Child Rights References in the Universal Periodic Review

Summary:
A compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the 'National Report', the 'Compilation of UN Information' and the 'Summary of Stakeholder's Information'. Also included is the 'Final Report' and 'Conclusions and Recommendations' from the Review.

Montenegro – 3rd Session – 2008
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National Report

13. On the basis of legal succession Montenegro became party to the Convention on the Rights of the Child, including both Optional Protocols.

21. Under the Constitution children enjoy rights and freedoms appropriate for their age and maturity level. The child is guaranteed special protection against psychological, physical, economic and any other exploitation or abuse. The Family Law provisions have been brought in line with the underlying principles of the United Nations Convention on the Rights of the Child, including abidance by the guiding principle of the best interest of the child, obligation of the state to respect and promote the rights of the child and undertake all measures to ensure his/her protection against neglect, abuse and exploitation. The Penal Code contains special provisions relating to minors, stipulates the conditions of application of such provisions and determines the limit of criminal liability of minors in regard of the application of sanctions. In accordance with the above, criminal sanctions cannot be applied against a minor younger than 14 years of age at the time of committing a criminal offence.

22. A pilot project carried out by the Ministry of Justice in cooperation with the UNICEF entitled “The Reform of Juvenile Judiciary” was initiated by the signing of a Memorandum on Cooperation between the Ministry of Justice, the Supreme State Prosecutor and UNICEF on 30 June 2006. This has set the basis for the implementation of a project entitled „Application of alternative measures and sanctions to minor offenders in Montenegro”, which creates conditions for application of the institute of out-of-court settlement between the injured party and the suspect for the purpose of compensation for damage in order that harmful consequences of the criminal offence can wholly or in part be eliminated. Under the project more than 100 professionals have been trained in the field of juvenile judiciary. Education has been organized on mediation between the victim and the offender and a comprehensive transformation of the Centre for Children and Young People has been initiated, entailing its reform and upgrading of the programme of work with the children-inmates, coupled with establishment of a Mediation Centre.


29. Over the preceding year a media campaign has promoted a telephone line to which citizens can direct their representations and complaints against actions by the police with special emphasis on the fact that each citizen has the right, among other things, to file a complaint if he/she believes to have been unlawfully detained. The issue of guaranteed human rights and freedoms and the issue of limitations thereof have also been addressed through the Law on Execution of Penal Sanctions stipulating a system of execution of sanctions, security and re-education measures. Actions subjecting a convicted person to any form of torture, cruel or degrading treatment, medical or scientific experiments are prohibited and punishable under the law and the person who has been victim of such treatments has the right to compensation for damage. The conditions made available to the convicted person enable the convict to fulfil his/her basic cultural and religious needs, as well as maintain personal hygiene and physical exercise. For the convicted persons and in particular minors and younger convicts of age who have not completed the elementary school, elementary school tuition is organized. In addition to this vocational training may also be organized.
62. According to the Constitution, everybody has the right to healthcare, and the healthcare costs for children, pregnant women, elderly, and disabled persons are covered from public funds, unless their healthcare costs are covered on some other grounds. General goals in respect to development of healthcare in Montenegro are defined by the Montenegrin Healthcare Development Strategy and the Master Plan for Development of Healthcare in Montenegro 2005 – 2010. The rights in area of healthcare are defined by the Healthcare Law, which is defining institutional conditions for the reform of the healthcare system, primarily of the primary healthcare. The basic concept of the law is defined by the healthcare policy and the healthcare development vision through: development of the public health system, providing primary healthcare to the entire population; increasing accessibility of the healthcare for population through introduction of the chosen team or chosen doctor (family doctor) system within primary healthcare; reorganization and empowerment of secondary and tertiary healthcare levels, and through development of special strategies for improvement of health and health conditions of vulnerable categories of population. The Healthcare Law lists medical measures and healthcare services that are financed from the mandatory healthcare insurance. The Law on Protection and Rights of Mentally Ill Persons was adopted in line with recommendations and Declaration of the World Health Organization.

66. It was reported that a team of experts from the OSCE and from the Council of Europe visited Montenegro to review the investigations on State Prosecutor, were arrested on suspicion of being involved in trafficking. The case was dropped, ostensibly for lack of evidence. It

66. It was reported that a criminal investigation had been opened into the case and that four people, including the Deputy politicians, judges, police and civil servants had tortured and raped her, along with other East European women, also trafficked and held

67. In line with the education reform principles, in 2004 a Law on Education and Upbringing of Children with Special Needs has been adopted, defining basic goals, as follows: providing equal education opportunities for all children; providing adequate conditions that enable optimal development; timely steering and inclusion into an appropriate educational program; individual approach; keeping the right balance between physical, intellectual, emotional, and social development; inclusion of parents into the processes of habilitation, rehabilitation, upbringing and education; achieving continuity of upbringing and educational programs; comprehensiveness and complexity of upbringing and education; organizing upbringing and education as close to home as possible. Implementation of the inclusive model of education has highlighted several key shortcomings, which are reflected in the following: undeveloped database and insufficient reach of children with special needs; inefficient procedure of steering children with special needs; insufficient horizontal and vertical circulation between mainstream and special schools, as well as within mainstream schools due to incompatible curricula; too many architectural barriers coupled with inadequate spatial and didactic conditions; insufficient systemic promotion of inclusive education. In order to eliminate the above shortcomings the Government has adopted an Inclusive Education Strategy, which relies on the existing, very intensive and rich experience, setting a framework that guarantees successful implementation.

72. In 2005, the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, including the establishment of national teams to combat trafficking in Montenegro, as well as the introduction of a criminal offence in the criminal codes of Montenegro, concerns remained for the Committee about the definition of trafficking, the lack of effective witness protection mechanisms and the apparent lack of awareness about trafficking in women and children on the part of law enforcement officials, prosecutors. In 2005, CESCRI also expressed its deep concern about the high numbers of trafficked women and children including for purposes of sexual exploitation, as well as about reported incidents of police involvement. The Committee urged the State to prosecute and punish perpetrators and corrupted law enforcement officials involved in trafficking, to provide medical, psychological and legal support to victims and to raise awareness about the dimension of the crime among law enforcement officials.65
the case and presented to the authorities a report about the shortcomings of the investigations by the police. The Government of Montenegro set up a commission to independently investigate the actions of the police and the judicial authorities. Reportedly, the OSCE was dissatisfied with the findings of the Commission.67 In its response, the Government provided information on the investigation that had taken place, the charges filed, and the dismissal of charges due to insufficient evidence.68 The Government also provided information that following the Independent Experts’ report, which concluded that the proceedings should be reinstated, the Deputy State Prosecutor and another Prosecutor had been dismissed and efforts had been undertaken to gather new evidence. The Government was unable to establish contact with the victim, who had moved to Canada, but noted that it was possible to re-open the case.69

23. In 1996, CRC recommended that the State accord greater attention and consideration to the development of a strong primary health-care system, which would accord due attention to developing a culture of nutrition, hygiene and sanitation education, transmitting health skills to parents, and enhancing participatory approaches to the distribution and use of resources throughout the health-care system.95 Additionally, CESCR in 2005 recommended that the State should ensure universal access to affordable primary health care, by increasing the number of family doctors and community health centres, and include all members of society, including refugees, internally displaced persons and Roma, in the compulsory health insurance scheme.96 The State should intensify its anti-smoking and healthy diet campaigns with a view to combating the causes of cardiovascular diseases.97

24. In 2005, CESCR urged the State to take effective measures to promote school attendance by Roma children and children belonging to other minority groups, as well as refugee and internally displaced children, by increasing subsidies, scholarships and the number of teachers instructing in minority languages.98 A 2004 UNDP report noted that 30 per cent of Roma children have never attended primary school in Serbia and Montenegro.99 The report underlined that access to education for members of the Roma population, refugees and IDPs was of particular concern, noting that there was no detailed data on the educational standards of Roma and other minorities, except information on the children of refugees and internally displaced persons. It was noted that the Roma population, as part of the internally displaced population, was facing considerable difficulties. It was also noted that according to estimates, the Roma population makes up the main part of the total of 1,200 primary school age children who do not go to school and that data about Roma enrolment in secondary schools and universities is not available.

30. The Representative of the Secretary-General on internally displaced persons following his visit recommended the following measures: (1) the provision of the possibility of integration as one form of durable solution besides return and resettlement to third countries to internally displaced persons; (2) the provision of access to secondary health care and social welfare also to IDPs without permanent residency; (3) the abolition of higher tax obligations for such IDPs as well as the requirement for employers to pay a special fee for employing them; (4) the adoption of a national strategy that would reach out to Roma, Ashkali and Egyptian IDPs and other minorities, and to provide particular support in the areas of housing, access to livelihoods, and education to, in particular, those living in irregular settlements, by taking into consideration the size of their families and their particular cultural needs.118

Stakeholders Compilations

32. According to ERRC, a significant proportion of Roma living in Montenegro are unemployed and live in poverty. The effects of extreme poverty are particularly noticeable amongst Roma refugees and displaced persons. Unemployment or involvement in the informal sector is particularly widespread amongst Romani women. There is a scarcity of jobs available for Roma, as well as racial discrimination in both hiring procedures as well as within the workplace. Children often need to work instead of or besides going to school, which hinders their education and places their health at risk. In addition to general high unemployment of Montenegrin Roma, unemployment is particularly acute among Roma refugees and displaced persons. Their social vulnerability is exacerbated by their not being entitled to social assistance, at a time when humanitarian support is no longer widely available. 43

38. HRA maintained that elementary education has still not been provided for a significant population of Roma children and not enough has been done to suppress a regular and massive school drop-off. Except for Albanian, education in minority languages has not yet been provided. Children and students with disabilities still suffer from exclusion from officially proclaimed inclusive education at all levels. 49

39. Regarding early drop out rates of Romani children, the major contributing factors relate to violations of other economic and social rights, as numerous Romani parents cannot afford the costs associated with education - the general economic situation of Roma is dire, and significant proportions of Roma in Montenegro live in extreme poverty, under highly substandard living conditions. Under these conditions, many Romani children have to start contributing to family income at a very early age. This seriously hinders their access to primary education; additionally, some of the income-generating activities, such as collecting scrap iron or rummaging through waste, pose health risks. Racial discrimination at school, taking place in forms such as harassment by non-Romani children, lack of attention or verbal abuse by non-Romani teachers, also contributes to the early drop-out rate. Some interviews in the ERRC research indicated that a number of parents was also considerably discouraged by the lack of opportunities that would await their children when completing education, as the unemployment rates among Montenegrin Roma are very high. The ERRC noted that drop out rates are especially prevalent amongst Romani girls. 50

40. ERRC noted that some Romani interviewees reported that their children had been placed in special schools for children with mental disabilities, although their children had no disabilities themselves, merely for reasons such as difficulties speaking the majority language, or lack of available places in regular schools. In some cases, Romani children were referred for enrolment to schools for adults, or to “special Romani classes” at regular schools. This leads to disproportionate overrepresentation of Romani children in special schools, special classes or schools for adults, whereas education in such schools considerably limits the children’s future educational and career opportunities. Also, many Romani women interviewees noted that their children were commonly placed at the back of mixed classrooms, away from other children, effectively creating spatial segregation within the classroom. According to the ERRC research, many non-Romani children reportedly do not interact with Romani schoolmates, or participate in acts of harassment against Romani
41. ERRC recommended that the authorities in Montenegro prioritize education in its Roma-related policies.

42. SRI noted that the introduction of “civic education” lessons in primary and secondary schools two years ago significantly contributes to developing a society which cherishes a culture of human rights. However, SRI considers that even though significant attention is paid to minorities, tolerance, solidarity and gender equality in the curriculum and textbooks, the status and promotion of the rights of sexual minorities is not addressed at all. On the other side, civil society has developed several alternative and very successful educational programmes on human and minority rights that include references to LGBT rights.

Final Report

28. Germany welcomed the measures taken to improve the participation of Roma children in primary education and asked for further information on the impact of these measures and on actions to improve the participation of the Roma community at different educational levels. Although it welcomed some positive results towards improving the observance of international standards in the judiciary, it noted that further efforts were needed to improve their judicial enforcement. With regard to the situation of human rights defenders and journalists, Germany recommended that Montenegro effectively address politically motivated attacks or attacks from organized crime against journalists and other human rights defenders, including by undertaking prompt, thorough and impartial investigations into these crimes and by bringing those responsible to justice.

33. Italy welcomed the progress made in strengthening the legislative framework for minority protection but noted that implementation was lagging, in particular with regard to the Roma, Ashkali and Egyptian populations. It recommended that Montenegro take all necessary measures to guarantee full access to education to children from those communities and support their social inclusion. Italy welcomed the law on gender equality passed in 2007; however, it noted that discrimination still exists and that domestic violence against women was recently described by the European Commission as widespread. Italy recommended that Montenegro take effective measures to strengthen its domestic legislation concerning domestic violence against women. Montenegro’s legislation on freedom of religion was not fully in line with standards enshrined in article 9 of the European Convention on Human Rights and the relevant case law of the European Court of Human Rights. In this respect, Italy recommended that Montenegro take all adequate measures to guarantee the protection and promotion of religious freedom, including by adopting legislation with regard to the recognition of churches and the property rights of religious communities.

41. Montenegro reported on measures to integrate Roma in the formal education system, and has provided text books to all Roma children in primary school. Montenegro organized for Roma individuals in university studies to become teachers, and introduced Roma assistants for Roma pre-school and school children, removing language barriers. Special databases are established to follow the achievement on Roma children and the number of children going to school. All Roma attending high school and university are granted scholarships. The Statistics Office collected data on gender, education, health and housing; according to preliminary results, there are about 10,500 Roma in Montenegro. The delegation noted that databases are being established in the employment agency, and the Government gives tax reliefs to employers who employ Roma.

47. Poland, while recognizing that corruption remained a serious problem in Montenegro, noted with appreciation the measures taken to combat corruption and sought clarifications about the concrete results achieved. Poland recommended that Montenegro continue and further strengthen its anti-corruption policy. Poland commended the Government for measures taken to address the issue of trafficking in women and children and enquired about specific actions and programmes to provide assistance exclusively for the child victims of trafficking, including those for the purposes of sexual exploitation.

57. Bangladesh welcomed some of the concrete steps taken by the Government since the independence of Montenegro in 2006. However, it expressed its concern at the situation of the Roma community, particularly with regard to access to education and health services. While noting the measures taken to improve their situation, Bangladesh stated that a comprehensive anti-discrimination legislation, as suggested by some treaty bodies, could make a positive difference, and expressed its hope that such a bill would be adopted as soon as possible. Bangladesh noted that the high incidence of trafficking in women and children for the purpose of sexual exploitation was a serious concern. It asked the Government to look into this issue seriously and bring perpetrators to justice. It recommended that Montenegro deal with the issue of trafficking in persons, particularly women and children for sexual exploitation, with the full cooperation of countries in the trafficking chain. It also recommended that effective measures be taken for the full enjoyment of human rights of the Roma, Ashkali, and Egyptian minorities, especially to guarantee their economic, social and cultural rights.

Conclusions and Recommendations

9. Enact new measures to combat the trafficking in women and children for the purposes of sexual exploitation (Croatia); deal with the issue of trafficking in persons, particularly women and children for sexual exploitation, with the full cooperation of countries in the trafficking chain (Bangladesh);

17. Elaborate a census, in conjunction with UNDP, UNHCR and civil society, on the number of Roma, in particular refugees and displaced Roma (Algeria); develop reliable statistics on the number of children belonging to the Roma, Ashkali and Egyptian minorities in the Montenegrin school system (Luxembourg); evaluate the access of the various categories of Roma to education, jobs and social protection (Algeria); within the context of the National Programme of Action, adopt further measures and implement programmes to provide access and opportunities for ensuring better social and political integration of Roma groups in Montenegro (Chile); take all necessary measures to guarantee full access to education for children belonging to Roma communities and support their social inclusion (Italy); adopt a strategy to ameliorate the living conditions of the Roma population, in particular, amending legislation to ensure access
to basic social services, condemn discrimination and to register undocumented Roma refugees (Canada); take effective measures for the full enjoyment of human rights by the Roma, Ashkali and Egyptian minorities, especially to guarantee their economic, social and cultural rights (Bangladesh); actively seek to promote awareness about the Roma population in order to combat discrimination (Canada); enact new measures against the discrimination of the Roma population (Croatia);