



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Concluding observations on the initial report of Montenegro\*

1. The Committee considered the initial report submitted by Montenegro (CCPR/C/MNE/1) at its 3108th and 3109th meetings (CCPR/C/SR.3108 and 3109), held on 14 and 15 October 2014. At its 3127th (CCPR/C/SR.3127), held on 28 October 2014, it adopted the following concluding observations.

##### A. Introduction

2. The Committee welcomes the submission of the initial report of Montenegro and the information presented therein. It expresses appreciation for the opportunity to engage in a constructive dialogue with the State party's delegation on the measures taken by the State party to implement the provisions of the Covenant since its entry into force in the State party. The Committee is grateful to the State party for its written replies (CCPR/C/MNE/Q/1/Add.1) to the list of issues which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

##### B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party since the entry into force of the Covenant in 2006:

(a) The adoption of Law on Amendments to the Law on the Protector of Human Rights and Freedoms of Montenegro on 18 June 2014;

(b) The adoption of the Law on Amendments to the Law on the Prohibition of Discrimination on 26 June 2014;

(c) The adoption of the Law on Amendments to the Law on Election of Councillors and Members of Parliament on 21 March 2014;

(d) The adoption of the Law on Free Legal Aid on 15 April 2011;

(e) The adoption of the Action Plan and Strategy for Improving Quality of lives of LGBT Persons (2013-2018);

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\* Adopted by the Committee at its 112th session (7–31 October 2014).



- (f) The adoption of the Plan of Action for Gender Equality (2013-2017);
  - (g) The adoption of the National Strategy for the Fight against Trafficking in Human Beings (2012-2018).
4. The Committee welcomes the ratification of, or accession to the following international instruments by the State party:
- (a) The Optional Protocol to the Convention on the Rights of the Child in 2013;
  - (b) The Convention for the Protection of All Persons from Enforced Disappearance in 2011;
  - (c) Convention on the Rights of Persons with Disabilities in 2009;
  - (d) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 2007;
  - (e) Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime in 2006.

### **C. Principal matters of concern and recommendations**

#### **Applicability of the Covenant in domestic courts**

5. The Committee takes note of the information that the provisions of international human rights treaties, including those under the Covenant, can be invoked directly in court. The Committee notes, however, that there are only limited examples where the provisions of the Covenant have been invoked. While welcoming the trainings carried out by the Judicial Training Centre, the Committee expresses concern about the insufficient awareness of the provisions of the Covenant among the judiciary and the wider legal community, and the insufficient application of the Covenant in the domestic legal system (art. 2).

**The State party should take appropriate measures to raise awareness of the Covenant among judges, lawyers and prosecutors to ensure that its provisions are taken into account before national courts. In this regard, the State party should take effective measures to widely disseminate the Covenant in the State party.**

#### **Remedies for human rights violations**

6. The Committee notes with concern the difficulties faced by individuals trying to obtain reparation from the State for human rights violations, in particular regarding war crimes. In this regard, the Committee is concerned that the law that provides pensions for war victims only provides reparations to war victims who have suffered at least 50 per cent bodily damage due to injuries received, and that the State party does not recognize families of missing persons as deserving of reparations (arts. 2, 6 and 7).

**The State party should ensure that all victims and their families, including victims of mental torture, are granted adequate reparations for human rights violations, such as rehabilitation measures, fair and adequate compensation and access to social programmes. It should also ensure that relatives of disappeared persons have access to adequate compensation.**

#### **National human rights institution**

7. While noting the adoption of the new Law on Amendments to the Law on the Protector of Human Rights and Freedoms of Montenegro, the Committee is concerned about a reported lack of capacity in implementing a broad mandate for the national human

rights institution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (art. 2).

**The State party should enhance the capacity of the national human rights institution to implement a broad human rights mandate, and provide it with adequate resources, in line with the Paris Principles .**

#### **Discrimination on the grounds of sexual orientation and gender identity**

8. While welcoming various legislative and institutional measures adopted to protect the rights of lesbian, gay, bisexual and transgender (LGBT) persons, the Committee is concerned at the prevalence of stereotypes and prejudices against LGBT persons. In this regard, it is particularly concerned about reports of acts of violence against LGBT persons and the lack of effective investigation and prosecutions. In particular, the Committee is concerned that human rights violations which occurred during the Budva and Podgorica Prides were not thoroughly investigated (arts. 2 and 26).

**The State party should intensify its efforts to combat stereotypes and prejudice against LGBT persons, including by launching a sensitization campaign aimed at the general public and providing appropriate training to public officials so as to put an end to the social stigmatization of LGBT persons. The State party should ensure that all reports of violence against LGBT persons are effectively investigated and that perpetrators of violence based on sexual grounds are prosecuted and sanctioned.**

#### **Accountability for past human rights violations**

9. The Committee is concerned at the persistence of impunity for serious human rights violations committed during the armed conflict in the 1990s. While it notes that the authorities of the State party have conducted investigations into such crimes, it regrets that few investigations have led to prosecutions, and that relatively light sentences have been handed down, which are not commensurate with the gravity of the crimes committed. The Committee is particularly concerned at the final verdict reached in the Bukovika case, in which it was found that the acts perpetrated did not constitute a criminal offence by the law at the time when it was committed, despite the exception contained in article 15, paragraph 2 of the Covenant. The Committee also regrets that the fate and whereabouts of 61 persons who went missing during the war remain unresolved (arts. 2, 6 and 7).

**The Committee recalls that the State party has an obligation to fully investigate all cases of alleged violations of articles 6 and 7 of the Covenant, and that article 15 permits the State party to employ retroactive criminal statutes to bring those responsible for such violations to trial when the acts were criminal according to the general principles of law recognized by the community of nations at the time when they were committed. The State party should take immediate and effective steps to investigate all unresolved cases of missing persons and bring perpetrators to justice. It should ensure that the relatives of disappeared persons have access to information about the fate of the victims.**

#### **Non-discrimination and equality between men and women**

10. While welcoming the adoption of Plan of Action for Gender Equality 2013-2017, and the Law on Amendments to the Law on Election of Councillors and MPs (21 March 2014), the Committee notes with concern that women remain underrepresented in senior and decision-making positions in the public sphere, including the judiciary (arts. 2, 3 and 26).

**The State party should strengthen its efforts to increase the participation of women in the public sector, and if necessary, through appropriate temporary special measures to give effect to the provisions of the Covenant.**

#### **Violence against women**

11. While noting the 2013 amendments to the Criminal Code which have introduced new security measures to protect women from domestic violence, the Committee notes with concern the continuing reports of gender-based violence, sexual harassment and domestic violence against women and children in the State party. The Committee is particularly concerned at reports of lack of investigation and prosecutions as well as lenient sentences imposed on perpetrators. Finally, the Committee is concerned about the lack of a sufficient number of shelters for victims of domestic violence (arts. 3, 7 and 24).

**The State party should adopt a comprehensive approach to preventing and addressing gender-based violence in all its forms and manifestations. In this regard, it should intensify its awareness-raising measures among the police, judiciary, prosecutors, community representatives, women and men on the gravity of domestic violence and its detrimental impact on the lives of victims. The State party should ensure that cases of domestic violence are thoroughly investigated and that the perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and the victims adequately compensated. The Committee should also ensure the availability of a sufficient number of shelters with adequate resources.**

#### **Prohibition of torture and ill-treatment**

12. While welcoming the measures taken to combat and prevent cases of torture and ill-treatment committed by law-enforcement personnel, the Committee is concerned at the high number of reported cases of ill-treatment in detention centres and the low number of prosecutions of such cases (arts. 7 and 10).

**The State party should establish and reinforce the already existing mechanism to deal with allegations of ill-treatment. In this regard, the State party should ensure that law enforcement personnel receive training on investigating torture and ill-treatment, by integrating the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) in all training programmes for law enforcement officials. The State party should ensure that allegations of ill-treatment are effectively investigated, alleged perpetrators are prosecuted and, if convicted, punished with sanctions commensurate with the seriousness of the crime, and that victims are adequately compensated.**

#### **Corporal punishment**

13. While taking note that violence against children and corporal punishment is legally prohibited in schools and some institutional settings, the Committee notes that corporal punishment remains a concern especially in the home where it traditionally continues to be accepted and practised as a form of discipline by parents and guardians (arts. 7 and 24).

**The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.**

### **Trafficking in persons**

14. While taking note of the progress made with regard to combating trafficking in persons, the Committee is concerned at the prevalence of trafficking in persons, particularly of Roma, Ashkali and Egyptian girls and women. The Committee is also concerned at the low number of prosecutions and the lenient sentences imposed on traffickers (art. 8).

**The State party should vigorously pursue its public policy to combat trafficking, in particular of Roma, Ashkali and Egyptian girls and women. It should continue its efforts to raise awareness and to combat trafficking in persons, including at the regional level and in cooperation with neighbouring countries. The State party should also train its police officers, border personnel, judges, lawyers and other relevant personnel in order to raise awareness of this phenomenon and the rights of victims. It should ensure that all individuals responsible for trafficking in persons are prosecuted and punished commensurate with the crimes committed, and that victims of trafficking are rehabilitated.**

### **Administration of justice**

15. While welcoming the State party's efforts to strengthen the independence of the judiciary, the Committee is concerned about allegations of political interference with the judiciary. The Committee is particularly concerned at the procedure in the appointment and dismissal of judges, especially in misdemeanour courts, and the process by which funds are allocated to the judiciary. (art. 14).

**The State party should take steps to entrench judicial independence by ensuring that judicial appointments and dismissals are made according to objective criteria of competence and independence. The State party should also ensure that the budget allocation process should not interfere with the independence of the judiciary.**

### **Free legal aid**

16. While noting the adoption of the Law on Free Legal Aid and its ongoing reform, the Committee is concerned about the quality of the legal assistance provided and its accessibility by the most vulnerable groups (art. 14).

**The State party should review its free legal aid scheme to provide for free legal assistance in all cases where the interests of justice so require. It should also provide adequate resources to the free legal aid offices so that they can fully perform their functions, and introduce mechanisms for monitoring the quality of legal assistance provided.**

### **Rights of minorities, birth registration, refugees and internally displaced persons and early marriage**

17. While welcoming the efforts to address the challenges in the registration of births, the Committee is concerned about the frequent failure to issue birth certificates for Roma, Ashkali and Egyptian children. The Committee takes note of the Draft Law on Amendments to the Law on Non-Contentious Procedure, but regrets the lack of comprehensive strategy to identify children lacking birth registration and/or identity document, and to issue those documents retroactively (arts. 16 and 24).

**The State party should increase its efforts to improve birth registration and the provision of birth certificates, particularly among Roma, Ashkali and Egyptian children, through appropriate interventions such as awareness-raising programmes aimed at changing mindsets regarding the need to register births or obtain birth certificates. The State party should also take immediate measures to identify children**

**lacking birth registration and/or identity document and to ensure retroactive birth registration and issuance of documents for these children.**

18. The Committee is concerned that displaced persons and refugees, in particular Roma Ashkali and Egyptians, are not provided with sufficient support to obtain official documents for the purposes of applying for permanent residence status under the amended Law on Foreigners. The Committee is also concerned at the lack of infrastructure and basic services in the Roma, Ashkali and Egyptian refugee camps. In particular, the Committee is concerned that, despite the adoption of a strategy in 2012 to provide housing to Roma, Ashkali and Egyptians, the construction of housing for the inhabitants of the Konik camp has still not begun (arts. 2, 12 and 26).

**The State party should pursue its efforts to facilitate access by displaced persons and refugees to the procedure for obtaining permanent residence status and to ensure equal access to social and economic opportunities in the State party. It should also adopt and implement a sustainable strategy, in consultation with Roma, Ashkali and Egyptians living in camps, to improve their living conditions and access to basic services. The State party is reminded that any relocation must be carried out in a non-discriminatory manner and must comply with international human rights standards, including the rights of individuals concerned to be fully informed and consulted, to an effective remedy, and the provision of adequate alternative housing.**

19. While welcoming the efforts to address the de facto discrimination against Roma, Ashkali and Egyptians, the Committee is concerned that they continue to face discrimination in accessing housing, employment, education, social services and participating in political life. The Committee is also concerned at the persistence of child labour, particularly among Roma Ashkali and Egyptians, who are often engaged in harmful and exploitative labour, particularly in begging (arts. 2, 8, 24, 25, 26 and 27).

**The State party should take immediate steps, in consultation with the Protector of Human Rights and Freedoms, civil society organizations, and the Roma, Ashkali and Egyptians communities to improve their rights with regard to access to housing, health care, employment and their participation in the conduct of public affairs. The State party should redouble its efforts to eliminate child labour and should ensure that violations are effectively investigated and that those responsible are prosecuted and punished. The State party should also adopt sustainable strategies for providing support to families at risk of becoming victims of such practices and reinforce its awareness-raising campaigns.**

20. The Committee is concerned at reports of the persistence of early marriages in the State party, in particular among Roma, Ashkali and Egyptian communities (arts. 2, 3, 24 and 26).

**The State party should further strengthen measures to combat early marriage by pursuing community awareness-raising strategies focusing on the consequences of early marriages, in particular among Roma, Ashkali and Egyptian communities. The State party should also collect data on early marriages and provide it to the Committee in its periodic report.**

#### **Freedom of opinion and expression**

21. The Committee is concerned about multiple reports of intimidation and violence against journalists, in particular against those investigating issues such as organized crime or alleged links between organized crime and the authorities. The Committee is concerned that there has been a lack of investigation and prosecution of many of the attacks against journalists. The Committee is also concerned that, despite the State's intention to privatize the Pobjeda newspaper, one of the main newspaper in the State party, the State continues to

own and fund it and that the editorial content of Pobjeba is often used to criticise other journalists (arts. 6, 7 and 19).

**Recalling its general comment No. 34 (2011) on freedoms of opinion and expression, the Committee recommends that the State party take effective measures to fully guarantee the right to freedom of opinion and expression in all its forms. In this regard, according to general comment No. 34 “care must be taken to ensure that systems of government subsidy to media outlets and the placing of government advertisements are not employed to the effect of impeding freedom of expression”. The State party should further protect journalists and media against any form of violence and censorship. Moreover, the State party should investigate incidents of attacks on journalists and media, and bring those responsible to justice.**

#### **Dissemination of information relating to the Covenant and the Optional Protocols**

22. The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, the text of the initial periodic report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also suggests that the report and the concluding observations be translated into the other official language of the State party. The Committee also requests the State party, when preparing its second periodic report, to broadly consult with civil society and non-governmental organizations.

23. In accordance with rule 71, paragraph 5, of the Committee’s rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee’s recommendations made in paragraphs 7, 9 and 18 above.

24. The Committee requests the State party to provide in its next periodic report, due for submission on 31 October 2020, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing its next periodic report, to broadly consult civil society and non-governmental organizations operating in the country.

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