodily damage entails the loss, severe injury or considerable disability of an organ or body part, rendering difficult the normal activity of the body and requiring greater efforts to fulfil living needs, regardless of any disability it caused. Since 2012, the compensation has been from 51 to 102 Euros per month.⁵⁰

Regarding the State report, paragraph 118, please note:

Financial compensation in case of unemployment is extremely limited. It can be exercised in case of termination of employment, provided that the person has been insured for at least 12 months continuously or intermittently over the past 18 months. Generally, a person is not entitled to compensation if the termination of employment occurred by employee's will or fault. Unemployed people who fall into the category called redundancy can exercise this right. The monthly compensation represents 40% of the minimum wage under the general collective agreement in the amount of. 57Euros.

The table below shows aforementioned amounts in proportion to the value of a minimal consumer basket⁵¹ as well as absolute poverty line⁵²:

⁵⁰ This sum is made on the basis of Article 56: The base for determining subsidy for physical impairment for the first six months in 2004 shall amount 114.61 Euros.

Subsidy for physical impairment shall be determined on the base under paragraph 1 of this Article, and shall amount: for 100% of physical impairment - 40% of the base; for 90% of physical impairment - 36% of the base; for 80% of physical impairment - 32% of the base; for 70% of physical impairment - 28% of the base; for 60% of physical impairment - 24% of the base; for 50% of physical impairment - 20% of the base. The base under paragraph 1 of this Article shall be indexed in the same manner as for pensions. According to the Decision on the harmonization of the basis for determining the compensation for bodily injury from January 1, 2012 ("Official Gazette of Montenegro, No. 9/2012"), this sum is 255 Euros.

⁵¹ Methodological explanation obtained from the Statistical Office in Montenegro (Monstat): „The value of minimal consumer basket is the sum of expenditures for food and other expenditures covering bought products, own production, and gifts for an average household consisting of four members, two adults and two children.“ More information available at: http://www.monstat.org/userfiles/file/min%20potrosacka/2014/1/MCB-Jan%20-2014eng_.pdf.

⁵² Methodological explanation obtained from the Statistical Office in Montenegro (Monstat): „Poverty estimations are based on national absolute poverty line which was made according to the methodology recommended by World Bank.“ More information available at: http://www.monstat.org/userfiles/file/analiza%20siromastva/ENGLESKI-%20ANALIZA%20SIROMA%C5%A0TVA%20U%20CRNOJ%20GORI%20U%202012_.pdf.

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Administering from the budget	Amount according to Law	Value regarding minimal consumer basket (<i>per four persons</i>): 790 Euros ⁵³	Absolute poverty line <i>per person</i> ⁵⁴ 182,4 Euros
Minimum pension	45 Euros	6%	24%
Financial Compensation for Bodily Injury	from 51 Euros for 50% body damage to 102 Euros for 100% body damage	7% 12,5%	30% 54%
Financial Compensation in Case of Unemployment	77 Euros	9,7%	42%

As opposed to social insurance, where workers allocate part of their incomes to ensure specific rights for themselves and their families against old age, illness, disability or death, welfare entails payment of benefits from public funds derived from state public revenues.

Regarding the State report, paragraph 97 (“Basic social welfare benefits”), please note that the Law on Social and Child Protection has been changed in 2013.⁵⁵ The new Social and Child Protection Act, currently in force, presents a step back regarding amounts of welfare benefits in relation to the former Law. We will present this argument in greater detail in the following pages. Please note that we will refer to the 2013 Social and Child Protection Act, currently in force.

According to the Act, the basic financial support and social and child protection services (Article 11) are the rights in the area of social and child protection. The basic material supports (social assistance benefits) in social protection involve: financial support; personal disability allowance; care and support allowance; health protection; funeral costs and one-off financial assistance (Article 20). Regarding the insufficient amounts of those material support, please see the table below.

⁵³ According to the last official state records: 790,8 Euros in August 2014. More details available at: http://www.monstat.org/userfiles/file/min%20potrosacka/2014/8/MPK%20Avgust%202014_.pdf.

⁵⁴ According to the last updated official records, absolute poverty line stood at 182.43 Euros per person in 2012. More information available at: <http://www.monstat.org/userfiles/file/analiza%20siromastva/ENGLESKI-%20ANALIZA%20SIROMA%C5%A0TVA%20U%20CRNOJ%20GORI%20U%202012.pdf>.

⁵⁵ “Official Gazette“, No 27/2013.

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Administering from the budget	Amounts prescribed by Law on social and child protection	Value regarding minimal consumer basket (<i>per 4 persons</i>) ⁵⁶	Absolute poverty line <i>per person</i> ⁵⁷
Financial support	from 63.5 of Euros for single-member families to 120.7 Euros for families <i>with five or more</i> members	8% to 15%	31%
Personal disability allowance ⁵⁸	108.80 Euros	13,7%	60%
Care and support allowance ⁵⁹	63 Euros	8%	35%

Please note, that the right to financial support may be exercised only by an individual or family with no income or valuable property.⁶⁰ Additionally, parents with children who are capable of working can receive financial support only for 9 months per year⁶¹. This provision will make proper child care impossible and will affect the functionality of the family. It will force parents, who are unable to obtain formal employment, to struggle to earn money for the family without losing the right to scarce material benefits, which will encourage the growth of grey economy and other illegalities. However, this provision has not yet been implemented, since the Ministry of Labour and Social Welfare is still preparing for its implementation.

⁵⁶ According to the last updated official records: 790,8 Euros in August 2014. More details available at: http://www.monstat.org/userfiles/file/min%20potrosacka/2014/8/MPK%20Avgust%202014_.pdf.

⁵⁷ According to the last updated official records, absolute poverty line stood at 182.43 Euros per person in 2012. More information available at: <http://www.monstat.org/userfiles/file/analiza%20siromastva/ENGLISKI-%20ANALIZA%20SIROMA%C5%A0TVA%20U%20CRNOJ%20GORI%20U%202012.pdf>.

⁵⁸ Article 32: „A person with severe disability shall have the right to personal disability allowance.“

⁵⁹ Article 33: „The following persons shall have the right to care and support allowance:

- 1) A person who needs care and support due to bodily, mental, intellectual or sensory disorders or changes in health condition, in order to have access to fulfilment of its needs;
- 2) Beneficiary of personal disability allowance.“

⁶⁰ Article 22: The right to financial support can be exercised by an individual, or a family referred to in on the condition that he or it does not possess or does not use: business premises, a flat or a residential building bigger than: one bedroom flat for an individual; two bedroom flat for a family with two or three members; three bedroom flat for a family with four or more members, land in town or suburban region, agricultural land, or commercial forests of surface larger than 20 ares for an individual to 60 ares for a family of five and more members as well as land of surface larger than 2 ha, cattle stock, agricultural and construction mechanisation and other means for work and doing business, a motor vehicle, except the motor vehicle which serves for transport of an individual or a family member.

⁶¹ Article 29: „Parents capable of work, who maintain a child, shall be entitled to financial support for the period of nine months during one year, unless the child is a beneficiary of the care and support allowance, if it meets the conditions prescribed by this Law. Notwithstanding paragraph 1 of this Article, if one of the parents is involved in education, training or some other form of social engagement in accordance with the individual plan of activation, he shall be considered a person incapable of work with regard to the duration of the right to financial support.

Parents referred to in paragraph 1 of this Article can exercise the right to financial support after expiry of the three month period from the day of termination of the right to financial support, if they meet the conditions prescribed by this Law“.

Also, our experience shows that the State does not implement the necessary control in order to establish the exact number of people who have a real need for financial support, so a number of users who work illegally and whose income exceeds the actual amount of the statutory requirements for the use of family allowance go unnoticed. This situation contributes to improper spending of the social welfare funds, which significantly reduces the amount received by persons who are in real need of social assistance and live exclusively on those funds.

Regarding persons with disabilities, please see page 51.

Recommendation: The state should increase the aforementioned amounts of social assistance benefits, implement necessary control in order to determine those who genuinely are in need of social welfare, as well as delete provision prescribing that parents with children who are capable of working may receive financial support for only 9 months per year.

e) Non-final judgement regarding violation of the right to one-off financial assistance

As above mentioned, the one-off financial assistance is one of the basic material supports prescribed by the Act (Article 37):

“An individual or a family who, due to special circumstances that affect their residential, material and health condition, find themselves in the state of social need can exercise the right to one-off financial assistance.

The person referred to in paragraph 1 of this Article shall exercise this right in accordance with the criteria and according to the procedure prescribed by the competent state administration body.

The amount of assistance referred to in paragraph 1 of this Article shall be established by the Social Welfare Centre, depending on the need of an individual or a family and the financial capacity of the state.”

According to the information obtained from the persons who addressed us seeking legal, the amount of the one-off financial assistance varies from 20 Euros to several hundred Euros. The Social Welfare Centre is free to determine the amount of assistance, in accordance with the above cited Article paragraph 3. The Rulebook on conditions for exercising the right to social protection⁶² prescribed who may claim the right to one-off assistance,⁶³ the requirement of the applicant to state reasons for requiring the assistance⁶⁴, the fact that the assistance may be provided in terms of money and goods⁶⁵, but the Rulebook does not prescribe the amount.

⁶² Rulebook on conditions for exercising the right to social protection (Office Gazette CG“; No 27/13).

⁶³ Rulebook, Art. 23.

⁶⁴ Rulebook, Art. 24.

⁶⁵ Rulebook, Art 25.

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After the parliamentary elections in October 2012, daily *Dan* published in March 2013 a list of names of 362 persons who were allegedly expected to vote for the ruling political party (Democratic Party of Socialists - DPS) and receive money in return - the one-off financial assistance via the Centre for Social Care in Pljevlja. The daily published that the one-off social assistance has actually been paid to 103 persons in the city.⁶⁶

MANS and the election headquarters of the opposition political party Democratic Front filed criminal charges against the director of the Centre Jusa Ajanović, officers of the Center Ermin Nuhanovic, and another 10 persons (DPS activists), for crimes of Abuse of official status and Violation of exercising free will at voting.

After being accused of abuse of the official status during awarding the one-off financial assistance, in the manner of making a list of the citizens of Pljevlja who were allegedly supposed to receive one-off assistance, prior to receiving request from the citizens (which is, according to Rulebook, a required condition for exercising this right),⁶⁷ the Director of the Centre, Juso Ajanović and official Ermin Nuhanović, have been sentenced on 17 September 2014 in the first instance with suspended sentences of 6 months (which shall be executed if they do not again commit the same offence). Ajanović and Nuhanović have been obliged to pay jointly 4.250 EUR to the public budget. The judge emphasized that she handed down the minimum sentence as the accused were “decent and honourable persons”⁶⁸.

Minister Predrag Bošković, being the head of the state body, had the duty to initiate proceedings of determining the disciplinary liability of the employee of the Centre, but failed to do so⁶⁹. The Minister and officials who have been convicted with the first instance verdict belong to the same political party, the ruling DPS.⁷⁰

Recommendations: The state should prevent abuse of social welfare for political purposes as well as misuse of rights arising from Law on Social and Child Protection. The State should prescribe precise criteria as well as the amount of the one-off social assistance – or method for

⁶⁶ „Voters received up to 50 EUR“, *Dan*, 3 April 2013.

⁶⁷ By doing so, they have violated the provisions of the Law on Child and Social Protection and the Rulebook on conditions for exercising the right to social protection, as well as the Law on General Administrative Procedure, because all these decisions have been adopted on the same day when the requests were allegedly filed to the Centre for Social Care, after 15 October 2012. This has been done without any administrative proceedings, and the one-off financial assistance has been awarded before the request was even registered in the Register book and before the Decision has been adopted. The budget of Montenegro suffered a damage amounting 4.000 EUR. „Verdict for votes purchase to be reached on 17. September“, *Dan*, 5. September 2014.

⁶⁸ “Judge Ljiljana Popović finds the actors of the „Recording“ honourable”, *Dan*, 18.9.2014.

⁶⁹ According to the Law on Civil Servants and State Employees (Official Gazette No 39/2011), Articles 3,4, 81 and 83, the liability for criminal offence or misdemeanour offence shall not exclude disciplinary liability, whereas the abuse of office or overstepping authorities in service as well as improper use and handling of entrusted assets represent severe violations of official duty.

⁷⁰ As the director of the Centre Juso Ajanović is a member of the Municipal board of DPS in Pljevlja, and Minister Bošković is a member of the Central Board of the party, MANS states that it is easy to conclude why the minister decided to protect the party's interests, instead of the full application of the Law on Civil Servants and State Employees.. For more details please visit: <http://www.mans.co.me/arhiva/2014/09/zloupotreba-sluzbenog-polozaja#sthash.ZyXiS3IY.dpuf>.

its calculation (as with the right to financial support), in order to provide for uniform practice of the social work centres in implementation of the right and prevent its abuse.

ARTICLE 10
PROTECTION OF FAMILY, MOTHERS AND CHILDREN

a) *Discriminatory treatment of employed women whose salary is higher than two average salaries during maternity leave*

Regarding the State report, paragraph 142, please note:

HRA: Former Social and Child Protection Act prescribed that the employee during the absence of the maternity leave is entitled to the full amount of salary (before exercising this right employee has to work for six months uninterrupted). Employee, who was employed continuously for less than 6 months, was entitled to 70% amount of salary. *The Act prescribed that the employer should be reimbursed the full amount of paid salaries, i.e. the amount paid to the employee on maternity leave* (articles 52, 53, 60).

However, the new 2013 Social and Child Protection Act *reduced the amount to be reimbursed to the employer* in the following manner: the maximum amount of funds can be established *as the amount of two average salaries of the state employee in the previous year*, according to the data of the body competent for the affairs of statistics (article 51). Cited provision applies to an employee who was in employment relationship before exercising this right as a minimum 12 months without interruption.

Otherwise the Law prescribes that an employee is entitled to:

- a) 70% of the average income of the employee (from 6 to 12 months without interruption);
- b) 50% of the average income (from 3 to 6 months without interruption);
- c) 30% of the average income of the employee during work which preceded the acquiring of the right to maternal or parental leave (up to three months).

In those cases *maximum amount to be reimbursed to the employer is one average income of a state employee in the previous year*, according to the data of the state body competent for the affairs of statistics.

The employers who hire women with a salary greater than the average salary in the state (470 Euros in July 2014)⁷¹, will only be entitled to receive reimbursement up to the amount of the two average salaries during the maternity-parental leave encourage discrimination against women at work, especially educated women whose salaries exceed the average. The employer who hires a pregnant woman 12 months prior to the commencement of maternity leave (i.e. if the employer hires her two months before she became pregnant), will receive reimbursement of 70% of her salary during maternity leave. Also,

⁷¹The information has been obtained from Statistical Office of Montenegro: <http://monstat.org/eng/novosti.php?id=1432>

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the employer, who hires a pregnant woman three months prior to the commencement of maternity leave, will not receive reimbursement of her salary during her leave, and the employer, who hires a pregnant woman six months prior to the commencement of maternity leave, will receive reimbursement of only 50% of her salary (see above). Such measures particularly encourage “looking at the stomach” and advise against employment of young women – women in fertile age. Such legal provisions are opposing the obligation of Montenegro to ensure gender equality.

The same rules apply also to non-for-profit employers, including the NGO sector. The new law provided for direct losses for our organizations hiring young and well educated women whose net salaries exceed 940 Euros per month).

Recommendation: State should reconsider this discriminatory provision, which lowers previously attained level of social rights and is detrimental to gender equality.

b) *Child labour has been observed*

We believe that the same recommendation provided by the Committee to Serbia in 2014, should be provided to Montenegro as well:

The Committee urges the State party to strengthen the monitoring of child labour, in particular by enhancing the Labour Inspectorate, in order to detect and prevent the worst forms of child labour, in particular by street children. The State party should also improve protection and reintegration programs that focus on family empowerment and elimination of various forms of abuse and economic exploitation of children, including positive parenting programs for marginalized communities, and compile information thereon, including statistics.

HRA: Regarding the List of issues, paragraph 15, please note:

- The Ministry of Labour and Social Welfare issued a press release on 12 June 2014, on the occasion of the World Day Against Child Labour, which announced that, according to the Administration for Inspection Affairs, no cases of child labour have been reported in Montenegro.⁷²
- HRA reacted to this press release with a letter advancing reasons why this statement was not true, including a statement that we can see children of the youngest age begging barefoot and dressed in rags every day on the streets of Montenegrin cities in the rain and extreme temperatures, while they have to hand over the collected money to ones who sent them to do it.⁷³ Also please see below f) paragraph (observation by NGO Montenegrin Women’s Lobby). In addition to begging, one of the reasons for

⁷² „In Montenegro has not recorded a case of child labour“, portal Vijesti, 12 June 2014. Available at: <http://www.vijesti.me/vijesti/u-crnoj-gori-nije-zabiljezen-slucaj-djecijeg-rada-217623>.

⁷³ For more detail please see: http://www.hracion.org/wp-content/uploads/Letter_to_Minister_of_Labour_and_social_welfare_23062014.pdf.

school drop-out of particularly the Roma children is the fact that they are being engaged by their parents to work in the field (agriculture).⁷⁴

Recommendation: The state should obtain exact data relating to child labour as well as take all measures to prevent it.

Regard to Reply to List of issues, paragraphs 13-18, please note:

The European Commission's Montenegro 2014 Progress report, page 45: "In November, the Gender Equality Committee questioned the Minister of Labour and Social Welfare and the Chief of Police about the implementation of the 2011-2015 Strategy for protection against domestic violence. The hearing revealed that the statistics on domestic violence are unreliable and that inter institutional cooperation, especially between social services and the law enforcement authorities, needs to be significantly improved. Further efforts are needed to strengthen the capacity of the police and social services dealing with individual cases of violence against women, and to consistently implement the relevant protocol of procedures.

c) *Insufficient promotion of new measures from 2013 prescribed by the Criminal Code in order to improve protection of victims of domestic violence*

WSH, WRC: The Criminal Code of Montenegro has been amended in July 2013 (related to title IXX: criminal acts against marriage and family) and the provisions relating to protective measures have been improved by introduction of two new measures: restraint and removal of the perpetrator of domestic violence from the home or other place of residence.⁷⁵ According to WSH, there have been no activities aimed at promoting these new measures in the general and professional public.

Recommendation: The state should provide promotion of new protective measures in order to improve protection of victims of domestic violence.

d) *Lack of implementation of legal framework relating to domestic violence*

WSH, WRC: Legal framework is much improved, but lack of implementation still remains concerning. For example, although the Protocol on the treatment, prevention and protection from domestic violence⁷⁶ (prescribing responsibility of centres for social work to inform victims about their rights), has been adopted, experience in its implementation shows that victims were deprived of basic information about their rights and ways of how to exercise them. Also, despite the fact that by-laws regarding the Law on

⁷⁴ HRA learned about this from the director of the elementary school in the suburb of Podgorica in 2011.

⁷⁵ Restraint order, Criminal Code of Montenegro, Article 77a, paragraph 1, and Article 77b, paragraph 1 (Official Gazette of Montenegro no. 70/2003, 13/2004, 47/2006, 40/2008, 25/2010, 32/2011, 40/2013 and 56/2013.

⁷⁶ The Protocol on treatment of institutions domestic violence, available at <http://sudovi.me/podaci/vrhs/dokumenta/641.pdf>

Protection from Domestic Violence have been adopted in 2013, its implementation is still pending (for example, *protective measure of mandatory psychosocial treatments prescribed by the Regulation*⁷⁷ *still has not been imposed to perpetrator of domestic violence by the competent institutions*).

Recommendation: The state should provide full implementation of legislation related to domestic violence and instruct the victims on their rights

e) Observed violations of Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence

WSH, WRC: In accordance with the Convention on preventing and combating violence against women and domestic violence⁷⁸ it is forbidden to send victims of domestic violence to alternative dispute resolution, including mediation and reconciliation, in the case of any form of violence. In practice it often happens that a victim of domestic violence is referred to mediation at the WSH for mediation after her claim for divorce, with an explanation by the judge that "procedures must be complied," despite the fact that the victim refuses mediation. Also, the experience NGOs whose representatives attended trials as confidential persons⁷⁹ shows that during misdemeanour proceedings for offenses a judge tries to reconcile the victim with the perpetrator of violence, saying that together they should take care of the children and that future conflicts shouldn't be resolved in this way, not allowing the victim to tell the facts related to the family situation and violence. The judge in this case does not act within his/her jurisdiction, but plays the role of the professional staff of the Centre for Social Care or a mediator. Such actions discourage the victim to continue initiating and conducting judicial proceedings.

Recommendation: The state should intensify work on the harmonization of Council of Europe Convention on preventing and combating violence against women and domestic violence with positive domestic law as well as inform all stakeholders in order to combat violence against women, in order to implement the Convention in practice, and to overcome and seek out the most effective solutions.

f) A database with comprehensive statistics on violence against women, classified by gender, age, relationship between victim and perpetrator has not been established yet.

WSH, WRC: In addition to the statistics on domestic violence (paragraph 109, Reply to List of issues), please note that data base containing comprehensive statistics on violence against women, classified by

⁷⁷ Regulation on detailed procedure for determining and implementing protective measures of mandatory psychosocial treatment on the basis of Article 25 paragraph 3 of the Law on Protection from Domestic Violence ("Official Gazette", No. 46/10)

⁷⁸ The Law Confirming the CoE Convention on Prevention and Combating Violence against Women and Domestic Violence („Official Gazette of Montenegro“, international treaties No. 4/2013).

⁷⁹ Law on Protection against Domestic Violence, Article No. 16.

gender, age, relationship between victim and perpetrator (also recommended by UN CEDAW Committee)⁸⁰ has not been established yet. Statistics are being monitored instead, by means making all relevant institutions submit their data to the Ministry for Human and Minority Rights.

Recommendation: The state should obtain adequate records, prepare detailed analysis of the collected statistical data and use those results in order to establish a single database on gender-based violence in purpose of defining the policies and measures to combat violence against women.

g) Inappropriate implementation of positive legislation, as well as inadequate adopting of international instruments regarding protection of victims of trafficking in terms of their identification

MWL: The main problem is the inadequate identification of the victims, as it is done only by the police. With this regard, please note that victims' number has had officially a decreasing trend in recent years, although their *real* number, in fact, seems to be unchanged. In the most countries in the region, representatives of the Centre for Social Care, Emergency Service, and NGOs are dealing with this issue (besides the police).

Although the Criminal Code has been amended⁸¹ in a manner to prohibit "unlawful marriage with an underage person", the number of so-called "arranged marriages" (*traditional community law*) with girls of Roma origin is still increasing. Namely, underage Roma girls from Montenegro become victims of "early marriages" in Roma communities in Kosovo and countries of Western Europe.

Recommendations:

- **The state should develop a multi-disciplinary approach to proactive victim identification and involve civil society groups and NGOs in the national referral mechanism;**
- **The state should take proactive screening of potential victims, especially in vulnerable population and potential victims of forced work;**
- **The state should conduct continuous training for police, social workers and other officers dealing with high risk populations in order to train them to proactively identify and refer trafficking victims.**

⁸⁰ Concluding observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/MNE/CO/1, 2011.

⁸¹ Trafficking in human beings – Article 444 of the Criminal Code of MNE (Amendments adopted in 2014).

ARTICLE 11

RIGHT TO AN ADEQUATE STANDARD OF LIVING

Please note that following chapter has been prepared by HRA.

Regarding the List of issues, paragraph 19, please note:

a) *The state has no information on the number of persons who are homeless or inadequately housed and without access to basic infrastructures and services such as water, heating, waste disposal, sanitation, and electricity, as well as the number of persons living in over-crowded or structurally unsafe housing*

There are no official data about homeless or inadequately housed people.

Recommendation: The state should obtain information on the number of persons who are homeless or inadequately housed.

b) *Capital city (Podgorica) has no shelter for homeless people*

Homeless people in Podgorica (as well as in the other cities in Montenegro, with exception of municipality Pljevlja) are living in train cars, bus stops, caves, tents, and other similar places. According to our recent research (middle of September 2014) only at the train station in Podgorica currently live eight persons. Experience of HRA in managing the shelter for homeless (please see the State Reply to the List of Issues, paragraph 19) shows that providing shelter for 10 persons costs no more than 1000 Euros per month in circumstances providing one (of three) meal in the public kitchen. Also, please note that the legal provisions relating to the financing of shelters are unclear, so, their interpretation infers that the state will fund only shelters that are needed.⁸²

The current situation shows that it would be necessary to urgently establish shelter in the capital Podgorica particularly in view of the coming winter. Unfortunately, our previous appeals on this occasion had no results.⁸³

Recommendation: The state should provide shelter for homeless people (at least in Podgorica) immediately.

⁸² Article 154: *Funds for financial support in the social and child protection stipulated in this Law can be provided from the municipal budget*, as well as for social and child protection services such as: help at home, day care, the people's kitchen, relaxation and recreation of children, housing with support, *accommodation in a shelter*, housing for socially vulnerable persons, in accordance with the law, and other services in accordance with its financial capacity. *If municipalities are not able to provide funds for services referred to in paragraph 4 this Article, the state shall take part in their funding* in accordance with Article 156 of this Law.

Article 156: *For the purpose of developing and financing the social and child protection services, funds shall be provided from the state budget*, municipal budgets, donations, games of chance and other sources in accordance with the law.

Funds referred to in paragraph 1 of this Article shall be used to finance:

1) social and child protection services for which there is need in municipality.

⁸³ More details available at: <http://www.hraction.org/?p=6476>, as well as at: <http://www.hraction.org/?p=2822>.

Right to adequate nutrition

a) Persons without Montenegrin citizenship have no right to free meal in the public kitchen in Podgorica

Although State in its Reply to the List of Issues cited that “the capital Podgorica provides a public kitchen with a capacity of 500 meals a day for indigent persons, which is also used by homeless persons”, please note that Podgorica municipality denies access to the public kitchen to persons without Montenegrin citizenship. Regarding that, HRA submitted the initiative for the review of the constitutionality and legality of the said Decision of Podgorica municipality to the Constitutional Court in August 2011.⁸⁴ The Protector of Human Rights and Freedoms then filed an obligatory proposal for constitutional review of this Decision at HRA initiative. However, the Constitutional Court has not yet ruled on that proposal.

Please note that according to the latest available data (previously mentioned), the absolute poverty line in Montenegro stood at around 182,43 Euros per capita in 2012 and 11,3% of the population was beneath that line.

Also, please note that this percentage has been increasing since 2010⁸⁵:

	2010	2011	2012
National absolute poverty line (Euros)	169,98	175,25	182,43
Poverty rate (%)	6,6	9,3	11,3

Recommendation: State should provide access to public kitchen regardless of Montenegrin citizenship as well as increase the capacity of the public kitchen.

ARTICLE 12

THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH

a) Payment for medical procedures and medicaments although they are covered by mandatory health insurance

Regarding the State report, paragraph 250, please note:

⁸⁴ The proposal is available at: http://www.hracion.org/wp-content/uploads/Inicijativa-01_08_2011.pdf.

⁸⁵ Information obtained from Statistical office of Montenegro:

http://www.monstat.org/userfiles/file/analiza%20siromastva/ENGLESKI-%20ANALIZA%20SIROMA%C5%A0TVA%20U%20CRNOJ%20GORI%20U%202012_.pdf.

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WSH, HRA, WRC: Based on the Law on Medical Insurance⁸⁶ entire population has mandatory health insurance (Art. 3). The right to compulsory health insurance is a right to health care (Art.15), which, among other things, includes medical examinations and medicaments (Art.16). Thus, in practice, health insurers should exercise aforementioned rights free in public health facilities and pharmacies.

However, problems occur when a patient who was prescribed medical examinations or medicaments cannot obtain them in public health institutions (including public pharmacies), so a patient has to pay for those procedures or medicament in private health institutions. In such a case, the state Fund for Health Insurance accepts to reimburse expenses up to the bare cost of medical procedure (or medicament) at which it is supplied to healthcare institutions,⁸⁷ but not the actual cost the person has to pay, the profit of the private health institution. In other words, the difference of the price reimbursed by the Fund and the full price actually paid by the patient falls on the patient.

So, if the patient does not have the money to pay this difference (which in some cases exceeds three times the amount reimbursed by the Fund), the patient will not be able to undergo the necessary medical procedures, or get the necessary medication.

Recommendation: The state should provide exercising rights arising from mandatory health insurance in full and without additional payments.

b) Law on the restriction of the use of tobacco products is still not fully implemented

Regarding the State report, paragraphs 290-296, please note:

HRA: Although it came into force in August 2004, the Law on the Restriction of the Use of Tobacco Products has still not been fully implemented in 2014. Please note that the Law is not being implemented in some state institutions (for example: basic courts in Podgorica and Nikšić, Tax administration headquarters, prison etc.) as well as in most restaurants. The inspection is generally turning a blind eye regarding implementation of this Law.

Recommendation: The state should insure strict implementation of the Law on the Restriction of the Use of Tobacco Products.

c) Almost half of patients in Dobrota Special Psychiatric Hospital in Kotor are persons whose mental state does not require hospitalization, but in the absence of any other way to be placed, remain in the hospital

HRA: According to data from 2011 about 120 patients in Dobrota Special Psychiatric Hospital in Kotor have been hospitalized for many years. Out of these, mental condition in cases of about eighty patients

⁸⁶"Official Gazette of the Republic of Montenegro", No 39/04, 23/05, 29/05, and "Official Gazette of Montenegro", No. 12/07, 13/07, 73/10, 40/11,14/12.

⁸⁷ According to Ordinance on the conditions and the manner of exercising certain rights under the compulsory health insurance, "Official Gazette of Montenegro", No. 69/06.

allows them to be placed in any type of social institutions or under family care, which means that one third of the Hospital capacities is occupied by patients whose mental state does not require hospitalization⁸⁸. In 2013 the Hospital, to the same extent, has been providing care in terms of food and housing to persons whose inpatient treatment is no longer needed.⁸⁹ According to the latest information this number remains approximately the same.⁹⁰

Recommendation: The state should provide social care for persons placed in Dobrota Hospital, whose further treatment at this facility is not necessary.

d) No organized education about sexual and reproductive health exists in Montenegrin schools.

Regarding the List of Issues, paragraph 22: "Please clarify whether education on sexual and reproductive health at the secondary level remains optional", please note:

PRIMA: Unfortunately, no organized education about sexual and reproductive health exists in Montenegrin schools. Some of the terms are explained in subject of Biology and Healthy Life Styles, but it's basically about reproduction process. There are no texts about sexual health, sexual and reproductive rights, sexual orientation and sexual/gender identity, sexual/gender based discrimination or contraception as such (Prima was dealing with this topic with high school and University students, and in camps for refugees and internally displaced people, as well).

Recommendation: The state should establish organized system of sexual and reproductive education.

⁸⁸ For more details please see: Respect for human rights of patients placed in psychiatric institutions, available at: http://www.hraction.org/wp-content/uploads/Psychiatric_institutions_0113.pdf.

⁸⁹ For more information please see recommendation No 37, from: Final assessment on the fulfilment of recommendations presented in the report: Respect for human rights of patients placed in psychiatric institutions, available at: http://www.hraction.org/wp-content/uploads/psychiatric-institutions-final-report-2_.pdf.

⁹⁰ Information obtained from our colleague from NGO Civic Alliance who had the meeting with the Hospital Director on 15 September 2014.

ARTICLE 13
THE RIGHT TO EDUCATION

a) There is no systematic education for teachers neither in the pre service nor in service regarding the subject Civic Education

With regard to the State report, paragraph 305, please note:

CCE: Although Civic Education is obligatory subject in primary schools in VI and VII grade and elective subject in Gymnasiums and Vocational schools in Montenegro, please note that there is no systematic education for teachers of this subject neither in the pre service nor in service. The fact is that Civic Education is taught by teachers of biology, mathematics, history, geography, visual arts, music, etc., who do not have a full number of classes in their basic subjects. A certain number of teachers have passed the basic trainings on teaching techniques, topics and the methods of pupils' achievement assessment within Civic Education during the initial phase of the subject introduction in the time frame from 2005 to 2007, but still there is a huge number of teachers that were not encompassed by those trainings, especially those working in Gymnasiums and Vocational schools. Process of education during the trainings is not systematized and there is a lack of certification process. Although it was envisaged by the Strategy for Civic Education in Montenegro 2007-2010 to establish at least a postgraduate course on Civic Education at the Faculty of philosophy in Nikšić⁹¹, this was not implemented.

Recommendation: State must provide systematized and certified education for Civic Education teachers and reconsider the possibility of introduction of the master studies for Civic Education at the Faculty of Philosophy.

b) Ignorance of the topics related to the rights of sexual minorities.

With regard to the same paragraph (305), please note:

CCE: Although it is stated that: "Our aim is to develop with young people sensitivity for problems of minority groups and we insist on equality and equal rights for all social groups (children, women, persons with disability, etc.)", please note that analysis of the teaching programs and textbooks for Civic Education for VI and VII grade show that there is no mention of the LGBT topics at all⁹². The authors of those programs and the textbooks stated that it is always possible to debate on these topics in classes bearing on mind that the 15% of Civic Education curricula is open and available for the LGBT topics. However, CCE is of the opinion that it would be necessary to include those topics into the program and textbooks in order to prevent arbitrariness in this regard. Otherwise, absence of this important issue will

⁹¹ For more information, please see:

http://planipolis.iiep.unesco.org/upload/Montenegro/Montenegro_strategy_civic_education_2007_2010.pdf.

⁹² For more information, please see: <http://media.cgo-cce.org/2013/10/LGBTanalizaMNE.pdf>.

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negatively affect the process of sensitization of pupils as well as development of the culture of human rights and tolerance within the school and beyond.

Recommendation: State should intensify the process of adjusting the programs and contents of the Civic education textbooks in order to include this important human rights issues. This should be followed by the capacity building of Civic education teachers to understand this issues properly in order to be able to educate pupils.

c) The elementary education is not free of charge.

With regard to State report, paragraph 307, please note:

CCE: Elementary education is not free of charge, as stated in the State report, in practice since the pupils and their parents have to pay the costs of the textbooks and school supplies. Also, pupils often have to pay the transportation to the school.⁹³

Recommendation: State should ensure implementation of Constitutional provision and provide free of charge elementary education as prescribed.

d) Schools are not truly democratic and depoliticized institutions

Regarding the State report, paragraph 304, please note:

CCE, HRA: The 2010 amendments to the General Education Act⁹⁴ fully centralised the procedure for the appointment of school principals. Principals are now appointed exclusively by the Minister, and the school board is now entitled only to advertising the vacancy and forwarding the documentation to the Minister (Art. 80). The principal was originally appointed by the school board and his/ her appointment was confirmed by the Minister. This solution allowed for political appointments regardless of the needs and wishes of the school staff and students to happen. The structure of the school board has changed as well. The board now comprises: three representatives of the Ministry, three representatives of the

⁹³ During 2011 and 2012 Centre for civic education addressed the Government, Ministry of Education and Sports, Committee for Education, Science, Culture and Sports and the Committee for Economy, Finance and Budget of the Parliament of Montenegro, parliamentary council for education and MP to reconsider the possibilities to bring to life the Constitutional provision on free elementary education by introducing the provision on free textbooks for elementary school (more information available at: <http://media.cgo-cce.org/2013/06/CCE-Free-education-25082011.pdf>; <http://media.cgo-cce.org/2013/06/CCE-Free-textbooks-28082012.pdf>), and laws to amend the set of educational laws during 2013 (more information available at: http://cgo-cce.org/en/2013/07/19/obracanje-sefovima-poslanickih-klubova-povodom-seta-zakona-obrazovanju-koji-su-u-skupstinskoj-proceduri/#.VDOnB_mSxC0). Unfortunately, up to-date, bodies has not been replied on the initiative (excluding response obtained from former Prime Minister Igor Lukšić in 2012 stating that were not enough financial capacities).

⁹⁴ „Official Gazette of Montenegro No. 45/2010“.

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municipality if the school was established by a municipality, one representative of staff and one representative of the parents (Art. 73); before this, the school board used to be made up of two Ministry representatives, two representatives of the Bureau for Educational Services, two representatives of the staff and one representative of the parents. The issue of who will the school principal be has always concerned the school staff the most. This is why the appointment of principals should have been fully or at least predominantly vested with the teachers' councils and the parents. This would have helped the schools truly become democratic, depoliticized institutions, which is still not the case in Montenegro.

Recommendation: The state needs to amend the General Education Act in order to achieve that schools truly become democratic and depoliticized institutions.

e) Salaries of teaching staff have consistently been lower than the state average since 2008.

HRA: Please see the table which shows the proportion between average national net and average teachers' net wage:

Year	The average national net wage ⁹⁵	The average teachers' net wage
2008	425 Euros	395 Euros (more than 7 % lower)
2009	476 Euros	427 Euros (more than 10 % lower)
2010	479 Euros	432 Euros (more than 9 % lower)
2011	475 Euros	440 Euros (more than 7 % lower)
2012	480 Euros	453 Euros (more than 5 % lower)
2013	481 Euros	452 Euros (more than 6 % lower)
2014 ⁹⁶	478 Euros	451 Euros (more than 5 % lower)

Recommendation: The state should increase salaries of teaching staff.

⁹⁵ Information obtained from Statistical office of Montenegro: <http://www.monstat.org/cg/page.php?id=24&pageid=24>.

⁹⁶ For July 2014.

ARTICLE 15

THE RIGHT TO EVERYONE TO TAKE PART IN CULTURAL LIFE, TO ENJOY THE BENEFITS OF SCIENTIFIC PROGRESS, TO BENEFIT FROM THE PROTECTION OF THE MORAL AND MATERIAL INTERESTS RESULTING FROM ANY SCIENTIFIC, LITERARY OR ARTISTIC PRODUCTION OF WHICH IS THE AUTHOR

Regard to State report, paragraph 340, please note:

a) The Culture Act permits space for political influence regarding appointing members to The National Council for Culture, and for appointing and selecting the management bodies of public cultural institutions

HRA: The Culture Act from 2008⁹⁷ has been amended in 2012, but still can be criticized for its centralist provisions charging the ministry with appointing members to the National Council for Culture⁹⁸, and for appointing and selecting the management bodies of public cultural institutions.⁹⁹

Recommendation: The state needs to prevent any political influence regarding appointing of the members to the National Council for Culture as well as appointing and selecting the management bodies of public cultural institutions.

b) Montenegro does not invest sufficiently in scientific development and culture.

HRA: Although the Culture Act prescribes that the state is obliged to set aside annually for culture at least 2.5 per cent of the budget, or at least 3 percent if the GDP is greater than 8 percent¹⁰⁰, even in 2009, the first year following the adoption of the Act, the allocation for culture stood at 14 million Euros, or just under 1% of the state budget.¹⁰¹ In 2010 it was 11 million, or 1.7% of the budget for 2010, and in 2011 7.5 million Euros, or 1.2%.¹⁰²

⁹⁷ "Official Gazette No 49/08 and 38/2012".

⁹⁸ Article 9: „The Government, upon the proposal of the Ministry, establishes the National Council for Culture (hereinafter referred to as the National Council) for the monitoring of condition in certain areas and activities of culture and for proposing the measures for the improvement and development of culture.

The composition, the mandate, the competence and the manner of work of the National Council are established by the act on the establishment of the Council.

A member of the National Council is appointed from among artists and experts in the field of culture, of high reputation from the country and the international ones.

The Ministry secures the administrative-technical conditions and the funds for the work of the National Council“

⁹⁹ Article 44: „The Chair and the members of the Council of a public institution, the founder of which is the state, are appointed and dismissed by the Government, at the proposal of the Ministry.“.

¹⁰⁰ The Budget of Montenegro provides the funds for the culture in line with the National program. The funds for the work of the Ministry in the current budget are allocated at least at the level of 2.5% of the national budget, reduced for the expenditures of the state funds and capital budget, in case the planned real growth of the gross national product (GNP) is up to 8%, or at least at the level of 3%, in case the planned real GNP growth is greater than 8%.

¹⁰¹ "Fatal for Culture – statement by the Liberal Party“, Vijesti, 6 February 2009.

¹⁰² 2011 Budget Act (Official Gazette 78/2010).

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In 2012, 2013 and 2014 the amounts were even more below the percentage required by law:

Year	Amount (allocated for Ministry of Culture from total budget)
2012 ¹⁰³	5 471 881 Euros (from 1 210 074 101 Euros) or 0,45%
2013 ¹⁰⁴	5 500 493 Euros (from 1 161 800 821 Euros) or 0,47%
2014 ¹⁰⁵	5 860 333 Euros (from 1 268 056 399 Euros) or 0,46%

Also, Montenegro does not invest sufficiently in scientific development, and the sums that are invested are far below both the average European percentage and the target to be achieved by all EU members within the next ten to fifteen years.

Year	Amount (allocated for University of Montenegro-high education and scientific development from total budget)
2012	13 290 001 Euros (from 1 210 074 101 Euros) or 1.09%
2013	12 260 001 Euros (from 1 161 800 821 Euros) or 1.05%
2014	13 309 236 Euros (from 1 268 056 399 Euros) or 1.04%

Recommendation: The state should invest more in scientific development and culture.

¹⁰³ 2012 Budget Act (Official Gazette 66/2011).

¹⁰⁴ 2013 Budget Act (Official Gazette 66/2012).

¹⁰⁵ 2014 Budget Act (Official Gazette 61/2013).

ARTICLE 15 CULTURAL RIGHTS

a) Work of the Fund for Minorities is not in accordance with the law

CA: Regarding the List of issues, paragraph 24: „Please clarify how the Fund for Minorities operates (E/C.12/MNE/1, para. 357), including how the funds are allocated and whether there is an independent oversight mechanism to ensure the effective implementation of projects“, please note:

The most important problems in the work of the Fund are the following:

- **Conflict of interest** – the members of the Board of Directors¹⁰⁶ allocate funds to the organizations in which governing bodies they themselves work, to the organizations of their family members, and to partner organizations¹⁰⁷;
- **Secrecy of work** – the work of the Board of Directors was continuously not transparent, although the Rules of Procedure on the work of the Board specify that its work should be public¹⁰⁸. CA has been continuously requiring from the Board to open their sessions to the public and allow their members to monitor the work of the Board. However, the Board denied presence on the sessions every single time. There was a case when the Board forbid a journalist to follow the session;
- **Illegal selection** – during the allocation (2012) of the funds, the Board has carried out the selection illegally, in order to disqualify all organizations¹⁰⁹ that are not closely related to members of the Board, before deciding on the projects. The Board declared that CEDEM, Libertask, Civic Alliance and many other organizations are not dealing with minority rights, despite the fact that all these organizations have been dealing with minority rights years before the establishment of the Fund¹¹⁰. The fund did not

¹⁰⁶ Statute of the Fund for Minorities: Bodies of the Fund are Managing Board and Director (Art. 3).

Mandate of members of Managing Board and Director lasts four years and may be elected again. Managing Board has a President and 14 members (composed of: one representative from each of the constituted councils of minorities defined by minority councils; representative of the Board for human rights and freedoms of the Parliament of Montenegro; secretary of Ministry for Protection of Human and Minority rights; other members elected by the Parliament of Montenegro (in further text: the Parliament) (Art 4).

¹⁰⁷ In line on the LAW ON PREVENTION OF CONFLICT OF INTERESTS (article 2) “Public official shall discharge the public office in such a manner that he shall not place private interest before public interest and shall not cause the conflict of interests. Conflict of interests exists when private interest of a public official affects or might affect the unbiasedness of the public official in performance of public office“.

¹⁰⁸ The Rulebook about the work of Fund for minorities: Work of the Managing Board is public-works at sessions (Art. 4).

¹⁰⁹ According to the article 4 of the Rulebook about criteria for evaluation and allocation of funds for financing of projects from the means of Fund, the right to participate in the public tender have NGOs whose activities are aimed at the preservation and development of minority rights.

¹¹⁰ Up to date, Civic Alliance implemented several projects related to minority rights: Researching of situation on human rights with the focus on minority rights, researching on representation of Roma children in media; Standpoints of Roma and Egyptians about the Decade, Representation of minority population in public administration, Representation of minority population in public service etc.

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announce the decision on disqualification of these organizations to date, but only a list of organizations that were disqualified, without any justification provided;

- **Failure to comply with the Law on Free Access to Information** – as the Fund has not announced the decision on illegal disqualification of the organizations from the competition, we addressed the Fund by means of the Law on Free Access to Information, but the Fund didn't allow access to the documents. The Fund did not allow access to information for months in some cases, by using various obstructions (delaying replies on purpose so CA would miss deadlines, giving a lot of paperwork to obstruct finding one specific report etc.), until they become out of date;
- **Segregation, nationalism, and not supporting multiethnic projects** – The Fund has not supported multi-ethnic and inter-cultural projects¹¹¹ so far, but did support nationalist projects that led to increasing ethnic distance, as shown in the results of relevant surveys¹¹². In one of the last allocations, no funds were provided for the area of multinational projects - it was cut out from the ads, although earlier it was formally cited in the ads.;
- **Illegal scoring** – some projects have received a maximum of 100 points illegally, even though it was clear that those projects did not comply with basic legal criteria. Those were the projects of the members of the Board or people closely linked to them. For example, the Serbian National Council received maximum points for its projects, despite the fact that compliance with government documents is scored with 5 points, co-financing of the projects is scored with 5 points, good cooperation with the organization in that area is scored with 5 points as well, and their projects could not have received a single point on those grounds ¹¹³;

¹¹¹ The Rulebook about criteria for evaluation and allocation of funds for financing of projects from the means of Fund for protection and exercising of minority rights.

Article 3: Funds planned by the Budget for these purposes, and funds from other sources in accordance with the Law, have been allocated in accordance with Article 2, Paragraph 4 of Decision of the Fund for Protection and Exercising of Minority Rights, for:

1. maintaining and developing of national, or ethnical features;
2. maintaining and improving cultural identity and heritage;
3. maintaining and developing of language identity;
4. maintaining and improving religious identity and
5. projects of various characters.

¹¹² More information available at: <http://www.cedem.me/en/component/jdownloads/viewdownload/48/458.html>.

¹¹³ Article 6 of the Rulebook about allocation of means says : General criteria:

-While making Decisions about allocation of funds, according to Article 3 of this Rulebook, after the end of public call, allocation of funds will be done in accordance with the following criteria:

-Contribution the project provides to maintaining and developing of national, cultural, religious, language and ethnical character;

- Transparency and possible control of implementation of projects;

- Credibility of project applicant.

-Compatibility of projects with strategic documents of the Government;

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- **Illegal decision making** – after the Board had decided twice not to support one project, that same project remained on the list of projects for which funds have been allocated, which indicates external influence on decision making. Two members of the Board publicly protested against such actions of the Board, pointing out to the public minutes from the sessions which confirmed this, but they were outvoted and isolated;
 - **Illegal holding of the meetings** - Chairman of the Board initiated the maintenance of electronic and telephone sessions, in violation of the Rules of Procedure.
 - **Party employment** – based on the data available to CA, all employees of the Fund were appointed due to political influence of one party; neither the director nor all other employees of the Fund have any experience in the area of minority rights;
 - **Inadequate financial management** – the Fund owns very expensive vehicles, and spends about 20% of the funds (150000€) for the costs of administration. Despite this, the Fund announces very often that they do not have enough staff to conduct good quality checks of implemented projects, and that this is the reason why they can not comply with the recommendations of the National Audit Institution (please see below);
 - **Expired mandate of the members of the Board, from minority councils** – the mandate of the members of the Board, from minority councils (six members) expired on August 7, 2012, so all the decisions made by the Board after that period are illegitimate. Especially worrying is the fact that the representatives of the Council were the Presidents of the Commissions that ultimately worked alone without other members of the Board. In July 2012 the Commission for Prevention of Conflict of Interest adopted a decision which made clear that members of the minority council were former members of the Board of the Fund. The Parliament of Montenegro adopted the Decision on Amendments to the Decision on the Establishment of the Fund for Minorities "Official Gazette of Montenegro", no. 64 of December 29, 2011 (which was adopted on the basis of the Law on Minority Rights and Freedoms), and it was found that the Decision on establishing the Fund for Minorities was changed to the Decision on establishing the Fund for the Protection and Realization of Minority Rights, and the name of the Fund has been changed accordingly, as of a new legal entity. The Commission has concluded that, in line with this change, members of the Board of Directors of the Fund for Minorities automatically terminated their public office in the Fund, in accordance with the positive legislation.¹¹⁴

The State Audit Institution (NAI) twice controlled the Fund's work¹¹⁵. Findings showed that the Fund does not have precisely defined criteria for evaluating projects, the indicators for measuring the effects of

¹¹⁴ The decision of the Commission for Prevention of Conflict of interest can be seen here
<http://www.konfliktinteresa.me/rjesenja/Avdul%2031.08.htm>

¹¹⁵ <http://www.dri.co.me/1/doc/Izvjestaj-o-kontrolnoj-reviziji-Fonda-za-zastitu-i-ostvarivanje-manjinskih-prava.pdf>

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completed projects, nor does it monitor implementation and measurement of results of implemented projects; The reports on implementation of projects submitted by holders of Fund projects are incomplete, superficial and without due evidence of the financial costs incurred in respect of their implementation; In the regulations on determining the criteria for allocation of funds there is no clear and precise definition of the criteria which specifies the purpose, content and evaluation of projects; Fund made advance payment of the total contract amount to the beneficiaries of funding for projects, therefore not respecting the dynamic of the project implementation; During the controlled period, the Fund has not provided monitoring of implementation of supported projects and never conducted evaluation of the results of these projects; The Accounting of the Fund did not perform recording of financial transactions in the accounts in the manner prescribed by the accounting standards and principles and analytical chart of accounts for budget users; The beneficiaries of the Fund filed reports on the implementation of projects for 2009, but the Serbian National Community presented their activities in the form of publications (books) rather than in form of reports; Reports on the implementation of projects are incomplete, superficial, statements are descriptive and without adequate financial evidence to be able to determine the actual costs for the project and did not comply with Article 4 of the Agreement on financing and co-financing of projects (conclusion applies to more than 50% report) but nevertheless the Fund continued to support the same organizations; there is also the delay in reporting the work. In the 2013 Progress report, the European Commission¹¹⁶ mentioned the Fund in a negative context, noting certain disadvantages in terms of implementation of projects it financed. The Government and Parliament have not done anything in this regard.

The Administrative Court issued a judgment¹¹⁷ annulling the decision of the Fund, from August 2012, with which 500.000€ were distributed, noting that the Fund has committed a substantial violation of administrative procedure. NGO Youth Initiative for Human Rights (YIHR) filed a lawsuit to the Administrative Court of Montenegro due to all failures that occurred at the time of decision making on allocation of funds after the public call in 2012 that are above mentioned. The Court defined that the Decision made by the Fund was illegal and ordered to the Fund to make a new Decision in accordance with the law. Unfortunately, the Fund has not respected the decision of Administrative Court to date nor has it implemented the new procedure of allocating, and it also has not required return of funds. YIHR filed a lawsuit to Administrative Court against the Decision of the Fund also for 2014.

Recommendations:

The State should provide functioning of the Fund for protection and exercising of minority rights without conflict of interest, so that national councils cannot decide about allocation of funds and at the same time be users of these funds. Managing Board of the Fund should have fewer members and they should all be professionals.

The State should provide respect of the verdict of the Administrative Court and determine the responsibility for non-compliance, as the verdict has not been implemented to date.

¹¹⁶ Progress report 2013, http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mn_rapport_2013.pdf, page 43.

¹¹⁷ Administrative Court judgement from 5 February 2013 http://www.gamn.org/images/docs/cg/Upravni_sud_06032013.pdf

The State should create conditions for respect of findings and recommendations of National Audit Institution. The state should provide conditions for the Fund to be able to allocate the means according to quality of projects and priority in the society that would lead to reducing ethnical distances.

PERSONS WITH DISABILITIES

Please note that the following text was prepared by Association of Youth with Disabilities of Montenegro (AYDM) and First Parents' association for children with special needs – Podgorica (FPA).

The European Commission in its Montenegro 2014 Progress report, highlighted on page 32: "Overall access to buildings for people with disabilities, including those in the areas of education and medical facilities, remains limited. None of the thirteen priority buildings in public use have so far been adapted. The law prohibiting discrimination against people with disabilities still has shortcomings. Financial support paid to employers for employing people with disabilities is insufficiently protected against misuse."

General information:

Although Montenegro has largely harmonised its legislation with international standards on the protection of persons with disabilities, persons with disabilities are one of the most vulnerable categories of the population due to weaknesses of the institutions charged with safeguarding their rights.

A survey conducted by the Ministry of Human and Minority Rights shows that more than half of Montenegro's citizens think that persons with disabilities are discriminated. (50,8%).¹¹⁸

Please note that most public buildings are still inaccessible to persons with disabilities. Under the 2008 Spatial Planning and Construction Act, all public facilities should have been adapted to allow access to persons with disabilities by 2013, but it has not been done to date.

¹¹⁸ Survey has been conducted in November 2013, results available at:
<file:///C:/Users/PC/Downloads/REZULTATI%20%20ISTRA%C5%BDIVANJA.pdf>.

ARTICLE 2, paragraph 2
ANTIDISCRIMINATION

We believe that the following recommendation of the Committee to Serbia should also be forwarded to Montenegro:

The Committee urges the State party to: (a) Intensify its efforts to promote equality and combat discrimination against members of ethnic minorities, persons with disabilities, refugees and internally displaced persons, including Roma, lesbian, gay, bisexual and transgender persons and other marginalized persons and groups with regard to access to employment, social security, housing, health and education;

a) Courts do not provide effective protection against discrimination of persons with disabilities

AYDM: With regard to the Reply to the List of Issues, paragraph 7: "Law on Amendments to the Law on Prohibition of Discrimination includes specific standards relating to marginalized social groups, including also penal provisions prescribing strict punishment for discrimination committed against these categories of the population", please note:

In practice, the courts do not provide effective protection against discrimination of persons with disabilities.

The following example provides an illustration:

Miroslava-Mima Ivanović from AYDM has filed a lawsuit for protection from repeated discrimination (inaccessibility) against the Parliament of Montenegro on 2 December 2013 with the Basic Court in Podgorica. Because of repeated discrimination (4 times) against the plaintiff from September till December 2013, and based on the Law on Prohibition of Discrimination and Law on Prohibition of Discrimination of Persons with Disabilities, Miroslava asked from the court to confirm that discrimination occurred in this case, and to take all necessary steps to ensure that the same would not be repeated and requested non-pecuniary damages in the amount of 10,000 EUR. As the Protector of Human Rights and Freedoms of Montenegro (Ombudsman), Mr. Šučko Baković witnessed the first case of discrimination, the plaintiff proposed him for a witness. However, the Ombudsman did not appear at the main hearing, where he was supposed to testify. He informed the court about this two days before the hearing, but not the plaintiff or the AYDM. The Basic Court partially accepted the claim, and awarded Miroslava with 3000 EUR for non-pecuniary damages, but did not order the Parliament to take necessary measures to stop further discrimination and remove cause of discrimination (Later the High Court confirmed this verdict but decreased the amount of compensation to 1500 EUR. Just like the Basic Court, the High Court did not state the reasons (interpretation of the norms of the Law on Prohibition of Discrimination, Article 26, paragraph 2) for rejecting the request that the Parliament should take all necessary measures

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to stop further discrimination as unfounded.¹¹⁹ It is interesting that both the Basic and High Court did not consider any of the relevant international instruments ratified by Montenegro.

A revision (irregular remedy) has been filed upon the verdict of the High Court to the Supreme Court.

Recommendation: The State should provide that courts consult relevant international documents related to human rights and discrimination as well as court practice from the European Court of Human Rights from Strasbourg.

Article 6 - RIGHT TO WORK

We believe that the following recommendation provided by the Committee to Serbia in 2014 should also be forwarded to Montenegro:

The Committee also urges the State party to establish objectives on an annual basis for the employment of persons with disabilities and to collect reliable data on the extent of their unemployment.

a) Law on professional rehabilitation and employment is still ineffective in practice. The Fund for Professional Rehabilitation and Employment does not operate as an independent legal body.

AYDM: With regard to the Reply to the List of Issues, paragraph 8: "Recruitment of persons with reduced employability is conducted in accordance with the Law on Professional Rehabilitation and Employment of Persons with Disabilities", please note:

The Law on Professional Rehabilitation and Employment is still ineffective in practice even though the Law has been adopted five years ago. The Rulebook on grant scheme, which is necessary for financial support for employment of persons with disabilities, was adopted only in July 2014.

The State report is also missing data on the structure of employers who employed persons with disabilities. According to unofficial data most of these employers are actually NGO's dealing with disability issues.

The Fund for Professional Rehabilitation:

In 2013 employers have paid (as a special contribution) 8.799.756,74 EUR to the Fond for Professional Rehabilitation and Employment, from which only 234.941,71 EUR has been spent, which is 2.67% of total amount (official information from the Ministry of Labor and Social Welfare, page 19¹²⁰). From May 2009 until June 2014 in Fond for Professional Rehabilitation and Employment 33.160.05, 59€ has been

¹¹⁹ More details, available at: <http://umhcg.com/en/press-release-civil-proceeding-for-protection-from-discrimination-2/>.

¹²⁰ More details available at:

https://www.google.me/?gws_rd=cr,ssl&ei=V8QiVOntJsbjywOu_oKABQ#q=Informacija+o+sprovo%C4%91enju+Akcionog+plana+Strategije+za+integraciju+OSi+2013.

paid into budget. It is estimated that somewhere around 1.500.000 € was spent for the purposes of professional rehabilitation and employment, which is only around 4.5% of the total amount.¹²¹

The amount of 2 million of EUR, which has been planned by the budget of the Employment Bureau of Montenegro for this year, is only quarter of the total funds that will be, just like the last year, lodged at the expense of the payment of special contribution by the employer. Such definition of the Budget Law for 2014 will increase funds that have been planned for the purpose of employment of persons with disabilities, but without possible insight in the manner of disbursement and to whom all these lodged funds are being disbursed. A bylaw (Rulebook) was adopted in July 2014 after 5 years of delay and to date no calls for proposals have been lounged.

Recommendation: The State should amend the Law on Professional Rehabilitation and Employment of Persons with Disabilities and establish the Fund for Professional Rehabilitation and Employment as an independent legal body.

The NGO FPA:

Recommendation: The State should increase subventions for employers who hire persons with disabilities or remit certain taxes in a higher amount in order to stimulate employment.

Article 7

RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

a) Distinction between “completely healthy” and “disabled” persons is absolutely unacceptable

With regard to the State report, paragraph 68: “Person with disability that has the health capacity to work in specific job, may sign a labour contract under the conditions and in the manner stipulated by this law, unless regulated otherwise by some other law. Accordingly, conditions and manner of employment are equal for all citizens regardless of their working abilities, so therefore disabled persons are employed by the same regulations as completely healthy persons, if not otherwise established by the special law”, please note our concern.

The distinction between a “completely healthy” and “disabled” person is totally unacceptable. Persons with disabilities are not “sick” or “ill” and therefore such formulation is discriminatory. Despite the obligation prescribed by the law, the state does not promote possibilities and abilities of persons with disabilities, and therefore employers still rather employ persons without disabilities. We do not have a one good example of an employer hiring persons with disabilities in the case where these persons fulfill same criteria as the person without disability.

¹²¹ Official responses to AYDM, from Employment Agency number 110/02 from 11.07.2014, number 0601/612/4 from 11 February 2014, and number 0301-2572 from 30 April 2013 as well as official response from Ministry of Finance 011-70/2 from 04 March 2014.

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Recommendation: The State should take all necessary measures to promote employment and abilities of persons with disabilities. State officers should be better trained in the rights of persons with disabilities.

Article 9 and 11

RIGHT TO SOCIAL SECURITY/ RIGHT TO AN ADEQUATE STANDARD OF LIVING

a) The Law on Social and Child Protection has serious shortcomings

AYDM:

- No social security for persons with disabilities has been prescribed by this Law since the amounts for the basic social welfare benefits are symbolic and they cannot provide even fulfillment of basic needs. They do not follow real costs of living in Montenegro (for more details please see page 26).
- Some of the support services are not listed in this Law, such as accessible transport. Financing of these services is not ensured.
- When it comes to benefits such as personal disability benefit and allowance for home care and assistance, we consider them as compensatory rights and they should be treated and defined separately by some bylaws.

Recommendations: The State should adopt all bylaws important for implementation of the Law on Social and Child Welfare, and ensure systematic and stable financing of the support services for persons with disabilities.

FPA:

Although the Law prescribes social services such as day care centers,¹²² please note, that currently these services are predominantly provided by NGOs and parents associations (80% or 5 715 users provided by NGO sector)¹²³ with no permanent funds. Also, please note that Podgorica still does not have a Day Care Centre.

Also, please note that system of social and child protection is poorly connected with other systems, and an efficient system of evidence and database has not been established yet.¹²⁴

NGO associations of parents provide most of the services and information for the parents, whereas a small number of children is covered by the Centres for children with disabilities at the Primary Health

¹²² Article 62 Law on Social and Child Protection.

¹²³ Data obtained from Strategy for development social and child protection 2013-2017.

¹²⁴ Data obtained from Strategy for development social and child protection 2013-2017.

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care Centres (not all Primary Health Care Centres have Centres for children with disabilities, and those that do have are of insufficient capacity to meet all the needs).

The Socio-Medical Commission (which operates as a part of the Centres for Social Welfare and whose decisions represent the background for exercising all rights) makes unreasoned decisions, which discourage the parents to complain, because these decisions do not specify why their request was rejected (apart from generally stating that it is not in accordance with the Rulebook on medical indications). The second-instance commission exceeds the deadlines for making the decision.

Even though the Labour Act prescribes that a parent can work half of full working hours in order to take care of a child with disabilities (Articles 113, 114 and 115) according to the data of the FPA most parents who work with private employers do not exercise this right as the employers do not conduct necessary procedures for it to be exercised.¹²⁵

Also, although the Pension and Disability Insurance Act prescribes the possibility for one of the parents who has a child with serious disabilities and is a user of personal disability benefit to exercise the right to the old-age pension earlier (with 20 years of service)¹²⁶, these amounts vary between 46 and 85 EUR in practice, which is insufficient for subsistence, bearing in mind that the parent should use this right to dedicate himself/herself to taking care of the child and not work.

NGO Centre for Children's rights:

When children with disabilities are concerned, there is no single database that could provide the exact number of children with disabilities in Montenegro. The last census did not provide accurate data due to some issues - data were not adjusted and they were not even able to provide data that are important when it comes to this population. The number of day centers is still limited (they exist in Bijelo Polje, Pljevlja, Nikšić, Mojkovac, Herceg Novi, Ulcinj, Plav and Cetinje), although there are municipalities that have announced the building of such centers until the end of 2014 (Podgorica) and mid 2015 (Budva).¹²⁷

Recommendations:

The State should develop a single database on children with disabilities as well as keep separate records at the level of social institutions and service providers and develop and implement uniform criteria/ indicators to assess the quality and scope of the services provided.

The State should examine and evaluate the work of Socio-Medical Commission as well as the implementation of protective provisions relating to part-time work regarding the Labour Act.

¹²⁵ The employer refuses to file a request upon the demand of the employee (to which the employer is bound by law), and the employee does not report this due to the fear of losing the job

¹²⁶ [2] Pension and Disability Insurance Law, ("Office Gazette of the Republic of Montenegro", No. 54/03, 39/04, 61/04, 79/04, 81/04, 14/07, 47/07, and "Office Gazette of Montenegro", No. 79/08, 14/10, 78/10, 66/12 and 38/13), Art. 197i.

¹²⁷ *Report on implementation of recommendations of the UN Committee on the Rights of the Child 2010 – 2013*, p. 46, available in Montenegrin at <http://www.djecaps.me/fajlovi/Publikacije/lzvjestaj-web.pdf>

The State should encourage the establishment of non-institutional services for children with disabilities and their families, through opening of new day care centers and equipping teaching assistants and personal assistants with updated skills and information to allow them to assume their tasks more effectively in accordance with child's best interest.

ARTICLE 12

THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH

a) Inaccessibility of health institutions, lack of adequate equipment and non-educated medical staff to provide medical services for this persons with disabilities.

With regard to the State report, paragraph 272: "All citizens of Montenegro have equal rights to health care", please note:

AYMD: The main problems for persons with disabilities in this area are: inaccessibility of health institutions, lack of adequate equipment and non - educated medical staff which should provide medical services for this population. Therefore, persons with disabilities still have no equal right to health care. Some categories of persons with disabilities are even more discriminated in relation to other categories. Also, complicated and restricted procedures for obtaining different rights represent a significant problem. Right to aids, spa treatment, and some other special kind of medical treatment are not available for all persons which needs this.

Recommendations: The State should ensure accessibility (both in terms of architecture of the institutions as well as accessibility of information) of health institutions for persons with disabilities. The State should educate medical staff how to provide medical services to persons with disabilities.

FPA: Children with disabilities have no full dental service in Montenegro, because interventions are not provided to children with disabilities under anaesthesia (only several dentists are willing to provide services at all). There is no neurologist for children with disabilities. In the most municipalities there are no highly educated medical staffs, so children are forced to travel to Podgorica to obtain some medical procedure.

The inaccessibility of the Children's Hospital for children wheelchair users, no appropriate placement of children with severe disabilities and their companions is a problem as well.

Children of age from 15 to 18 years, regardless of their developmental disabilities and diagnosis, are not eligible for rehabilitation. Rehabilitation of children with certain diagnoses (according to the Regulations of the Health Fund) is provided once a year, but excluding a number of diagnosis and syndromes (due the restrictive list of indications).

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Also, the Health Fund has restrictive policies regarding purchase of aids (wheelchairs, beach swimming, seats, chairs, wheelchair positioning, etc). In addition, aids are inadequate, of poor quality and available only to children from restricted list of indications.

Recommendations:

- **The State should provide full dental service to children with disabilities as well as a neurologist (specialized for children).**
- **The State should adjust the Children's Hospital for child wheelchair users as well as ensure appropriate placement of children with severe disabilities and their companions.**
- **The State should provide rehabilitation to all children with disabilities (under 18), as well as adequate aids.**

ARTICLE 13

THE RIGHT TO EDUCATION

We believe that the same recommendation provided by the Committee to Serbia in 2014, should be provided to Montenegro as well:

The Committee recommends that the State party continue legal and policy reforms to allow every child to achieve the right to education, and to that end:

...

(b) Ensure inclusive education for all children with disabilities in mainstream schools.

a) Most of the educational institutions at all levels of the education are not accessible for children and students with disabilities. Also, teaching processes, programs and materials are not accessible for this population.

Regarding the State report, paragraph 303: "Pursuant to the Constitution of Montenegro (art. 75), the right to education under same conditions shall be guaranteed", please note:

AYDM: This constitutional right is not fully provided for persons with disabilities. Most of the educational institutions at all levels of the education are not accessible for children and students with disabilities. Also, teaching processes, programs and materials are not accessible for this population. Children and students with disabilities have no systematically organized and supported services (assistants in teaching, sign language interpreters etc), and they are mostly provided on a project basis by NGO's. Due to these problems a significant number of children with disabilities do not continue their education after elementary schools and especially after high schools.

Because of barriers in high education AYDM has constantly been demanding from the Ministry of Education and the Universities exemption from tuition fees for students with disabilities. However, this is being done only upon the individual requests of AYDM and not as a systematic solution.

Recommendation:

The State should ensure accessibility (architectural and accessibility of information) of educational institutions at all levels of education for persons with disabilities, enable the enrolment of the students with disabilities by amending the Law on High Education, through the application of affirmative action principle, whose tuition fees will be covered by the state budget, as well as provide systematically organized support services for children and students with disabilities.

FPA:

A problem has occurred in coordination between the Resource Centres (which include children and youth with disabilities) and the Employment Bureau due to inadequate determining the direction in education, so in practice, youth with disabilities are educated for jobs that are unnecessary or non-competitive in labour market.

With regard to the State report, paragraph, 46, please note: The Law prescribes¹²⁸ that children with special education needs can be provided a teaching assistant during the classes that will provide technical assistance, as a rule, voluntary, in accordance with a special Law. However, this provision is not applicable because no one agrees to work voluntary as an assistant to children with disabilities. In practice, the NGO sector provides these assistants through the Employment Bureau, but it has not been able to provide sufficient number of assistants due to lack of funds.

Recommendations:

The State should provide education of children and youth with disabilities in accordance with labor market assessment.

The State should provide engaging of assistants as well as full implementation of legal provisions regarding technical assistance and other assistance in accordance with the Law.

ARTICLE 15
CULTURAL RIGHTS

a) Despite legal framework prescribing adjustment of public buildings to persons with reduced mobility, little progress has been made so far

With regard to the State report, paragraph 343, please note:

¹²⁸ Law on Education of Children with Special Educational Needs („Official Gazete of Montenegro“, No 80/04, 45/10) , Article 30a.

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AYDM: Although this paragraph is related to accessibility of cultural institutions and programmes, the area of accessibility is related to many articles and rights and it is one of the preconditions for realization of these rights. Despite legal framework, (the Law on Urban Planning and Construction, Rulebook on Amendments of the Rulebook on detailed conditions and the manner of adjustment of public buildings to persons with reduced mobility, which in details defines obligations and standards during adjustments of objects in public use, little progress has been made so far. There is no visible progress in implementation of Action Plan for Adjustment of Objects in 2014 which was prepared by the Government, and since the end of this year is approaching it is hard to expect that these planned objects will be adjusted.

Recommendations: The State should ensure effective implementation of the Law on Urban Construction and related bylaws and action plans.

CHILD RIGHTS

Please note that the following text has been prepared by the Centre for children's rights.

General information:

A large number of regulations in Montenegro explicitly or implicitly stipulate that the child is entitled to access all information concerning the exercise of child's rights as well as to disseminate information concerning its status. This right may be restricted only for reasons stipulated by international law, the Constitution and the domestic laws. Related to this, it should be stated that the State has not made much effort to involve civil society organizations in the preparation of the State Party's Report, neither to promote and disseminate the Report on the implementation of the International Covenant on Economic, Social and Cultural Rights and the List of issues addressed to the Government by the Committee on Economic, Social and Cultural Rights, apart from information published on Government's official website. On the other hand, children, their parents, teachers and other people working with children should be fully aware of the rights guaranteed by the a/m Covenant and should be timely provided with all relevant information related to its implementation in an accessible and appropriate manner.

Recommendation: The State should intensify efforts to ensure sound and continued promotion of the Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Child and other documents and information related to children, as well as improve the coordination between public and civil sector in the creation, implementation and evaluation of public policies aimed at children

Article 2

Maximum available resources and international cooperation

The budgeting process that the Government applies does not allow allocations that relate to children to be clearly identified, meaning that the means and expenses earmarked for the implementation of child-related policies are not visible in the budget, what causes difficulties in monitoring the distribution of

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budget funds to children, including monitoring of fulfilment of the state's obligation to allocate maximum available resources to promote and protect the rights under this Covenant.

Recommendation: The State should ensure consistent application of the program budgeting in order to allow clear monitoring of budget allocations aimed at children.

Article 10

Protection of the family, mothers and children

With regard to the State report, paragraph 105, please note:

The Government adopted several important policy documents, including the Foster Care Development Strategy, the Strategy for protection against domestic violence in June 2011, accompanied by the Protocol for managing the cases of domestic violence in order to set out mechanisms for greater protection of women and children – victims of domestic violence (November 2011).¹²⁹ As a member of the Council of Europe, Montenegro has also signed and ratified the Lanzarote Convention as an additional instrument for preventing and suppressing sexual violence against children. Recently, the Government has adopted a report on the implementation of this Convention, but without any public hearings and consultations with stakeholders.¹³⁰ According to data of the Ministry of Labour and Social Welfare for 2011, a total of 286 victims of abuse and neglect have been registered, out of which 157 are girls and 129 are boys. A number of 12 victims of sexual abuse have been identified. According to estimations made by the local Centres for Social Welfare, 546 children are exposed to risk of abuse and neglect since 2010.¹³¹

Despite the aforementioned policies, their implementation is greatly affected by the lack of resources and capacity constraints on the side of the implementers, notably of all professional groups working with and for children. Therefore, capacity building remains of the utmost importance for the implementation of both the ICESCR and the Convention on the Rights of Child, as the Committee on the Rights of the Child insists on in its recommendations.¹³² As the new Law on Social and Child Welfare introduced a category

¹²⁹ *Foster Care Development Strategy - Strategija za razvoj hraniteljstva 2012-2016; Strategy for protection against domestic violence – Strategija zaštite od nasilja u porodici* available in Montenegrin at

<http://www.mrs.gov.me/biblioteka/strategije?alphabet=lat>; *Protocol for managing the cases of domestic violence, November 2011*, available at <http://en.sudovi.me/podaci/en/vrhs/dokumenta/66.pdf>

¹³⁰ *Replies to the general overview questionnaire, February 2014* available at

http://www.coe.int/t/dghl/standardsetting/children/Montenegro_GeneralQuestionnaire_en.pdf; *Replies to the thematic questionnaire – Sexual abuse of children in the circle of trust, February 2014*, available at http://www.coe.int/t/dghl/standardsetting/children/Montenegro_ThematicQuestionnaire_en.pdf

¹³¹ *Report on implementation of recommendations of the UN Committee on the Rights of the Child 2010 – 2013*, NGO Centre for Children Rights in cooperation with NGO *Djeca prije svega*, January 2014, p. 57, available in Montenegrin at <http://www.djecaps.me/fajlovi/Publikacije/Izvjestaj-web.pdf>

¹³² *Concluding observations*, Committee on the Rights of the Child, available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMNE%2fCO%2f1&Lang=en; *List of issues*, Committee on Economic, Social and Cultural Rights available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/067/57/PDF/G1406757.pdf?OpenElement>

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of certified providers of social and child protection services¹³³, accent should be placed upon capacitating these providers so as to ensure that necessary competencies and skills are in place.

Recommendation: The State should implement continued education and capacity building programs for the staff working for and with children, especially for the certified providers of social and child protection services.

Articles 13 and 14 – The right to education

With regard to State report, paragraph 304, please note:

Although, in the field of education, permanent training of teaching staff has been organized for years on a variety of topics the facilitation of children's active involvement in influencing the creation of education policies, including training programs for teaching staff as well as in participation in school mediation process, still remain a challenge.¹³⁴

Recommendation: The State should work on systematic training of all professional groups working for and with children in the education system, primarily with teachers, health workers and schools management members.

Article 9

The right to social security

Out of 173 service providers, the most represented are NGOs (80,9%), then Municipal Red Cross (9.8%) and public institutions (with 8%). NGOs are mostly involved in providing counselling and support services for specific vulnerable groups. Out of available service, 27 (2%) are intended for children.¹³⁵ However, despite a relatively high number of available services and their providers, the availability of services and the coverage of users with these services differ among municipalities. For example, in the largest local governments (Podgorica, Nikšić, Bar, Berane, Bijelo Polje, Herceg Novi) almost all social services are available and the largest number of users is the largest in these municipalities. Furthermore, the capacities of centres for social welfare, which exist in all municipalities in Montenegro, to respond to the needs of youth and families in the local communities also vary, producing differences in a way of accessing services and enjoying benefits they provide. On the other hand, there are no clear-cut criteria based on which the performance of these centres can be easily accessed and their results compared and gratified. In addition, despite limited capacities of the centres, especially in less developed

¹³³ In order to decentralize powers in the field of social and child protection, support social services, such as social and educational counseling, therapeutic services and shelter services may be also provided by other certified entities from both public and private sectors: Article 119, 130 and 140 of the *Law on Social and Child Welfare*

¹³⁴ Report on implementation of recommendations of the UN Committee on the Rights of the Child 2010 – 2013, p. 43, available in Montenegrin at <http://www.djecaps.me/fajlovi/Publikacije/lzvestaj-web.pdf>

¹³⁵ Report on implementation of recommendations of the UN Committee on the Rights of the Child 2010 – 2013, p. 46, available in Montenegrin at <http://www.djecaps.me/fajlovi/Publikacije/lzvestaj-web.pdf>

municipalities in remote regions of the country, there is a prevailing tendency to extend the scope of their work, which will further burden the centres in terms of funds and professional resources.

On the other side, as seen from the percentage of NGOs' involvement in the provision of services, most of these services are not institutionalized and thus greatly depend on the support and funding of donors (personal assistants for children with disabilities, as we previously stated) , what affects the continuity of service provision as well as the number of potential users that these services can uphold. Certain services are underdeveloped, especially when some specific target groups are concerned. For example, the only family counselling service in Montenegro exists in Bijelo Polje (it has been opened in 2008 within the framework of the Support Centre for Children and Family Services).¹³⁶

Recommendation:

The State should develop specialized services to support children from single-parent families, and children from Roma and Egyptian families; adjust the amount of social benefits to the specific needs of children from vulnerable families, notably from a polynomial and single-parent families, foster care families and families with children with disabilities; invent specific programs for the protection of children without parental care through the development of alternative forms of care (foster care, adoption) as well as increase capacities of local centres for social welfare to foster a multidisciplinary approach to working with children (while increasing the control and supervision over their work, including through continuing education of professionals and supporting staff from social care institutions, development of clear performance assessment criteria and continued monitoring of their fulfilment by the centres for social work).

¹³⁶ Report on implementation of recommendations of the UN Committee on the Rights of the Child 2010 – 2013, p. 42, available in Montenegrin at <http://www.djecaps.me/fajlovi/Publikacije/lzvjestaj-web.pdf>

ROMA AND EGYPTIAN POPULATION

Please note that this Chapter has been prepared by CEDEM.

General information

According to 2011 population census, 6021 people declared as Roma and 2054 as Egyptians.¹³⁷ However, experience on the ground have shown that this data is not reliable, as NGOs, international organizations and the Government estimated that this number is much higher, ranging between 15,000 and 20,000 (ca.3%).¹³⁸ This inadequate statistics affects the funds earmarked for Roma inclusion, notably for the implementation of the Strategy for improving the status of Roma and Egyptians in Montenegro (2012 – 2016) and the funds allocated to Roma by the Minority Fund. The lack of accurate and ethnic disaggregated data also creates challenges in designing and evaluating measures aimed at Roma and Egyptians.

Being the most marginalized ethnic community in Montenegro, Roma and Egyptians face multiple discrimination¹³⁹ and severe risk of social exclusion¹⁴⁰ that are reflected in high unemployment rates, low education levels and the lack of participation in the social and cultural life of the country. In the first (and only) separate Report on Discrimination from 2011¹⁴¹, the Ombudsman raised concern on social exclusion of Roma and Egyptians and pledged to intensify activities to raise awareness among Roma and Egyptians to recognize and combat discrimination.¹⁴² In its latest Progress Report on Montenegro, the European Commission also recalls that the Roma communities face discrimination, especially in the field of employment, health issues and housing.¹⁴³

¹³⁷Population census breakdown, available at: [http://www.monstat.org/userfiles/file/popis2011/saopstenje/saopstenje\(1\).pdf](http://www.monstat.org/userfiles/file/popis2011/saopstenje/saopstenje(1).pdf)

¹³⁸Human Rights Report 2010/2011, Human Rights Action, Podgorica 2011, p. 397, available at:file:///C:/Users/PC/Desktop/Human_Rights_in_Montenegro_2010-2011.pdf

¹³⁹ According to CEDEM research from December 2013, ethnic distance of the mainstream population towards Roma and Egyptians towards Roma people is over 46%, meaning that every second citizen of Montenegro shows very high distance from the Roma population. According to the same research from 2004, the distance was 45, 6% indicating that no progress has been made in suppressing discriminatory attitudes towards this population. More details available at: <http://www.cedem.me/sr/publikacije/viewdownload/13-publikacije/456-etnika-distanca-2013-.html>

¹⁴⁰ UNDP Report from 2009 stresses out that the national average social exclusion rate is 3, 5%, while among Roma population this rate counts 14, 1%. *Human Development Report, Montenegro: Society for all*, UNDP Podgorica, 2009, p. 29, available at:<http://www.un.org.me/uploads/Documents/NHDR%20MNE.pdf>

¹⁴¹ Ombudsman, *Annual Report 2012* (March 2013), available at: http://www.ombudsman.co.me/docs/izvjestaji/Final_Izvjestaj_za_2013_310320131450.pdf

¹⁴²In its *Concluding observations on the second periodic report of Serbia*, CESCR urged the country to intensify efforts to promote equality and combat discrimination against members of ethnic minorities, including Roma, p. 4, para 11 (a), available at: [file:///D:/PODACI/Downloads/Serbia%202014%20\(1\).pdf](file:///D:/PODACI/Downloads/Serbia%202014%20(1).pdf)

¹⁴³ *Montenegro 2014 Progress Report*, {COM(2014) 700 final}, p.11, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-montenegro-progress-report_en.pdf

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A large share of members of these communities experience problems in obtaining personal identity documents, what prevents them from accessing fundamental rights, including the right to access basic subsistence, education and safe housing.¹⁴⁴ An urgent need to resolve the status of internally displaced Roma and Egyptians has been acknowledged by the State's Strategy for durable solutions of issues regarding IDPs in Montenegro, with special emphasis on Camp Konik, but also by the numerous reports of international bodies, including the European Commission 2010 Analytical Report¹⁴⁵ as well as reports on the implementation of the ICERD.¹⁴⁶

Article 2 - Non-discrimination

Lack of personal documents and a registered residence limits enjoyment of economic, social and cultural rights of the RE population, even when concerning access to basic services and subsistence.

Despite the efforts undertaken by the state, social status of Roma and Egyptians in Montenegro is still at the unsatisfactory level. Assistance provided by state regarding improvements of social status of RE is not sufficient.¹⁴⁷ There is a high risk of poverty and social exclusion of Roma population in Montenegro. Critically high employment rate clearly indicates unsatisfactory access of Roma and Egyptian to the labor market, especially women, youth and internally displaced persons of Roma origin. One of the key barriers regarding employment of Roma population is the fact the majority of Roma people do not have qualifications in accordance to the needs of labor market. Number of those who are permanently employed is very low -5 % of the working population of RE. Life in chronic poverty exposes this community to many health and security risks and often results in the emergence of child labor, which is not sanctioned in an effective and sustainable manner. Results in Roma and Egyptians employment in the public sector are very limited, especially when local government bodies are concerned. Employers usually don't want to hire Roma and Egyptians and rarely entrust them professional tasks, even when they meet the requirements of a given job.

¹⁴⁴Report on the legal status of persons living in the area of the Konik Kamp, with recommendations for improvements, Government of Montenegro, Podgorica, November 2011, available at: http://www.un.org.me/uploads/Documents/2013/ENG_The%20Report%20on%20the%20Legal%20Status%20of%20Persons%20Living%20in%20the%20Area%20of%20the%20Konik%20Camp%20with%20Recommendation%20for%20its%20Improvement.pdf

¹⁴⁵EC Analytical Report 2010, Montenegro available at: http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/mn_rapport_2010_en.pdf

¹⁴⁶Second and Third State Party Reports available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/454/23/PDF/G1345423.pdf?OpenElement> ; CERD Concluding Observations 2014 available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/MNE/CO/2-3&Lang=En

¹⁴⁷ More details available at CEDEM studies on *Social welfare and employment of RE population in Montenegro*.

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On the other hand, social policy measures are of such a nature that primarily seeks to reduce the effects of poverty, but not to enable the sustainable social integration of RE population¹⁴⁸. Further efforts are needed in terms of effective planning, implementation and monitoring of the effects of social policy measures. This cannot be done without precise data on the actual social situation of Roma and Egyptians. However, the fact is that social welfare data are not kept according to ethnicity significantly affects the implementation of measures aimed at improving the particular situation of this community, given that the actual data are often hidden behind the national averages. Despite constitutional guarantees of the proportional representation of minorities at local level, there are no Roma working in local governments, with the exception of sporadic internships that can hardly foster Roma employability. There is a lack of local mechanisms and measures aimed at improvement of RE employment.¹⁴⁹ However, due to a deplorable economic situation, municipalities cannot address Roma unemployment without adequate funding. The support of NGOs as an intermediary between the authorities and the community is also needed, in order to foster the effective participation of beneficiaries in the Roma employment policy and ensure that its effects reflects the concerns of the Roma. According to CEDEM's opinion, necessary progress that the EU expects from Montenegro when it comes to social inclusion of marginalized communities, cannot be achieved without a well-defined and applied affirmative action in accessing social care and employment, as well as without significantly greater inclusion of Roma NGOs and community representatives in defining priorities and designing and delivering policies aimed at achieving substantive equality for Roma and Egyptians. HRA also believes that Roma need to be provided access to work in order to achieve self-sustainability, and Roma children at least elementary education should be much more rigorously ensured. The European Commission also concludes, in its

¹⁴⁸ Around 70% of RE population don't have access to the material family financial aid (almost 1/3 of population receive material family aid but only 9 months); around 70% of population don't receive any school or note books necessary for regular, obligatory education; financial aid for children receives every 5th household of RE population; persons without of any legal documents, so called "legal invisible" persons, as well as stateless people and asylum seekers have access to basic material aids, but don't have access to social benefits and social protection regulated by Law, problem with regard of housing and adequate living conditions is very expressed; majority of RE population live in inadequate conditions, without of water and electricity.

¹⁴⁹ Lack of personal documents, frequent migration, and low awareness in the domain of social welfare represent obstacles in regard of effective access to social benefits, especially for Roma population with irregular legal status; life in chronic poverty exposes this community to many health and security risks and often results in the emergence of child labor, which is not sanctioned in an effective and sustainable manner; unemployment rate among Roma is almost three times higher (44%) than among the majority of population (19.7%), especially among young Roma; The State Employment Agency implements active employment policy measures – public work programmes, seasonal jobs, but they are not effective and they are rarely adjusted to the needs of Roma; approximately 1000 registered unemployed Roma – 94% have no job qualification, 5% of Roma have full time job, only 10% of them participate in active employment measures; 26% of RE population claimed have been decimated when tried to get the job: according to MONSTAT Survey 2012 – National Statistical Agency, only 19 of employers expressed readiness to employ Roma institutional and legislative framework on minority rights protection improved, but huge problems exist in domain of RE employment, especially regarding employment in public administration, political and proportional representation at local level, education, culture, social welfare there is a need to monitor the procedure implementing Strategy for RE population improvement 2012-2016, especially regarding allocating of financial resources.

latest progress Report on Montenegro, that, overall, the implementation of measures included in the IDPs Strategy should be accelerated.¹⁵⁰

Recommendations:

- **State needs to ensure effective access by Roma refugees, returnees and internally displaced persons, in particular those without a registered residence, to procedures for birth and residence registration in order to facilitate access to personal documents;**
- **Additional efforts to implement the principle of affirmative action in employment of RE population must be undertaken, especially when women are concerned;**
- **System of monitoring and assessment of the measures undertaken by the state for RE population needs to be established against a set of clear indicators, as well as a system to collect statistical data on the major factors affecting Roma access to social welfare;¹⁵¹**
- **New training programmes for RE people according to their education possibilities need to be devised; including programs to prevent and sanction child labor; open SOS services for supporting new employees, as well as supporting individual RE individuals with small business. Introduced employment programs should be implemented at municipal level where Roma integration can be best achieved, as CESCR is also insisting on ensuring that the nationally agreed priorities on Roma are duly communicated to the local authorities in order to be effectively implemented.¹⁵²**

Article 6 - The right to work

Despite active employment policy measures targeting, inter alia, Roma and Egyptians as harder-to-employ persons, labor market integration remains very difficult for most of them due to sound discrimination,¹⁵³ poor qualifications¹⁵⁴ and the lack of personal documents and citizenship status.

¹⁵⁰ *Supra*, p.46

¹⁵¹ In its concluding observations on the second periodic report of Serbia, CESCR also stresses out the importance of impact assessment of the undertaken measures as well as of disaggregated statistical data, E/C.12/SRB/CO/2, p.4, para. 10, available at: [file:///D:/PODACI/Downloads/Serbia%202014%20\(1\).pdf](file:///D:/PODACI/Downloads/Serbia%202014%20(1).pdf)

¹⁵² *Concluding observations on the second periodic report of Serbia*, p.4, para. 12

¹⁵³ Discrimination remains prevalent in access to employment and to social care and healthcare, *Montenegro 2014 Progress Report*, p. 46

¹⁵⁴ The research, conducted in 2011 by UNDP, the World Bank and the European Commission shows that 75% of Roma aged between 15 and 64 do not have any work experience. More details available at: <http://europeandcis.undp.org/data/show/D69F01FE-F203-1EE9-B45121B12A557E1B>

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According to the Registry of the State Employment Agency (SEA) on December 2013, Roma and Egyptians accounted 1118 (3.21%) of total unemployed people, more than three times their share in the population as a whole. Most of these people (94, 38%) have no occupational qualifications.¹⁵⁵ The gap between Roma men and women is evident (in the total number of employed Roma and Egyptians, women are participating with only 16%).¹⁵⁶

Most Roma and Egyptians are engaged in informal sector or informal self-employment. During 2013, SEA managed to find employment for only 5% of registered unemployed Roma and Egyptians, mostly through public works and seasonal jobs. The number of Roma and Egyptians who are employed in state bodies and local self-governments is negligible. For example, the number of employed Roma in the education sector is 0.01% and in the healthcare system 0, 06. There are no employees who declared as Roma or Egyptians working in social care institutions.¹⁵⁷ According to CEDEM, the situation is especially critical when local self-government structures are concerned; as employment of Roma and Egyptians proportionate to their share in the overall municipal population is almost completely missing, apart from some project-based internship in few municipalities (Berane, Nikšić and Herceg Novi). In the past six months, there was no one who claimed to be Roma or Egyptians during employment in public administration, local self-governance and public services.¹⁵⁸

On the other hand, out of the total number of registered unemployed Roma and Egyptians, only 10% (app.100 persons) is involved inactive employment programs, mostly in public works by NGOs and in training and labor market (re)integration programs that are not tailored to Roma and Egyptian employment needs.¹⁵⁹ CEDEM also stressed out that there are no particular mechanisms to monitor and evaluate the employment tracks for those participating in active employment programs after their completion. This is preventing policymakers from evaluating the progress made as well as from designing measures to overcome the gap between Roma/Egyptian skills and demands of the labor market and thus counter the real causes of their unemployment. Besides, most of these programs are project-based and with long breaks between project cycles that can last up to a year. When subsidies for employees who employ Roma and Egyptians are concerned, there is no separate data on the subsidized employment of this population in the overall statistics. In addition, these subsidies are limited (the

¹⁵⁵ *Study: Roma and Egyptian Employment in Montenegro: key obstacles and challenges*, CEDEM, Podgorica, February 2014, p. 29 and 42, available at: <http://www.cedem.me/sr/publikacije/finish/13-publikacije/497-studija-o-zapoljavanju-romske-i-egipanske-populacije-u-crnoj-gori.html>

¹⁵⁶ *Ibid*, p. 43

¹⁵⁷ *Information on the representation of national and ethnic minorities in public services, public authorities and local self-governments*, Government of Montenegro, July 2013, p. 4, available at: [file:///D:/PODACI/Downloads/8_30_18_07_2013%20\(2\).pdf](file:///D:/PODACI/Downloads/8_30_18_07_2013%20(2).pdf)

¹⁵⁸ Report on the implementation of Action Plan for acquis Chapter 23, p. 131, available at: www.mvpei.gov.me/en/library/document

¹⁵⁹ *Supra*, p. 43

distribution of the overall employment subsidies in the total state aid provided in 2011 accounted only 0.63%).¹⁶⁰

Recommendations:

- **Expand the scope and outreach of the existing active employment policy programs, while keeping precise statistics about participating entities and conducting regular impact assessment of these programs;**
- **Craft specific and tailor-made programs and incentives to counter Roma and Egyptian unemployment, including through specific programs that have a clear link with future job opportunities and known employers, greater involvement of this population in public sector, seasonal jobs, vocational trainings and public works as well as through stronger incentives to support Roma self-employment and female Roma/family businesses;**
- **Intensify efforts to put into practice two newly introduced occupational standards – social inclusion mediator and assistant for Roma and Egyptian so as to foster more effective access to the education, employment, health and social welfare. Ensure that sufficient budget funds are provided to finance these occupations, apart from donors' funding Foster participation in seasonal employment programs.¹⁶¹**

Article 9 – The right to social security

Restrictive legal clauses, frequent migrations and low awareness in the domain of social welfare represent key obstacles regarding effective access to social benefits, especially for RE population with non - regulated legal status.

The social status of Roma and Egyptians living in Montenegro is tempered with extreme poverty and long-term dependence on social welfare benefits that has even deepened the scope of their marginalization. Namely, social policy measures are affecting only the temporary consequences of the poverty and exclusion, without targeting their real causes. The lack of statistical breakdown by ethnicity additionally prevents the evaluation of the impact of these measures on Roma/Egyptian integration that has been even exacerbated by the effects of policy changes and budget cutoffs undertaken by the state in response to a recent economic crisis.

As previously stated the new Law on Social and Child Care from 2013 introduced certain restrictive criteria for accessing social services and subsistence, due to the high property threshold and time limits (please see page: 26). These restrictions are expected to induce disproportionate impact on Roma and

¹⁶⁰*Structure of State Aid in Montenegro - Government Assistance for Economic Development*, the European Movement in Montenegro, Podgorica, 2012, p.6, available at: <http://www.emim.org/files/4.pdf>

¹⁶¹ This was also recommended by the EC in its the latest Progress Report on Montenegro, p.46

Egyptians given their low incomes, high unemployment rates and the lack of information on the new Law. Furthermore, although the new Law recognized, for the first time, the category of IDPs and DPs as persons who are entitled to social benefits, Roma and Egyptian IDPs without regulated legal status cannot benefit from these provisions as they do not possess personal documents required to enter the administrative procedure to access social subsistence and services.¹⁶² These problems have been also stated in the ECRI (European Commission against Racism and Intolerance) Report from February 2012 stating "that members of the Roma and Egyptian population have little or no general access to public services and social assistance".¹⁶³

These restrictive clauses, along with the amounts of the social subsistence that have been manifestly reported as inadequate, represent a step back in implementing the obligation to provide a maximum of available resources to achieve progressively the full realization of the rights guaranteed by the ICESCR. HRA and CEDEM stresses out that, on the other hand, Roma and Egyptians have very limited possibilities to contest such decisions, due to the lack of knowledge and funds, and the fact that the Law on Free Legal Aid does not cover administrative litigations upon which the decisions on access to social benefits are based.¹⁶⁴

Recommendations:

- **Develop and implement a clear program of research and analysis related to the indicators of social exclusion of Roma and Egyptians as of the most marginalized community;**
- **Ensure monitoring and impact assessment of social policy measures intended at Roma and Egyptians, including the assessment of key statistical indicators, based on ethnicity;**
- **Adopt the missing secondary legislation and the Law on Social Entrepreneurship to allow effective implementation of the Law on Social and Child Protection from 2013 as well as to create additional employment opportunities through social economy concept;**
- **Devise and implement anti-discrimination training programs for staff working in social care institutions;**
- **Extend the scope of the Law on free Legal Aid to administrative litigations as well, so as to allow those nominally entitled to social welfare benefits to contest a decision regulating their (non) access to those benefits.**

¹⁶²Study: *Roma and Egyptian Employment in Montenegro: key obstacles and challenges*, CEDEM, Podgorica, February 2014, p.37

¹⁶³ECRI Report on Montenegro, p.27, available at: <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/montenegro/MNE-CbC-IV-2012-005-ENG.pdf>

¹⁶⁴*Report on the implementation of Free Legal Aid*, Civic Alliance/CEDEM, Podgorica, November 2013, p. 35, available at: <http://www.cedem.me/en/ostala-istraivanja/finish/38-ostala-istraivanja/434-istraivanje-sistema-besplatne-pravne-pomoj-u-crnj-gori.html>

Article 10 – Protection of the family, mothers and children

Grave violations of the rights of Roma and Egyptian children have been noticed as a consequence of children being forced into begging and other forms of the street work. There is no improvement in preventing and sanctioning the practice of minor forced marriages among RE population.

Domestic violence and child begging largely affect the Roma community,¹⁶⁵ making Roma women, children and youth particularly vulnerable to trafficking in human beings and sexual exploitation, as stated by the Protector of Human Rights and Freedoms in his Report from 2012¹⁶⁶ due to offhand attitudes towards education, strong adherence to tradition and ineffective work of the multidisciplinary teams that are attached to local social care centers and tasked with the protection of children from neglect and abuse. Namely, the enforcement of sanctions against parents whose children are involved in begging has still not been effective and only 19 complaints have been submitted to the authorities within two campaigns (“Beggar” and “Stop begging”) during 2012/2013.¹⁶⁷ The UN Committee on the Rights of the Child has also been concerned by a large number of children, mainly of Roma origin, living and working on the streets.¹⁶⁸

As the protection of family rights and right to marriage is concerned, forced marriages among minors have been noticed, but this phenomenon has not been thoroughly investigated and prosecuted by the state. Namely, several cases of forced marriages among local Roma and Egyptians, closely interlinking with trafficking in human beings, have been reported to the Police and the Prosecution by local Roma NGOs, but public prosecution has not processed any of such cases to date¹⁶⁹ reportedly due to the lack of sufficient and reliable evidence.¹⁷⁰ No prevention and repatriation mechanisms and support services for the victims of such marriages have been established so far.

Recommendations:

- **Allocate appropriate means and resources for the implementation of the Protocol on cross sector cooperation that was signed in April 2014 between Ministry of Labor and**

¹⁶⁵ Progress Report, p.46

¹⁶⁶According to this report, 19.4% of children who have been exposed to sexual exploitation are Roma. More details available at:

http://www.ombudsman.co.me/djeca/docs/110420133_kompilacija_izvjestaja%20konacna.pdf

¹⁶⁷*Situation report in the area of judicial reform and human rights*, p. 48

¹⁶⁸*Recommendations to Montenegro by the UN Committee for the Rights of the Child* (2010); *Conclusions of the UN Committee for the Rights of the Child on the situation of child's rights*, October 2010, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/MNE/CO/1&Lang=En

¹⁶⁹ Documentation of the Centre for Roma Initiatives and the First Women's RAE Network

¹⁷⁰*Situation Report on the state of judiciary, corruption and human rights*, CRNVO, October 2013, page 48, available at: <http://www.cedem.me/en/publications/finish/48-publikacije-eng/451-situation-report-in-the-area-of-judicial-reform-and-human-rights-chapter-23-in-montenegro-in-the-period-from-10-october-2012-to-1-october-2013.html>

Social Welfare, Ministry of Education and Ministry of Health, with the aim to improve their mutual work on preventing the abandonment and abuse of children;

- **Ensure the consistent implementation of the criminal provisions relating to trafficking in human beings, including through intensifies training for immigration and other officials tasked with the early detection of (potential) victims of trafficking, with special emphasis on Romani and Egyptian women and girls – victims of forced marriages;**
- **Increase the scope and number of police actions targeting organizers and associates in child begging so as to better prevent and sanction begging by underage Romani and Egyptian children.**

Article 11 – The right to an adequate standard of living

Exercising the right to adequate standard of living represents a significant problem for the RE population, especially for those living in slums and substandard informal settlements with very limited access to infrastructure that is essential for health, safe housing, sanitation, comfort and nutrition.

According to CEDEM's research, over 90% of families of Roma and Egyptians in Montenegro live in non-urban, disordered and extremely environmentally polluted areas. The percentage of 34.78% Roma and Egyptian families have their own houses, 4.34% of them live in their own condos, 42.39% live in shacks that are categorized as emergency accommodation, 17.05% rent apartments, while 1.44% of this population lives in tents.¹⁷¹

Several Roma families have faced the possibility of being forcibly removed from their tenure, mostly in situations where they have built informal buildings on the state-owned property or on the land of the private owner. The landmark case for this is the settlement Zverinjak, a poor neighborhood on the outskirts of Niksic and a home for displaced persons from Kosovo, users of social care, including elder and children, who are living under substandard conditions, facing forced eviction.¹⁷² The resolution of this problem has been recently found in close cooperation among the owner of the land, UNHCR and the authorities and concerns building of eight apartments for the families from Zverinjak.¹⁷³ However, the funding is still missing for one object.

After the European Commission and several treaty bodies, including ECRI, raised concerns on living conditions of Roma and Egyptians in the refugee Camp Konik in Podgorica, the Government has

¹⁷¹While 29,78% respondents ranked housing as their second priority, after education: *Needs Assessment of Roma and Egyptian population in Montenegro*, CEDEM, Podgorica, October 2013, p.12, available at:

<http://www.cedem.me/en/publications/finish/48-publikacije-eng/542-needs-assessment-of-re-population-in-montenegro.html>

¹⁷²Press Release of the Human Rights Action on Zverinjak problem, available at: <http://www.hraction.org/?p=7203>

¹⁷³<http://www.un.org.me/news/1071/127/HOMES-FOR-THE-VULNERABLE-FROM-THE-ZVERINJAK-SETTLEMENT-ALTRUISM-AT-WORK>

undertaken measures to improve housing conditions for the residents of the camp, including through the adoption of the Law on Social Housing¹⁷⁴ that created legal preconditions for the construction of 90 residential units and a multipurpose center within the project “Permanent solutions for Camps Konik I and II” - IPA 2011. Conditions for solving residential problems of displaced persons residing in collective centers have been also created within the Regional Housing Program (Sarajevo process)¹⁷⁵, through the provision of locations for the construction of residential buildings in the municipalities of Nikšić, Pljevlja, Berane, Herceg Novi and Podgorica. However, one should bear in mind that Konik in the capital of Podgorica is not the only slum Roma settlement, although it is the largest and most evident to international organizations. The Regional Housing Program is very important, although it is questionable whether its funds will be able to answer the existing need for adequate social housing throughout Montenegro. Namely, 5,500 displaced and 11,000 internally displaced persons are considered to live in Montenegro, while this Program is intended at the total number of 6,063 displaced and internally displaced persons (1,177 households) in Montenegro. Stronger efforts are therefore needed to facilitate transparent and timely implementation of these projects as well as to ensure more state funding and proper involvement of local Roma and Egyptian communities in decision making process.

Furthermore, although the Law on Social Housing recognizes Roma and Egyptians as one of its priority target groups, its application is questionable due to severe lack of financial resources and capacity of local self-governments to implement social housing programs. Namely, quality financial basis for this Law has not been developed, so the financing of the Law largely depends on donor funding. Effective implementation of the Law is also hindered by the delays in the development of the General Program on Social Housing that should contain the definition of central and local government support in housing for the socially vulnerable groups, including identification of low-income and vulnerable groups requiring special care and developing appropriate tools for determining and addressing social housing needs. The Law on the Legalization of Informal Buildings that would allow the legalization of informal housing facilities, which are predominantly inhabited by Roma, has not yet been adopted.

Secondly, although the Law recognizes homeless people as one of the target groups, it does not entail obligatory measures to prevent homelessness by establishing proper shelters (please see page 38). HRA and CEDEM recall that this was done despite the lack of institutionalized care for these persons and regardless of the constitutional provision that stipulates the obligation of the state to provide financial security to a person who is incapable of work and cannot provide means for living (Article 67(2)).¹⁷⁶ The support and care for these persons thus depend exclusively on the capacities of local self-governments most of which are facing budget deficits and cutoffs. In addition to financial shortcomings, local self-

¹⁷⁴ Prior to adoption of this Law, housing and housing relations were governed by the Ownership Rights Act (Sl. list CG, 19/09), the Strata Titles Act (Sl. list RCG, 71/04), also regulating the purchase of leftover socially-owned apartments, and by the Housing Cooperatives Act (Sl. list CG, 73/10) and the Strategy for Combating Poverty and Social Exclusion.

¹⁷⁵<http://www.coebank.org/Contenu.asp?arbo=164&theme=2&ChangeLangue=EN>

¹⁷⁶ Available at: <http://www.skupstina.me/images/documents/constitution-of-montenegro.pdf>

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governments are facing important capacity constraints and lack of accountability in their attempt to address the housing needs of vulnerable groups. Namely, pursuant to the 2007 Strategy for Combating Poverty and Social Exclusion in Montenegro, comprehensive housing construction activities have been undertaken over the past year for the users of the right to family care, including Roma beneficiaries of this care. However, the amount of 390,000 Euros that was intended to municipalities involved in this initiative (Nikšić, Berane, Bijelo Polje), was not used as intended and within contracted deadline, thus leaving many Roma and Egyptians homeless.¹⁷⁷

Recommendations:

- **Conduct baseline research to compile precise data about the settlements and buildings where Roma and Egyptians live, especially about informal buildings that fall under minimal standards of safety housing and are not eligible for legalization;**
- **Ensure conditions for the proper implementation of the Law on Social Housing, by introducing housing subsidies for those unable to attain affordable housing, as well as by supporting the development of the General Program on Social Housing by the Ministry of Tourism and Sustainable Development as well as by crafting local social housing programs and facilitating the involvement of Roma and Egyptian stakeholders in that process;**
- **Incorporate legal guarantees for the alternative accommodation for all people in need who do not meet the conditions for social housing (e.g. non-regulated legal status is a precondition to access this right), so as to protect such people from living in unsafe tenure as well as from forced evictions, without ensuring any alternative accommodation.¹⁷⁸**

Article 12 - The right to physical and mental health

Lack of personal documents still prevents Roma and Egyptians who have no regulated legal status to effectively access the health system.

As the laws governing the health care system of Montenegro does not allow the collection of data by ethnicity, the precise number of Roma and Egyptian users of health care services can hardly be found

¹⁷⁷ Request from Biljana Alković, president of the NGO Institute for Social Inclusion, at that time the coordinator of the national DW team, to the Minister for Human and Minority Rights the return funds from municipalities which spend it inappropriately, Podgorica, 17 February 2011, RSF Documentation; “Alković: Dinoša to terminate the contract”, Vijesti, 18 February 2011: taken from the *Human Rights Report*, HRA, Podgorica, p. 529, available at: file:///D:/PODACI/Downloads/Human_Rights_in_Montenegro_2010-2011.pdf

¹⁷⁸ Both CESCR and the Commission on Human Rights also focused on forced evictions as gross violations of human rights (General Comment No. 7 The right to adequate housing (Art.11.1): forced evictions 05/20/1997, Commission on Human Rights, Resolution 1993/77, p. 1), *Human Rights Report*, HRA, Podgorica, p. 519, available at: file:///D:/PODACI/Downloads/Human_Rights_in_Montenegro_2010-2011.pdf

and thoroughly analyzed so as to identify policy and implementation gaps. However, some general remarks may be drawn. To illustrate, mechanisms for organized preventative actions in health care system, such as prevention of diseases and epidemic in isolated settlements have not been developed yet. This is especially affecting segregated Roma and Egyptian settlements that live nearby dumpsites.¹⁷⁹ According to CEDEM research published in October 2013, the right to health care is used by all family members in 52.17% cases; in 47.83% cases only part of family members exercise this right.¹⁸⁰

Problems are noted in relation to those Roma and Egyptians who do not have Montenegrin citizenship (primarily former IDPs) as well. Although they are entitled to appropriate health care protection according to the Provision on the health care protection of foreigners, the implementation of the Provision raises problem in practice that are being resolved individually and with support from NGOs, by using informal mechanisms of communication.¹⁸¹ Also, problems occur when a mother who gave a birth to a child does not have any personal documents, so her child cannot enroll into the registry of birth, thus facing a great risk of statelessness. The state claims there are no such cases although a comprehensive research has never been conducted, while NGOs claim there are. Concretely, the Centre of Rome Initiative has data about 15 children that are not registered in the birth registry in Niksic.¹⁸²

Recommendations:

- **Intensify the promotion and organization of regular preventive and systematic medical check-ups of Romani and Egyptians, especially of women and children, including through tailored informational campaigns on health-related rights;**
- **Develop relevant indicators for monitoring the health condition of Roma and Egyptians and start maintaining ethnically segregated statistics relating to Roma and Egyptians in the health sector;**
- **Introduce the institute of the health mediator profession in health facilities and ensure sufficient means for its funding.**

¹⁷⁹*Civil Society Monitoring on the implementation of the National Roma Integration Strategy and Decade Action Plan in Montenegro in 2012 and 2013*, p.64

¹⁸⁰*Needs Assessment of Roma and Egyptian population in Montenegro*, CEDEM, Podgorica, October 2013, p.12

¹⁸¹The number of IDPs who have not yet filed requests to regulate their status is almost 3,000. This is mostly due to the large number of those who do not have documents: *Strategy for improvement of position of Roma and Egyptians in Montenegro 2012–2016*, p. 5, available at: http://www.romadecade.org/cms/upload/file/9310_file2_strategy-for-improving-the-position-of-roma-and-egyptia.pdf

¹⁸²*Supra*,65

Articles 13 and 14 - The right to education

High drop-out rates, especially among girls, segregation in education and low educational outcomes constitute the most concerning problems for effective access of RE population to education.

In all Montenegrin schools in 2013/2014, there were 1,583 pupils of Roma and Egyptian nationality.¹⁸³ Despite the fact that measures for increasing educational inclusion of Roma and Egyptians, such as scholarships and free-of-charge textbook and transportation, have produced an evident progress,¹⁸⁴ significant problems in the area of education still exist. High drop-out rates continue to be noticed, especially among girls, alongside low education achievements of those enrolled in schooling. High drop-out rates and the low proportion of female Roma students among the total population of Roma students has been also recently indicated by the European Commission.¹⁸⁵ Educational outcomes are especially low among IDP Roma and Egyptian pupils.

The segregation of Roma pupils is still present in the special branch of the primary school organized in the Konik Camp ("Bozidar Vukovic Podgoričanin"), although available figures show decrease in the number of Roma and Egyptians attending only this school (from 270 in 2012/2012 to 167 in 2012/2013).¹⁸⁶ Preschool education is still a serious problem; the coverage of children in pre-school education is still low. Overall, 13.81% RE children were in preschool institutions, which is half the number of children at the national level (26,65%).¹⁸⁷ Free-of-charge textbooks are provided only for children up to the third grade, which affects the drop-out in higher grades. There are considerable delays in providing textbooks, sometimes up to 2 months. The free-of-charge transportation is mainly functioning only in two municipalities, Podgorica and Tivat.¹⁸⁸

Systemic solutions to prevent girls' drop-out and ensure attendance to compulsory primary education is still missing, although a Commission for preventing drop-out among Roma and Egyptian children has

¹⁸³ Data received from NGO Institute for Social Inclusion

¹⁸⁴ The number of Roma and Egyptian children in primary and secondary schools in academic 2012/2013 is three times larger comparing to 2001/2002, *Situation Report in the area of judicial reform and human rights*, CRNVO, Podgorica, November 2013, p.37, available at: <http://www.cedem.me/en/publications/finish/48-publikacije-eng/451-situation-report-in-the-area-of-judicial-reform-and-human-rights-chapter-23-in-montenegro-in-the-period-from-10-october-2012-to-1-october-2013.html>

¹⁸⁵ *Montenegro 2014 Progress Report*, {COM(2014) 700 final}, p.46, available at:

http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-montenegro-progress-report_en.pdf

¹⁸⁶ *Civil Society Monitoring on the implementation of the National Roma Integration Strategy and Decade Action Plan in Montenegro in 2012 and 2013*, Decade of Roma Inclusion Secretariat Foundation, Budapest, September 2014, p. 53, available at: http://www.gamn.org/images/docs/en/civil-society-monitoring-report_en.pdf, *Report on the implementation of the Strategy for improvement of the status of Roma and Egyptian in Montenegro for 2013*, Government of Montenegro, March 2014, p.8, available at: [file:///D:/PODACI/Downloads/18_16_28_03_2013%20\(3\).pdf](file:///D:/PODACI/Downloads/18_16_28_03_2013%20(3).pdf)

¹⁸⁷ *Civil Society Monitoring on the implementation of the National Roma Integration Strategy and Decade Action Plan in Montenegro in 2012 and 2013*, p.53

¹⁸⁸ *Ibid*, p. 7

been recently created. Although the Commission includes representatives of public administration, it is initiated and led by the NGO Institute for Social Inclusion and is not yet institutionalized. Roma mediators and educational assistants, whose work proved extremely important for both overcoming the language barrier and preventing drop-out, have yet to be fully integrated at all levels in the education system. Namely, the work of the educational assistants was paid by foreign organizations to date and they have not yet been recognized as necessary teaching staff to be paid from the state budget. Despite the slightly increased number of Roma and Egyptian students (15 of them is currently attending faculties in the country, in comparison with only few in recent years), the regulations that are defining conditions under which persons from those communities may enroll high education based on the principle of affirmative action are still missing.¹⁸⁹

Recommendations:

- **Introduce effective mechanisms to prevent and manage drop-out, especially among girls, and to monitor their educational outcomes;**
- **Ensure continuing support for the education of Roma and Egyptians, through regular provision of scholarships, education incentives, free textbooks and school supplies, for all levels of education, particularly for pre-school and high school education. Efforts should be also made to leverage free travel services for Roma and Egyptians living in all cities;**
- **Continue with the desegregation process so as to increase the number of children enrolled in city schools in Podgorica.**

¹⁸⁹*Situation report in the area of judicial reform and human rights*, p.47