

Joint Submission to the
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MONTENEGRO

Phiren Amenca
European Network on Statelessness
Institute on Statelessness and Inclusion

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Introduction

1. Phiren Amenca, the European Network on Statelessness (ENS), and the Institute on Statelessness and Inclusion (ISI) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Montenegro.
2. [Phiren Amenca](#) is a Roma-led civil society organisation. The organisation is based in Montenegro and works on all the pressing issues for the Roma community: education, housing, employment, legal status, media, healthcare and antigypsyism. Phiren Amenca was awarded for the [Best European Youth Project 2020 Award](#) from 19 countries and more than 40 applications.
3. The [European Network on Statelessness](#) (ENS)¹ is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 170 members in 41 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising, and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments. This submission partially draws on information and analysis from ENS’s Statelessness Index, which covers Montenegro.²
4. The [Institute on Statelessness and Inclusion](#) (ISI)³ is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI’s mission is to promote inclusive societies by realising and protecting everyone’s right to a nationality. The Institute has made over 90 country-specific UPR submissions on the human rights of stateless persons. ISI has also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 41st UPR Sessions.
5. This submission focuses on:
 - I. Statelessness determination procedure and the rights of stateless people
 - II. Children’s right to birth registration and to a nationality
 - III. Discrimination against minoritized communities
 - IV. Statelessness population data

¹ For more information, see <https://www.statelessness.eu>.

² ENS, Statelessness Index: Montenegro, <https://index.statelessness.eu/country/montenegro>.

³ For more information, see <https://www.institutesi.org/>.

Previous UPR and UN Treaty bodies' recommendations to Montenegro

6. Montenegro was previously reviewed under the Universal Periodic Review during the 38th session in 2018 (Third Cycle), the 23rd session in 2013 (Second Cycle), and the 10th session in 2009 (First Cycle). There has been some positive progress in the implementation of these recommendations, although challenges still remain.
7. During the Third Cycle, Montenegro received a recommendation by Namibia '*to introduce into law a mechanism to expedite the determination of statelessness*',⁴ which it accepted, and by the Philippines to '*facilitate the processing and obtaining of necessary documentation, such as civil registration papers, for the thousands of stateless persons in the country*',⁵ which it noted.
8. During the Second Cycle, Montenegro received a recommendation by the Holy See to '*continue the efforts to achieve an effective registration of all births, with special attention to children belonging to ethnic minorities*',⁶ by Mexico to '*simplify the procedure for birth registration of persons born outside health-care institutions to contribute to measures carried out to eliminate discrimination*',⁷ and by Brazil to '*establish a simple and accessible procedure of birth registration to guarantee that all children have access to it*'.⁸ Montenegro also received a recommendation from Germany to '*ratify the 1961 Convention on the Reduction of Statelessness and take concrete steps at national level to prevent and eliminate the causes that lead to statelessness*',⁹ and Austria made a similar recommendation.¹⁰ Montenegro accepted all these recommendations.
9. During the First Cycle, Montenegro received a recommendation by Slovenia to '*clarify the legal status of refugees from neighbouring States, with a focus on the prevention of statelessness*',¹¹ which it accepted.
10. In 2018, the Committee on the Elimination of Racial Discrimination (CERD) called for effective implementation of '*a simplified procedure for birth registration, including by further sensitizing Roma, Ashkali and Egyptian parents to the importance of birth registration and to the existence of such a procedure*'.¹² The CERD also called on Montenegro to '*ensure the registration of children in cases where the mother is unknown or lacks an identification document and continue efforts to provide them with identification documents and with legal aid, when necessary, for birth registration*'.¹³ Similar recommendations were reiterated by the Committee on the Rights of the Child, with a special focus on Roma, Ashkali and Egyptian children, children who were

⁴ Human Rights Council (HRC), Report of the Working Group on the Universal Periodic Review, Montenegro, 18 April 2018, A/HRC/38/13, para 105.144.

⁵ HRC, Report of the Working Group on the Universal Periodic Review, Montenegro, 18 April 2018, A/HRC/38/13, para 106.115.

⁶ HRC, Report of the Working Group on the Universal Periodic Review, Montenegro, 21 March 2013, A/HRC/23/12, para 117.32.

⁷ HRC, Report of the Working Group on the Universal Periodic Review, Montenegro, 21 March 2013, A/HRC/23/12, para 119.10.

⁸ HRC, Report of the Working Group on the Universal Periodic Review, Montenegro, 21 March 2013, A/HRC/23/12, para 119.11.

⁹ HRC, Report of the Working Group on the Universal Periodic Review, Montenegro, 21 March 2013, A/HRC/23/12, para 119.5.

¹⁰ HRC, Report of the Working Group on the Universal Periodic Review, Montenegro, 21 March 2013, A/HRC/23/12, para 119.6.

¹¹ HRC, Report of the Working Group on the Universal Periodic Review, Montenegro, 6 January 2009, A/HRC/10/74, para 19.

¹² CERD, Concluding observations on the combined fourth to sixth periodic reports of Montenegro, 19 September 2018, CERD/C/MNE/CO/4-6, para 15(e).

¹³ CERD, Concluding observations on the combined fourth to sixth periodic reports of Montenegro, 19 September 2018, CERD/C/MNE/CO/4-6, para 15(f). The CERD made similar recommendations in a previous report. See CERD, Concluding observations on the combined second and third periodic reports of Montenegro, 13 March 2014, CERD/C/MNE/CO/2-3, para 12(d)-(e) and 14(b).

abandoned after birth, and children born to refugees.¹⁴ Similar recommendations were also made by the Human Rights Committee in 2014, adding that Montenegro should improve birth registrations *'through appropriate interventions such as awareness-raising programmes aimed at changing mindsets regarding the need to register births or obtain birth certificates'* and *'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'*.¹⁵ In 2014, the Committee Against Torture noted that obstacles to birth registration, in particular for Roma, Ashkali and Egyptian communities, put individuals at risk of statelessness and recommended the establishment of a simplified and accessible procedure for birth registration.¹⁶

11. The CERD previously also called on Montenegro to *'fully implement the 1961 Convention on the Reduction of Statelessness, address the shortcomings in the new statelessness determination procedure and ensure it is well known by those seeking international protection, in particular the remaining stateless persons of the Roma, Ashkali and Egyptian communities'*.¹⁷ The Committee on the Elimination of Discrimination Against Women also recommended that Montenegro ratify the Convention of the Reduction of Statelessness.¹⁸

Montenegro's International obligations

12. With a positive record of accession to human rights instruments, Montenegro has international obligations to protect the right to a nationality and protect the rights of stateless persons. It has been a State Party to the 1954 Convention relating to the Status of Stateless Persons since 2006, and to the 1961 Convention on the Reduction of Statelessness since 2013, with no reservations. Montenegro's obligations also derive from other UN and regional treaties to which it is a party, including:¹⁹
 - International Covenant on Civil and Political Rights (see article 24.3)
 - International Covenant on Economic, Social and Cultural Rights (see articles 2.2 and article 3)
 - Convention of the Rights of the Child (see articles 2, 3, 7 and 8)
 - Convention on the Elimination of All Forms of Discrimination against Women (see article 9)
 - International Convention on the Elimination of All Forms of Racial Discrimination (see article 5(d)(iii))
 - Convention on the Rights of Persons with Disabilities (see article 18)
 - International Convention for the Protection of All persons from Enforced Disappearance (see article 25.4)

¹⁴ Committee on the Rights of the Child (CRC), Concluding observations on the combined second and third periodic reports of Montenegro, 22 June 2018, CRC/C/MNE/CO/2-3, para 28. The CRC made similar recommendations in 2010. See CRC, Consideration of reports submitted by states parties under article 44 of the convention, Concluding Observations: Montenegro, 21 October 2010, CRC/C/MNE/CO/1, para 33, 61, 62.

¹⁵ Human Rights Committee, Concluding observations on the initial report of Montenegro, 21 November 2014, CCPR/C/MNE/CO/1, para 17.

¹⁶ Committee Against Torture, Concluding observations on the second periodic report of Montenegro, 17 June 2014, CAT/C/MNE/CO/2, para 12(b).

¹⁷ CERD, Concluding observations on the combined fourth to sixth periodic reports of Montenegro, 19 September 2018, CERD/C/MNE/CO/4-6, para 23.

¹⁸ Committee on the Elimination of Discrimination Against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women, Montenegro, 4 November 2011, CEDAW/C/MNE/CO/1, para 35.

¹⁹ See: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en>.

- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see articles 1 and 2)

Furthermore, the right to a nationality is included in Article 15 of the Universal Declaration on Human Rights.

13. At regional level, Montenegro is State Party to the European Convention on Nationality, but it maintains a reservation to Article 16, which precludes dual nationality. Montenegro is also State Party to the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession.
14. In October 2019, at UNHCR's High Level Segment on Statelessness, Montenegro pledged to strengthen its capacity for the effective implementation of the SDP, secure access to basic rights for stateless persons, and further strengthen its birth registration procedure. Montenegro has not yet taken sufficient steps to implement these pledges, but their implementation could have a significant impact on reducing statelessness.²⁰

Snapshot of Statelessness in Montenegro

15. The last population census in Montenegro was carried out in 2011 and recorded 4,312 individuals with 'no nationality' of which 3,471 stated they were born in Montenegro.²¹ These numbers are not accepted by the Ministry of the Interior.²² In November 2017, the Government and UNHCR jointly carried out an exercise to map refugees from the Former Yugoslavia in Montenegro, which covered 2,318 people. The mapping confirmed that lack of documentation remains widespread, especially among Roma and Egyptian communities, and identified at least 450 people at risk of statelessness.²³
16. Statelessness in Montenegro mostly affects Roma and Egyptian communities, many of whom originated from Kosovo having migrated to Montenegro between 1960 and 1980 and following the war in 1999. The phased separation of Montenegro from the Federal Republic of Yugoslavia (FRY) and, later, from the State Union of Serbia and Montenegro, together with changes in nationality legislation, have made it very challenging for some Roma and Egyptians, who were born outside Montenegro, to prove an entitlement to Montenegrin or any other nationality. Poor cooperation between successor States in the Balkans has further slowed progress. Their lack of documentation and/or their statelessness is in many cases being passed on to their children, creating intergenerational exclusion and perpetuating the risk of statelessness.²⁴ Surveys conducted by UNHCR and UNICEF of Roma and Egyptians in Montenegro in 2009 found that nearly 40% of those surveyed (more than half of whom were children) had incomplete personal documentation, and needed to initiate a legal procedure to resolve

²⁰ See <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>.

²¹ Statistical Office of Montenegro, Census 2011 Data – Montenegro, available at: <https://www.monstat.org/eng/page.php?id=393&pageid=57>.

²² For more information, see ENS, Statelessness Index - Montenegro at: <https://index.statelessness.eu/country/montenegro>.

²³ For more information, see ENS, Statelessness Index - Montenegro at: <https://index.statelessness.eu/country/montenegro>.

²⁴ For more information, see: UNHCR, Ending statelessness in South Eastern Europe, available <https://www.unhcr.org/see/11299-ending-statelessness-in-south-eastern-europe.html>; Human Rights Action, LJUDSKA PRAVA U CRNOJ GORI 2010–2011, p 421-423, available at: https://www.hraction.org/wp-content/uploads/2017/01/Ljudska_prava_u_Crnoj_Gori_2010-2011.pdf; Phiren Amenca and ISI, Studija Slučaja Romi Bez Regulisanog Pravnog Statusa U Vrijeme Pandemije Covid-19, available at: http://phirenamenca.me/media/files_down/STUDIJA%20SLU%20C4%8CAJA_ROMI%20BEZ%20REGULISANOG%20PRAVNOG%20TATUSA%20U%20VRIJEME%20PANDEMIJE%20COVID-19.pdf.

this.²⁵ 2013 data showed that the average birth registration rate in Montenegro of 99.4% drops to 94.5% for children under five living in Romani communities.²⁶ Deep rooted antigypsyism continues to be one of the main hurdles to reducing statelessness among these communities.²⁷

Issue 1 – Statelessness determination procedure and the rights of stateless people

17. Identifying stateless people in the country is the first step to providing adequate protection and rights enshrined in the 1954 Convention. Although the 1954 Convention does not specifically provide for how statelessness should be determined, UNHCR guidance has confirmed that this is best fulfilled through a dedicated statelessness determination procedure (SDP) with the necessary safeguards and procedural guarantees. It should be fair, efficient, and easily accessible.²⁸ The lack of an SDP leading to a dedicated statelessness status results in a failure to uphold the rights of stateless people, leaving many facing years of uncertainty, social exclusion, risks of arbitrary immigration detention, and other human rights violations.²⁹
18. Moreover, according to international norms and standards, statelessness status should include a residence permit, access to economic, social, civil, and political rights, the right to administrative assistance, exemption from requirements stateless people cannot meet because they are stateless, and other rights protected by international law. States should also establish a facilitated route to naturalisation so stateless people can acquire a nationality and resolve their statelessness.³⁰

Identification of stateless people and statelessness determination

19. Montenegro established a dedicated SDP in the 2018 ‘Law on Foreigners’,³¹ which is a positive and welcome step towards better identification of stateless people in a migratory context. In November 2018, Montenegro adopted the bylaw ‘Rulebook on the Procedure Initiated upon Request for Statelessness Determination’ (‘the Rulebook’),³² which detailed how to operationalise the procedure, submit a request for statelessness status determination, submit a request for a travel document for a stateless person, as well as the format and content of the travel document. However, the procedure has many shortcomings both in law and in practice and does not automatically lead to protection.
20. Montenegrin law defines a stateless person as “a person who is not considered as a national by any State in accordance with its legislation”, which is narrower than the 1954

²⁵ UNHCR and UNICEF, *Civil Registration and the Prevention of Statelessness: a Survey of Roma, Ashkaelia and Egyptians in Montenegro*, 2009, available at: https://www.unicef.org/montenegro/Booklet_Civil_registration_of_RAE_2009_ENG.pdf.

²⁶ UNICEF & MONSTAT, *Montenegro and Montenegro Roma Settlements Multiple Indicator Cluster Survey*, 2013, available at: <https://app.box.com/s/zq4l86xf53ck6gp2rftbr3cj3jazgdi>.

²⁷ Institute on Statelessness and Inclusion, European Network on statelessness and European Roma Rights Centre, *Roma Belong. Statelessness, discrimination and marginalisation of Roma in the Western Balkans and Ukraine*, October 2017, available at: <https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/roma-belong.pdf>.

²⁸ UNHCR, *Handbook on Protection of Stateless Persons*, 2014: <http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>.

²⁹ Statelessness Index, *Statelessness Determination and Protection in Europe: Good Practice, Challenges, and Risks*, 2021.

³⁰ Statelessness Index, *Statelessness Determination and Protection in Europe: Good Practice, Challenges, and Risks*, 2021.

³¹ Law on Foreigners, *Official Gazette of Montenegro*, no. 012/18 and 003/19, available at: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=60a4edb84>.

³² Rulebook on the Procedure initiated upon Request for Statelessness Determination, *Official Gazette of Montenegro* no. 72/2018: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5c2f72924>.

Convention definition. Moreover, the 1954 Convention exclusion clauses have not been transposed into national law. However, as international treaties take primacy over national legislation in Montenegro, the Convention may be directly implemented.

21. Applications for statelessness determination should be submitted via regional units of the Ministry of Interior in the applicant's place of residence, and must be made in writing on a prescribed form in an official language, with the help of a designated official and the assistance of a translator (if needed). Positively, there are no legal residence requirements or time limits for accessing the SDP. However, people who have applied for international protection, or have been granted refugee status or subsidiary protection, are excluded from applying. It is notable that only nine people have been recognised as stateless under the SDP since it was operationalised in November 2018.
22. Procedural and practical issues make the SDP difficult to access. In practice, the procedure is implemented inconsistently by the different regional units and there is a lack of harmonisation on how registration, issuing of certificates, and scheduling interviews take place. There is a lack of information available to potential applicants regarding the procedure, the application requirements are inflexible, and evidentiary rules to assess whether a person is stateless are not yet determined in law. Although authorities are obliged to consider all applications within a given timeframe, in most municipalities, the competent authority will not assess an application unless or until the applicant submits at least a birth certificate, which is not required by law and may be a requirement that is impossible to meet for potential applicants due to the nature of their statelessness. Similarly, although the Rulebook stipulates that an interview should be provided within 15 days of the submission of the application, in practice this is not adhered to.³³ Applicants under the SDP are still unable to access free legal aid, as it is not available in any administrative procedure in Montenegro.³⁴ Free legal aid is only available for judicial procedures. Ad hoc training is organised by the Ministry of Interior and UNHCR for public officials who are in direct contact with stateless persons, but there is currently no formal training for judges and lawyers on statelessness.
23. Applicants for statelessness determination have the right to stay in Montenegro while their application is pending and are protected from expulsion and detention. However, applicants do not have the right to work nor access to any other rights or assistance to meet their basic needs.

Access to protection and the rights of stateless people

24. Recognition as a stateless person under the SDP does not constitute a dedicated statelessness status in law nor does it result in automatic lawful residence in Montenegro or a renewable residence permit, as a facilitated pathway to Montenegrin nationality. The statelessness status does not ensure access to all other rights as stipulated in the 1954 Convention and in UNHCR guidance.³⁵ The Ministry of Interior issues travel documents to persons recognised as stateless upon request, which grants permission to stay and provides some rights. Such a travel document is valid for up to one year and must be renewed each year. In practice, the renewal procedure for travel documents is

³³ Information gathered through casework by Civil Alliance. For more information see ENS, Statelessness Index – Montenegro at: <https://index.statelessness.eu/country/montenegro>.

³⁴ Law on Free Legal Aid, Official Gazette of Montenegro, No. 020/11 of 15 April 2011, 020/15 of 24 April 2015.

³⁵ UNHCR, Handbook on Protection of Stateless Persons under the 1954 Convention relating to the Status of Stateless Persons, 30 June 2014, available at: <https://www.refworld.org/docid/53b676aa4.html>.

often delayed, leaving individuals undocumented.³⁶ Moreover, there have been cases of people recognised as stateless waiting more than a year for a travel document.

25. A temporary residence permit is only accessible to stateless people if they can meet the general conditions as set out in the Law of Foreigners, which are stringent and include requirements on income, accommodation, health insurance, identity documents, and not being subject to an entry ban or criminal convictions carrying more than a six-month prison sentence.³⁷ The person must also present evidence that they have resided in Montenegro for at least three consecutive years prior to the SDP application and that they intend to continue their stay in Montenegro.³⁸ These requirements are likely to be impossible to meet for stateless persons, due to the nature of their statelessness. In addition, a temporary residence permit may be revoked on certain grounds, including if the person stays outside Montenegro for more than 30 days. This decision can be appealed to the central office of the Ministry of Interior.
26. The right to work, education and healthcare is not guaranteed to all stateless people and depends on the type of residence permit issued. Those who hold a temporary residence permit can work if they also hold a work permit or work registration certificate, but the right to work for those who only hold a travel document is unclear. Children until the age of 15 can access education but they will not be granted a school certificate if they do not hold a birth certificate. Stateless people with a residence permit have access to higher education, social security, health insurance, and emergency healthcare, although they may encounter bureaucratic difficulties and be required to pay for some medical care.
27. As seen above, it is very welcome that Montenegro introduced a dedicated SDP that facilitates the identification of stateless people and access to the protection they are entitled to under international law. There are, however, shortcomings both in the procedure and in the range of rights that are afforded to people recognised as stateless. UNHCR has made specific recommendations to amend the Law on Foreigners in Montenegro to improve access to the SDP, enhance the procedural guarantees afforded to applicants, and to ensure that applicants are protected pending a decision on their application, including having a right to reside and access to identity documents, healthcare, education, work, legal advice and legal aid. UNHCR also made recommendations to change the law so that persons recognised as stateless have an automatic right to reside, certain economic and social rights, free legal aid, travel documents and a facilitated route to naturalisation.³⁹

Issue 2 – Children’s right to birth registration and to a nationality

28. Every child has the right to a nationality and to be registered immediately after birth.⁴⁰

³⁶ Law on Foreigners, *Official Gazette of Montenegro*, no. 012/18 and 003/19, article no. 59, point 7, available at: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=60a4edb84>.

³⁷ Law on Foreigners, *Official Gazette of Montenegro*, no. 012/18 and 003/19, article no. 43, available at: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=60a4edb84>.

³⁸ Law on Foreigners, *Official Gazette of Montenegro*, no. 012/18 and 003/19, article no. 60, available at: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=60a4edb84>.

³⁹ UNHCR, UNHCR Observations on the Amendments to the Law on Foreigners of Montenegro: Statelessness Determination Procedure, 10 February 2022, available at: <https://www.refworld.org/docid/6229fa0a4.html>.

⁴⁰ UN Convention on the Reduction of Statelessness, 1961, Articles 1 and 4; International Covenant on Civil and Political Rights, 1966, Article 24(2); Convention on the Rights of the Child, 1989, Articles 3 and 7; UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Action 7; UN Sustainable Development Goal 16.9.

These are core principles of international law, which, if applied in a comprehensive and non-discriminatory manner, would result in the prevention and reduction of statelessness.⁴¹ States should have provisions in law to prevent statelessness at birth, including granting nationality to all children born on the territory who would otherwise be stateless, children born abroad to non-national parents, foundlings, and following an adoption process.⁴² States should also put in place measures to ensure universal birth registration, regardless of the residence or documentation status of their parents or family members, which is key to children effectively exercising their right to a nationality. Birth registration is vital because it provides official evidence of key facts such as birthplace and parentage, without which the child can face issues proving their entitlement to nationality.

29. Any official determination of the child's nationality or statelessness status should be carried out by a competent authority with the necessary expertise, in line with good practice, and an established procedure that adheres to the best interests of the child. States should determine whether a child would otherwise be stateless as soon as possible after birth, and in any case in a period not exceeding five years. There should be no mandatory requirements for authorities to report undocumented individuals to immigration authorities. States should clearly prohibit the sharing of information about migrants suspected of irregular presence with immigration authorities and these firewalls are binding on State authorities and the private sector. Free and prompt birth registration should be assured in law and practice even if the period within which the birth should have been declared has expired.⁴³
30. Montenegro has a relatively robust legal framework to ensure universal and immediate birth registration. In October 2019, the Ministry of Interior and Ministry of Labour and Social Welfare developed a new birth registration practice codified in the Family Law,⁴⁴ which creates a role for municipal centres for social care in line with the principle of the best interests of the child. Since its establishment, UNHCR observed the implementation of the new practice in seven out of 24 municipalities. However, implementation issues remain and there are reports from civil society highlighting specific barriers to registration, disproportionately impacting on Roma and Egyptian communities.⁴⁵
31. All births in Montenegro must be registered within three days, but different procedures apply depending on where the child was born. Children born in hospitals are registered immediately after birth. Late birth registration is possible in law and practice through a procedure conducted by the Ministry of Interior, but it is subject to a fee and provision

⁴¹ See Article 7 of the UN Convention on the Rights of the Child, read in conjunction with Articles 2 and 3.

⁴² See, e.g., UN Convention on the Reduction of Statelessness, 1961: Articles 1-4. European Convention on Nationality, 1997: Articles 2 and 6.

⁴³ European Parliament, Resolution on minimum standards for minorities in the EU (2018); UN Human Rights Council, The right to a nationality: women and children, Resolution A/HRC/RES/20/4 (2012); Joint general comment No. 4 (2017) of the CMW and No. 23 (2017) of the CRC on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return; and Joint general comment No. 3 (2017) of the CMW and No. 22 (2017) of the CRC on the general principles regarding the human rights of children in the context of international migration; UNHCR, Guidelines on Statelessness No. 4 (2012); Global Compact for Safe, Orderly and Regular Migration; Global Compact on Refugees; Council of Europe: ECRI General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination (2016); Council of Europe, Recommendation CM/Rec(2009)13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children (2009).

⁴⁴ For more information see ENS, Statelessness Index - Montenegro at: <https://index.statelessness.eu/country/montenegro>.

⁴⁵ See for example: Institute on Statelessness and Inclusion, European Network on statelessness and European Roma Rights Centre, Roma Belong - Statelessness, discrimination and marginalisation of Roma in the Western Balkans and Ukraine, October 2017, available at: <https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/roma-belong.pdf>; and Phiren Amenca and ISI, Studija Slučaja Romi Bez Regulisanog Pravnog Statusa U Vrijeme Pandemije Covid-19, available at: http://phirenamenca.me/media/files_down/STUDIJA%20SLU%C4%8CAJA_ROMI%20BEZ%20REGULISANOG%20PRAVNOG%20TATUSA%20U%20VRIJEME%20PANDEMIJE%20COVID-19.pdf.

of documentation, including identity documents and proof of birth from the hospital. In the case of a child born outside a health institution whose place and date of birth cannot be determined, a non-contentious court procedure may be initiated to determine the relevant facts about the time and place of birth, parents and other relevant data.⁴⁶ The non-contentious procedure may be initiated by the person whose time and place of birth is to be determined, the person who has an immediate legal interest for such determination, a state body (centre for social care) or by other persons who may also report birth out of health institutions in accordance with the Law on Civil Records.⁴⁷ The court must hear at least two adult witnesses in the procedure and a medical examination to determine age may be requested.⁴⁸ Civil society organisations have reported that, in practice, after the court has issued a decision to register the child, birth registration is not automatic and parents may be asked to submit additional evidence.⁴⁹

32. Montenegrin law does not have any guidance on how to determine the child's nationality status at birth or later. In Montenegro, the birth certificate contains a field for the child's nationality, but, in practice, parents must initiate the registration of the child's nationality in the nationality registry and sometimes authorities record a presumed nationality without confirming whether the child has acquired it.⁵⁰ Further, bureaucratic barriers exist to registering a child's birth if the parents are undocumented, particularly if they are not receiving support or advice from an NGO. Some families have reportedly not registered the births of their children because they thought they needed documentation or evidence that they did not have.
33. Such complex bureaucratic barriers to birth registration, when combined with antigypsyism and marginalisation, have a disproportionate impact on Roma and Egyptian communities in Montenegro, as evidenced by lower overall birth registration rates among these populations. Although the law specifies that births can be registered even if the identity of parents is unknown or unconfirmed by documents,⁵¹ in practice this is not always the case.⁵²
34. There is generally a lack of training for public officials on antigypsyism and specific issues faced by Roma and Egyptian communities, as well as a prevalence of stereotypical attitudes and distrust, which further hinder equal access to birth registration.⁵³

⁴⁶ Law on Non-Contentious Procedure, Section II Chapter 3 (arts. 70a-70i), *Official Gazette of Montenegro*, no. 27/2006.

⁴⁷ Law on Non-Contentious Procedure, Section II Chapter 3 (arts. 70a-70i), *Official Gazette of Montenegro*, no. 27/2006.

⁴⁸ For more information, see ENS, Statelessness Index - Montenegro at: <https://index.statelessness.eu/country/montenegro>.

⁴⁹ Information gathered through Phiren Amenca's casework.

⁵⁰ For more information see ENS, Statelessness Index - Montenegro at: <https://index.statelessness.eu/country/montenegro>.

⁵¹ Law on Vital Registers, *Official Gazette of Montenegro*, No. 047/08, 041/10, 040/11, 055/16 of 17 August 2016, Art. 18, para. 3.

⁵² Information gathered through casework by Civil Alliance. For more information see ENS, Statelessness Index - Montenegro at: <https://index.statelessness.eu/country/montenegro>.

⁵³ Institute on Statelessness and Inclusion, European Network on statelessness and European Roma Rights Centre, Roma Belong - Statelessness, discrimination and marginalisation of Roma in the Western Balkans and Ukraine, October 2017, available at: <https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/roma-belong.pdf>.

Issue 3 – Discrimination against minoritized communities

35. Several international conventions prohibit discrimination on the ground of national or ethnic origin.⁵⁴ There should be no discrimination in birth registration⁵⁵ and States must ensure that the right to nationality is secured without discrimination.⁵⁶
36. As mentioned above, statelessness in Montenegro mostly affects Roma and Egyptian communities. Deep rooted antigypsyism continues to be one of the main hurdles to reducing statelessness among these communities.⁵⁷ Montenegro has received several recommendations to ensure that Roma, Ashkali and Egyptian communities do not face a risk of statelessness, in particular through the establishment of a simplified and accessible procedure for birth registration.
37. Positively, in 2021 Montenegro adopted a Strategy for Social Inclusion of Roma and Egyptians 2021-2025⁵⁸ which includes an operational objective to “improve the position of Roma and Egyptian communities by resolving the issue of civil status and personal ownership documents”. It also adopted a Strategy on Migration and Reintegration of Returnees in Montenegro 2021-2025⁵⁹ which includes two relevant objectives to “resolve the legal status” of internally displaced persons (IDPs), people who are not registered, and of people at risk of statelessness. The accompanying Action Plan to these strategies includes an action point to tackle antigypsyism, a first step towards tackling discrimination of Roma and Egyptian communities in the country, and actions to address civil registration and statelessness issues.⁶⁰ As follow-up from the 2019 Poznan Declaration on Roma integration in the EU Enlargement Process, Montenegro joined other Western Balkan countries in committing to ensuring universal civil registration and ending Roma statelessness and has continue to make commitments in this regard.⁶¹
38. It is hoped that Montenegro continues its efforts to tackle discrimination and antigypsyism, which are still seen to impact particular populations and to increase the risk of statelessness. The complex bureaucratic barriers to birth registration described under Issue 2 above, when combined with antigypsyism and marginalisation, have a disproportionate impact on Roma and Egyptian communities in Montenegro, as evidenced by lower overall birth registration rates among these populations. Although the law specifies that births can be registered even if the identity of parents is unknown

⁵⁴ See e.g. Convention on the Rights of the Child, Article 2(1); International Covenant on Civil and Political Rights, Articles 24 and 26; International Covenant on Economic, Social and Cultural Rights, Article 2(2); International Convention on the Elimination of All Forms of Racial Discrimination, Article 1(1); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 7.

⁵⁵ Convention on the Rights of the Child; UNHCR, Global Action Plan to End Statelessness 2014-24 (2014); European Parliament, Resolution on minimum standards for minorities in the EU (2018).

⁵⁶ European Court of Human Rights, *Genovese v. Malta* (2011).

⁵⁷ Institute on Statelessness and Inclusion, European Network on statelessness and European Roma Rights Centre, *Roma Belong. Statelessness, discrimination and marginalisation of Roma in the Western Balkans and Ukraine*, October 2017, available at: <https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/roma-belong.pdf>.

⁵⁸ Government of Montenegro, Ministry of Justice, Human and Minority Rights, *Strategy for Social Inclusion of Roma and Egyptians 2021-2025 with Action Plan*, available at: <https://www.refworld.org/docid/6231d6414.html>.

⁵⁹ Government of Montenegro, Ministry of the Interior, *Strategy on Migration and Reintegration of Returnees in Montenegro for the Period 2021-2025, with an Action Plan for 2021 and 2022*, available at: <https://www.refworld.org/docid/6231d49e4.html>.

⁶⁰ UNHCR, #IBelong Campaign Update, July – September 2021, 20 October 2021, available at: <https://www.refworld.org/docid/616ff7a34.html>.

⁶¹ RCC, Western Balkans Summit, Bosnia and Herzegovina Ministry of Human Rights and Refugees, *Conclusions of the Second Ministerial Meeting on Roma Integration*, 28 June 2021, available at: <https://www.rcc.int/romaintegration2020/files/admin/docs/d4e8f57b0e812017fee6a94e8af1fetc.pdf>.

or unconfirmed by documents,⁶² in practice this is not always the case.⁶³ Moreover, there is generally a lack of training for public officials on antigypsyism and specific issues faced by Roma and Egyptian communities, as well as a prevalence of stereotypical attitudes and distrust, which further hinder equal access to birth registration.⁶⁴

39. In addition, the field verification carried out by UNHCR in November 2017, jointly with the Ministry of Interior and the Ministry of Labour and Social Work, mentioned under Issue 4 below, did not take into account the Roma population born in Montenegro who do not have regulated legal status and have been returned under a readmission agreement, and internally displaced persons from Serbia and Kosovo.

Issue 4 – Stateless population data

40. Collecting accurate, disaggregated data on statelessness and the risk thereof is crucial to be able to implement and review policies and developing practice, and to prevent discrimination. The State should collect reliable qualitative and quantitative disaggregated data on stateless people on its territory and procedures for determining statelessness, including by gathering, analysing, and making available statistical data and trends in relation to asylum, immigration, and statelessness, that is disaggregated by sex and age.⁶⁵
41. Montenegro has undertaken some positive steps in the collection of data on the stateless population, but shortcomings also remain. In November 2017, jointly with the Ministry of Interior and the Ministry of Labour and Social Work, UNHCR carried out a field verification of all refugees from the Former Yugoslavia with unresolved status issues, including those at potential risk of statelessness. The exercise confirmed that documentation problems as a result of the dissolution of the former Yugoslavia remained widespread, particularly among Roma and Egyptian communities. Based on the results, some 605 persons were identified as being at risk of statelessness, of which at least 145 were without birth registration. After targeted follow-up following the verification, as of the end of July 2021, the number of people identified to be at risk of statelessness was 450. However, the data available through the verification exercise does not reflect all persons affected by statelessness in Montenegro. It is incomplete, does not cover the entire stateless (and at risk) population, and is not disaggregated by age, gender and other key factors. Although this verification exercise and follow up actions have improved registration levels, the verification did not take into account all groups who face issues with legal status and documentation in Montenegro. For example, the exercise overlooked the Roma population born in Montenegro who do not have regulated legal status and have been returned under a readmission agreement, and internally displaced persons from Serbia and Kosovo. A new field verification is planned for autumn 2022.⁶⁶
42. Additionally, in the latest 2021 report on protection against discrimination, as in previous

⁶² Law on Vital Registers, *Official Gazette of Montenegro*, No. 047/08, 041/10, 040/11, 055/16 of 17 August 2016, Art. 18, para. 3.

⁶³ Information gathered through casework by Civil Alliance. For more information see ENS, Statelessness Index - Montenegro at: <https://index.statelessness.eu/country/montenegro>.

⁶⁴ Institute on Statelessness and Inclusion, European Network on statelessness and European Roma Rights Centre, Roma Belong - Statelessness, discrimination and marginalisation of Roma in the Western Balkans and Ukraine, October 2017, available at: <https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/roma-belong.pdf>.

⁶⁵ UNHCR, Global Action Plan to End Statelessness 2014-24 (2014); CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014); Institute on Statelessness and Inclusion, *The World's Stateless* (2014); Council of the European Union, *Conclusions on Statelessness* (2015).

⁶⁶ For more information see ENS, Statelessness Index - Montenegro at: <https://index.statelessness.eu/country/montenegro>.

reports, the Protector of Human Rights and Freedoms of Montenegro again emphasised “the need to establish and operationalize a standardized data collection system related to this area and provide access to the Protector for a comprehensive analysis of the situation in the field of discrimination”.⁶⁷

43. Despite the Law on Foreigners requiring records on stateless people to be held electronically, these are still only held in handwritten files, making it difficult to access data.⁶⁸

Recommendations

44. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Montenegro:
 - I. Take concrete steps to facilitate access to the statelessness determination procedure for all stateless persons in Montenegro, regardless of their residence status, and ensure its implementation is harmonised across the territory and in line with UNHCR guidance and good practice.
 - II. Amend the Law on Foreigners to allow for persons recognised as stateless to be automatically granted a residence permit and all rights protected under the 1954 Convention relating to the Status of Stateless Persons.
 - III. Ensure that policies and practices relating to birth registration take into account UNHCR guidelines and good practice and remove all practical barriers to birth registration, with a particular focus on minority groups including Roma and Egyptian communities, so that all children are registered immediately regardless of their parents’ documentation or residence status.
 - IV. Ensure that children’s nationality status is determined as soon as possible after birth in order to ensure that otherwise stateless children born in Montenegro acquire a nationality.
 - V. Provide training and capacity building to frontline civil registry officials to address discriminatory and stereotypical attitudes and take steps to build trust between the authorities and Roma and Egyptian communities to facilitate access to essential services including civil registration.
 - VI. Improve the recording of statelessness, namely by harmonising quantitative data on stateless persons and those at risk of statelessness, ensuring that statistical data covers the entire population affected by statelessness, and publish annual reliable, transparent, disaggregated and comparable statistics on statelessness determination.

⁶⁷ Report on Protection against Discrimination from the Point of View of the Institution of Protector of Human Rights and Freedoms of Montenegro for the period 1 January - 31 July 2021, November 2021, Podgorica, page 40, available at: https://www.ombudsman.co.me/docs/1639560831_final_08122021_polugodis--nij%20izvjes--taj%20o%20zas--titi%20od%20diskriminacije%2022112021-1.pdf.

⁶⁸ Report on Protection against Discrimination from the Point of View of the Institution of Protector of Human Rights and Freedoms of Montenegro for the period 1 January - 31 July 2021, November 2021, Podgorica, page 40, available at: https://www.ombudsman.co.me/docs/1639560831_final_08122021_polugodis--nij%20izvjes--taj%20o%20zas--titi%20od%20diskriminacije%2022112021-1.pdf.

- VII. Ensure that all stateless people on the territory, including members of Roma and Egyptian communities, have access to fundamental rights in law and in practice without any discrimination.