



**PERMANENT MISSION OF MONTENEGRO TO THE UNITED NATIONS
AND OTHER INTERNATIONAL ORGANIZATIONS IN GENEVA**

No. OHCHR/ 42-3

The Permanent Mission of Montenegro to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and, with reference to the latter's note OHCHR/RRDD/HRESI dated 4 July 2017, has the honour to enclose information prepared by the Government of Montenegro for the preparation of the OHCHR Report on protecting the rights of the child in humanitarian situations in accordance with the Human Rights Council resolution 34/16.

The Permanent Mission of Montenegro to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 5 September 2017

**Office of the United Nations High Commissioner for Human Rights
Geneva**



MONTENEGRO

Information for the preparation of the OHCHR Report on protecting the rights of the child in humanitarian situations – Human Rights Council resolution 34/16

1. Please provide information on the main challenges that your country is facing in protecting the rights of the child in humanitarian situations.

2015 has seen numerous migrations across Europe. Montenegro, although not directly affected by the migration crisis, is vigilantly monitoring the migration routes as they can change and redirect to Montenegro. This is why the country has adopted the Action Plan in case of possible inflow of refugees and migrants (in November 2015), so to have a ready response in the event the migration routes change. In July 2015, the Ministry of Labor and Social Welfare issued the *Guidelines for the Treatment of Unaccompanied Minors (Accommodation, Protection and Rehabilitation) and Other Vulnerable Groups*, grounded on the principles of the UN Convention on the Rights of the Child as well as the Convention on the Status of Refugees, concerning the rights of migrant children. The Guidelines emphasize that care must be taken of the best interests of the child, while persons working with minors must possess appropriate qualifications, and at all stages of the proceedings explain minors their rights and opportunities in a language understandable to them, etc.

The National Office for Combating Trafficking in Human Beings, in order to take proactive action and prepare for the forthcoming challenges, has developed a project: "Development of standard operational procedures (SOPs) for dealing with children separated from parents or unaccompanied, with particular emphasis on proactive screening for potential victims and actual victims of trafficking in persons." The project is supported by the UNICEF Representative Office in Montenegro and relies on the recommendations of countries, which in the midst of the crisis - when thousands of migrants and refugees crossed their territories - prepared procedures for action and documents to refer migrants and refugee children, especially unaccompanied children and/or children separated from parents to appropriate institutions/services. The project also relies on the work aimed at screening for potential victims of trafficking in human beings/children among illegal migrants and asylum seekers, but also provision of adequate guidance and protection. The project will be implemented by the end of the current year.

Regardless of the good strategic framework, the fact that our country never faced actual humanitarian crisis could pose a challenge in the upcoming period.

So far, Montenegro has paid great attention to the protection of children, first of all through the adoption of the 2013-2017 National Action Plan for Children and the harmonization of its legislation to a great extent with the principles of the UN Convention on the Rights of the Child. The 2013-2017 National Action Plan for Children is a strategic document passed by the Government of Montenegro, which defines the country's general policy towards children. In the following period, the competent institutions will face challenges concerning the follow-up activities aimed at preparing the new National Action Plan for Children. The basic mission of such institutions will be to ensure the integrity and coherence of the country's policy towards children and to coordinate the implementation of actions and measures in all sectors dealing with children.

2. Please indicate the current status of your country's legal framework with regard to the protection of the rights of the child in humanitarian situations. Please include information on legal provisions (including Constitutional provisions) which explicitly deal with the protection of children and their rights in humanitarian situations with regard to their physical and mental health, protection from exploitation, and education.

The Constitution of Montenegro in Article 74 - The Rights of the Child prescribes the protection and enjoyment of all the rights by the child, guaranteeing the child a special protection against psychological, physical, economic and any other exploitation or abuse.

Amendments to the Family Law ("Official Gazette of Montenegro", No. 053/16 of 11 August 2016) stipulate in Article 5a an explicit prohibition of discrimination against the child.

Also, Article 9a provides for the prohibition of corporal punishment of the child or any other cruel, inhuman or degrading treatment or punishment.

Also, the Criminal Code of Montenegro under the heading "Criminal Offenses against Sexual Freedom" prescribes more stringent and severe punishments for crimes committed against the child (acts of rape, sexual intercourse with a child, sexual intercourse by abuse of position, child pornography, abuse and neglect of children, etc.).

Montenegro has signed and ratified numerous international conventions protecting the rights of the child. The Constitution of Montenegro under Article 9 stipulates that the ratified and published international treaties and generally accepted rules of international law form an integral part of the internal legal order and have a primacy over national legislation and apply directly when regulating relations differently from the national legislation.

Trafficking in human beings, which in the broadest sense represents the most serious violation of fundamental freedoms and human rights, with women and children as most often victims, is prescribed as a criminal offense under Article 444 of the Criminal Code of Montenegro.

Furthermore, the Law on Foreigners (passed in December 2014 and entered into force on 1 April 2015) stipulates, inter alia, that a temporary residence permit on humanitarian grounds may be issued to:

- 1) a foreigner suspected of being a victim of a crime of trafficking in human beings or a victim of a crime of domestic battery/family violence,
- 2) a minor foreigner, who has been abandoned or is a victim of organized crime or, who, for other reasons, has been left without parental care or is unaccompanied,
- 3) a foreigner, for particularly justified reasons of a humanitarian nature.

A foreigner, who has been granted a temporary residence permit on humanitarian grounds, has the right to accommodation, health care, education, work and financial assistance, in accordance with the law.

Article 52 of the Law states that a foreigner for whom the police finds to had been a victim of a crime of trafficking in human beings has the right to decide, within 90 days, whether to cooperate in a criminal proceeding, or whether to join prosecution or be a witness in such proceeding (reflection period).

Article 53 of the Law provides that a foreigner referred to in paragraph 1 of this Article, for whom there is a reasonable fear that by giving evidence in criminal proceedings he/she may be exposed to danger to life, health, physical integrity or liberty, shall be provided with the protection and exercise of rights in accordance with the law governing the protection of witnesses.

An underage foreigner, who was determined to be a victim of a human trafficking offense, shall not be returned to any country if circumstances indicate that such a return would not be in his/her best interests, following a risk and security assessment.

Article 62 of the Law on Foreigners stipulates that without a temporary residence permit and work permit or work registration certificate, a foreigner may work in Montenegro only if he/she has a temporary residence permit granted on humanitarian grounds.

The Asylum Law regulates the following: under Article 11 it stipulates that account shall be taken of the special needs of minors, unaccompanied minors and other vulnerable categories. Under Article 28, the Law stipulates that a guardian shall be assigned to unaccompanied minors; in the course of the procedure care shall be taken of the accommodation, the psycho-physical condition, the best interests of the minor, and measures shall be undertaken to trace family members. As far as rights of asylum seekers are concerned, Article 29 stipulates that they are entitled to residence and freedom of movement, identity documents, aliens' travel documents for travel abroad, free primary and secondary education in public schools, accommodation and the appropriate standard of living, health care, family unity, legal aid, social

welfare, freedom of religion, access to the UNHCR and non-governmental organizations, as well as humanitarian assistance.

The Rulebook on the manner of exercising the right to accommodation of asylum seekers, persons granted refugee status, persons under subsidiary protection and persons granted temporary protection, under Article 7 provides that an unaccompanied minor shall be accommodated in premises suitable for minors, and considering his/her best interests may be accommodated jointly with his/her adult siblings or elderly relatives, while Article 11 of the Rulebook stipulates that children are entitled to snacks - minors up to 14 years of age are entitled to two snacks a day while minors older than 14 years are entitled to one snack.

3. Please provide information on national policies, strategies and action plans relating to the rights of children in humanitarian situations.

The Government adopted the 2013-2017 National Action Plan for Children (hereinafter referred to as the NPAD), which includes the policies for the protection of children in all social spheres of life.

In July 2015, the Ministry of Labor and Social Welfare issued *Guidelines for the Treatment of Unaccompanied Minors (Accommodation, Protection and Rehabilitation) and Other Vulnerable Groups*, based on the principles of the UN Convention on the Rights of the Child, as well as the Convention on the Status of Refugees, concerning the rights of migrant children.

The Feasibility Study for strengthening the capacity for the accommodation, protection and rehabilitation of unaccompanied migrant minors and other vulnerable groups of migrants, adopted by the Ministry of Labor and Social Welfare in July 2015, includes information on international standards, accommodation, protection and rehabilitation, the institutional framework, analysis of the situation with statistical surveys, as well as other information that comprehensively describe asylum issues concerning minors.

The Ministry of Internal Affairs is responsible for the protection and rescue, and also the implementation of measures and activities for the protection and rescue in case of natural and man-made catastrophic events, which jobs are carried out in accordance with the protection and rescue plans developed at three levels (national, municipal and entrepreneurial). These plans deal with and adequately assess the level of risk for citizens in Montenegro, and consequently for children. An integral part of these plans is also a database on the population living in the vulnerable areas, which indicates that children are adequately recognized through this assessment.

The most concrete planning, organization and implementation of protection and rescue measures against different types of disasters is done under the entrepreneurial plans for protection and rescue. This applies in particular to the protection and rescue plans against earthquakes and fires that in the previous period the Ministry of Labor and Social Welfare and the Institute for Education, within the framework of cooperation with UNICEF, have developed for several primary schools and preschool institutions in Montenegro, as well as for three resource centers for persons with disabilities and for the Youth Center in Bijela. In all the mentioned facilities, a quality risk assessment was carried out as well as the implementation of protection and rescue measures through the organization of evacuation exercises.

Amendments to the Law on Protection and Rescue, the application of which began on July 1, 2017, established the obligation to develop protection and rescue plans for every facility in Montenegro, and therefore all facilities where children are residing. Through the implementation of the aforementioned provisions of the Law, we are certain that in the coming period, all facilities where children reside will develop planning documents, meaning that child safety will be set at an adequate level.

The Institute for Education, Ministry of Internal Affairs - Directorate for Emergency Situations and UNICEF implemented the project "Emergency Preparedness, Response and Disaster Risk Reduction in Montenegro" in five primary schools in Montenegro, with the aim that students and entire schools acquire knowledge and build skills necessary for an adequate response to emergencies (December 2012 - November 2013).

In order to determine the knowledge and attitudes of students and parents about the necessity of preventive action in emergency situations caused by natural disasters, an *Emergency Preparedness and Disaster Risk Mitigation Survey* was carried out.

An interdisciplinary program *Education in the Field of Emergency Situations* was developed and adopted by the National Education Council.

The Methodological Guidelines for Teachers in the Implementation of the Education in the field of Emergency Situations were developed.

The programs of professional development *Crisis Events and Psychological Interventions in Stressful Situations* and *Secure Communication with the Media in Stressful Situations* have been accredited.

A *Handbook for Emergency Situations* has been prepared – as a framework of protection activities that schools should undertake in the event of disasters. Exercises were carried out to evacuate students, teaching and extra-curricular staff in five elementary schools.

The National Office for Combating Trafficking in Human Beings is coordinating the work of public, international and non-governmental organizations in the implementation of the national policy aimed at combating trafficking in human beings as contained in the 2012-2018 Strategy to Combat Trafficking in Human Beings. At the beginning of this year, the government adopted the Action Plan for Implementation of the 2017 – 2018 Strategy to Combat Trafficking in Human Beings. Under this document, within the framework of Strategic Objective 1, which refers to the need to strengthen the existing mechanisms, with the additional training of experts, bodies and organizations working jointly on the screening of victims, compliance with common standards and protocols of action, the following Operational Objective has been defined:

- 1.1. *Create conditions for raising the level of detection or self-identification of potential victims in vulnerable groups, such as persons involved in prostitution, migrants without personal documentation, internally displaced persons - especially members of the RAE population*

4. Please provide examples of good practice undertaken by your Government to protect the rights of the child in humanitarian situations, both within your State and internationally.

The Feasibility Study for strengthening the capacity for the accommodation, protection and rehabilitation of unaccompanied migrant minors and other vulnerable groups of migrants is an example of good practice under which the Ministry of Labor and Social Welfare recognized the needs of minors and defined the policy related to minors and strengthened its capacities in the field. The Study recognizes that unaccompanied minors can be accommodated in a special pavilion of the Public Institution Center Ljubovic, thereby providing additional adequate accommodation capacities. Also, the Study recognized the need for the Guidelines for the Treatment of Minor Migrants (Accommodation, Protection and Rehabilitation) and Other Vulnerable Groups, which were subsequently adopted, providing the officials who come in contact with underage migrants with instructions for their adequate treatment (identification, guardianship, action upon asylum applications, accommodation, social protection and health care and education).

Teachers have been attending *trainings on the realization of teaching curricula* on natural disasters, as well as the modes of response, and they have raised awareness of the need to protect young people from security risks in case of emergencies. *Five protection and rescue plans* have been prepared for *five elementary schools*. The schools, in cooperation with the Directorate for Emergency Situations, have developed risk assessments, earthquake protection and rescue plans. Counseling for principals was organized (approx. 100 of them) in elementary schools for southern, central and northern regions. In 2016, about 139 teachers and 150 principals and professional associates were trained in this field.

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emphasis on proactive screening for potential victims and actual victims of trafficking in persons." The project will be implemented by the end of the current year.

5. Please specifically indicate how your Government involves children in decision-making processes relating to humanitarian situations - both in terms of planning and implementation.

The adoption of a new National Action Plan for Children has been in plan, as a document which will integrate different aspects of national policies on children contained in other documents.

When it comes to the children's access to the courts and their active participation in judicial and administrative proceedings, we note that through the amendments to the Family Law special attention was dedicated to the free expression of the child's opinion before the court, depending on the age and maturity of the child. The law also placed emphasis on the best interests of the child, as well as the right of the child to education, health care, etc.

In the process of exercising health care, a child who is capable of judgment is entitled to confidential counseling with the medical doctor and other expert.

The child has the right to be informed about his or her state of health, if it is in his/her best interest.

The essence is that, regardless of whether it comes to special humanitarian situations in which a child can be found, the child shall have the right to the best possible living conditions for his/her proper and complete physical, psychological and emotional development, in accordance with his/her developmental needs.

During their stay in the Asylum Seekers Center, minors, especially senior minors, are involved in decision-making in order to pursue their best interests, through a dialogue with the Center's officials who care about their needs and rights.