



# **Report on civil registration of children lacking birth and/or citizen certificates in Montenegro**

Drs. Jaap van der Straaten, MBA, UNICEF consultant  
Podgorica, Montenegro | Delft, The Netherlands  
25 March 2011

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## Acronyms used

BCR	Bureau for the Care of Refugees
CRC	Convention of the Rights of the Child
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CoE	Council of Europe
DP	Displaced person (refugees from Bosnia and Herzegovina and Croatia, who fled the other republics of the SFRY in the early 1990s)
EU	European Union
FRY	Federal Republic of Yugoslavia
FWPRS	Foreigner with permanent residence status
GoM	Government of Montenegro
ICCPR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally displaced person (refugees from Kosovo who fled the conflict area in the late 1990s, a group which includes RAE and refugees from Albania who were relocated from Montenegro to Kosovo before the Kosovo conflict)
MoFAEI	Ministry of Foreign Affairs and European Integration
Mol	Ministry of Interior
MoLSW	Ministry of Labour and Social Welfare
MONSTAT	Statistical Office of Montenegro
PoC	Population of concern
RAE	Roma, Ashkalia and Egyptians
SFRY	Socialist Federal Republic of Yugoslavia
TPoC	Total Population of Concern
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

## Table of contents

Acronyms **1**

Table of contents **2**

### Sections

Executive summary **3**

1 Background and context **4 (1-13)**

2 Population of concern **5 (14-25)**

3 Especially vulnerable groups within the population of concern **7 (26-38)**

4 The international, regional and Montenegrin legal framework **10 (39-48)**

5 Foreigner with permanent residence status, problems to obtain it and problems that may flow from it **15 (49-69)**

6 The Roadmap **18 (70-99)**

### Attachments

1 Methodology **21**

2 Meeting program **22**

3 Sources used **24**

4 Table-Refugee numbers and absorption capacity EU and candidate countries **26**

5 Table-Estimate non- and incomplete registration 2008-2010 **27**

Notes **28**

## Executive Summary

Montenegro has made measurable progress in harmonizing its legal framework with international standards and multiple reforms are underway. This progress is recognized in the positive European Commission opinion on Montenegro's application for membership of the European Union (November 2010) and as a result Montenegro became a candidate country for membership of the EU on 17 December 2010. However, to open accession negotiations for membership Montenegro must make progress on seven key EU priorities, the 7<sup>th</sup> of which requires GoM to: *“Implement the legal and policy framework on anti-discrimination in line with European and international standards; guarantee the legal status of displaced persons, in particular Roma, Ashkalia and Egyptians (RAE), and ensure respect for their rights. This will include the adoption and implementation of a sustainable strategy for the closure of the Konik camp.”*

In September 2009 GoM had already adopted the *“Action Plan for Resolution of the Status of Displaced Persons from the Former Yugoslav Republics and of the Status of Internally Displaced Persons from Kosovo in Montenegro”*, the number of which totals about 16,500. The internally displaced persons, whose number is about 11,000, include about 4,500 RAE as well as about 1,750 refugees from Albania who were relocated from Montenegro to Kosovo. The rate of non- or incomplete registration among children of the internally displaced RAE and refugees from Albania is 73-86%. A large majority of these children were born in Montenegro. Non- or incomplete registration is lower but still significant among children of the “local” RAE at 30%. Registration rates for displaced persons are unknown (but have been estimated in this report). ***The population of concern, including local RAE, is 22,700 (low estimate) to 32,000 (high). The estimate of the number of un- or incompletely registered persons is between 8,200 and 10,700, among which the number of children is between 5,200 and 6,700.***

In 2009 Montenegro amended the law on foreigners to make it easier to acquire the status of foreigner with permanent resident status for the group of 16,500. From this status a graduation to Montenegrin citizenship would be possible in another ten years. A deadline on the 7<sup>th</sup> of November 2011 is looming for the application for foreigner with permanent residence status. It is expected that many will not be ready for this deadline. This report suggests a roadmap to resolving issues, broken down in urgent short-term measures and medium-term measures, with an emphasis on children, their families and vulnerable groups. The complications are not to be underestimated, as set out in this report. But pessimism is not the tenor of this report. With political will, the current law may provide for creative and timely solutions for a good number among the 16,500, especially for children and their nuclear families. A roadmap presented in this report suggests what short-term and medium-term measures can be taken to get every deserving individual “on board” of the Montenegro citizen “ship” as well as to keep Montenegro’s “ship of state” on the right course.

## 1. Background and context

1. Over past years Montenegro has made measurable progress in harmonizing its legal framework with international standards, and multiple reforms are underway.
2. This progress is recognized in the European Commission's positive Opinion on Montenegro's application for membership of the European Union (November 2010) and as a result Montenegro became a candidate country for membership of the European Union on 17 December 2010.<sup>i</sup>
3. However, the date of the opening of accession negotiations has been left open. To open accession negotiations for EU membership Montenegro must make progress on seven key EU priorities, the 7<sup>th</sup> of which is central to this report.
4. According to key priority seven, GoM is expected to: *"Implement the legal and policy framework on anti-discrimination in line with European and international standards; guarantee the legal status of displaced persons, in particular Roma, Ashkalia and Egyptians, and ensure respect for their rights. This will include the adoption and implementation of a sustainable strategy for the closure of the Konik camp."*
5. In response, in February 2011 GoM has adopted an ambitious action plan for implementation of the EU recommendations by July 2011.<sup>ii</sup> By the same token, the European Commission in its regular Montenegro Progress Report 2011 will focus in particular on the implementation of those key priorities needing to be addressed with a view to the opening of accession negotiations.
6. In order to regularize the legal status of displaced persons—in particular Roma, Ashkalia and Egyptians (RAE)—GoM has taken steps already. In September 2009 GoM adopted the *"Action Plan for Resolution of the Status of Displaced Persons from the Former Yugoslav Republics and of the Status of Internally Displaced Persons from Kosovo in Montenegro"* (hereafter called the "(I)DP Action Plan").<sup>iii</sup>
7. The (I)DP Action Plan creates a mechanism for "displaced persons" and "internally displaced persons" (including RAE DPs/IDPs) to have special access to the status of foreigner with permanent residence (FWPRS).
8. FWPRS provides the full spectrum of rights as Montenegrin citizens enjoy with the exception of the right to vote. In accordance with the (I) DP Action Plan, this change in status was made possible by the adoption of the Law on Amending the Law on Foreigners of October 2009, which reduces the requirements for FWPRS for DPs and IDPs.
9. In 2009/2010 a re-registration of holders of the status of both DPs from Bosnia and Herzegovina and IDPs from Kosovo was conducted by GoM, which also covered Roma IDPs. Individuals who re-registered may get FWPRS, but not all who will need to secure legal status through FWPRS in Montenegro have re-registered.
10. The Law on Amending the Law on Foreigners sets 7 November 2011 as the deadline for submission of the application FWPRS by DPs and IDPs. Those who

miss the deadline will lose DP/IDP status and will be considered as illegally staying in Montenegro.

11. Since the Law on Amending the Law on Foreigners went into effect the costs involved (since reduced) and the lack of documentation of applicants have proved to be the main obstacles for regulating the status of DPs/IDPs. Application numbers have initially been worryingly low.
12. Prerequisite for FWPRS application is valid documentation—a birth certificate, a citizenship certificate, and a valid, biometric passport of the country of origin.
13. Without satisfactory documentation unsuccessful applicants are at risk of statelessness or de facto staying in Montenegro illegally after the deadline of 7 November 2011.

## **2. Population of concern**

14. According to the re-registration figures of BCR and Mol the total number of DPs and IDPs (the “total population of concern” or TPoC) in Montenegro is 16,711 as of 2009/2010.
15. According to data provided by the Minister of Labour and Social Welfare (March 3, 2011) there are 10,773 DPs from Kosovo (which includes ca. 2,000 who fled from Albania) and 5,796 IDPs from Bosnia and Croatia, i.e. the total of 16,569 is close to the TPoC mentioned in para 14.
16. According to data from a UNHCR/UNICEF survey (2008, see pt. 28) 4,458 of the DPs from Kosovo belong to the group of RAE. The group of RAE is estimated at 10,619 in total, of which 6,200 are “local” RAE, although many of the older generation of local RAE came reportedly from Kosovo to Montenegro in the 1960-1980 period.
17. The registration total of TPoC (pt. 14: 16,711, pt. 15: 16,569) is different from numbers as at January 2010 published by UNHCR.<sup>iv</sup> For this report we will use the number 16,500.
18. Following the conflicts in the former Yugoslavia from 1991, Montenegro has been a land both relatively left outside of the conflicts and it has been a safe haven for many refugees. Following the conflict in Kosovo (1999) the numbers of the TPoC rose to the equivalent of about 20% of Montenegro’s own population.<sup>v</sup> Hence, the TPoC has dropped to less than 15% of the large number Montenegro had given shelter at the peak of the refugee inflow.
19. It is important to put the Montenegro TPoC in perspective. The conflict in the former Yugoslavia has resulted in a TPoC in the six constituent countries of 789,000 (as at January 2010), or 24.7 per 1,000 of the population. This compares to 2,170,000 in the EU member countries, or 4.4 per 1,000 of the population (see table in attachment 4). In other words: the numbers of the population of concern (for UNHCR purposes) in the former Yugoslavia are more than 5 times as large as applies in the EU member states. Montenegro’s TPoC of 16,500 translates in 24.9

- per 1,000 of the population (almost the same as the average for the former Yugoslav countries, which are all candidates for EU accession).
20. Not only is the TPoC relatively large in Montenegro as compared to member states of the EU, Montenegro's resources are also relatively smaller in terms of national income per capita. Measured in those terms the member states have €7m per one individual of the TPoC, as compared to €400,000 in Montenegro and €500,000 in the countries of the former Yugoslavia.
  21. Hence, while Montenegro's TPoC may seem small in comparison to what it once was, it is a multiple of what is normal in EU member states while Montenegro's resources are relatively small (at purchasing power parity, GDP per capita of Montenegro is only 1/3 of the EU average).
  22. The EU key priority 7 requires GoM to "*guarantee the legal status of displaced persons, in particular Roma, Ashkalia and Egyptians*". Besides the factors mentioned in paras 19 through 21, which make Montenegro's task relatively heavy, "guaranteeing" the legal status is further complicated by the fact that Montenegro since 1991 has undergone several changes in state organization.<sup>vi</sup> These changes have resulted in the adoption of new laws on citizenship not just once but several times. Changes in citizenship and civil registration laws, under normal circumstances, are very rare in any country. It is therefore that—for civil registrars and individuals—navigating the legislative maze is extremely difficult. In Montenegro each individual belonging to the TPoC is a different case, her or his journey through the countries of the former Yugoslavia will have been different from one to the next individual, and such differences exist even within many a family.
  23. Besides the TPoC there are those who consider themselves Montenegrin citizens—or those who are assumed to be—while they may not actually have the documentation to prove this. Among the "local Roma" for example, of which many of advanced age came from Kosovo in the 1960s to the 1980s, there are about 1,650 who do not have a registration in birth or citizen register, or neither.<sup>vii</sup>
  24. Given the fact that from 1946 through 1992 people could freely move about in the former Yugoslavia, and from 1992 through 2006 within the territory of Serbia (including Kosovo until 1999) and Montenegro, one can expect there to be many current Montenegrin citizens or residents for whom—or for whose families—vital events occurred outside Montenegro. It is reasonable to expect therefore that for substantial numbers of people currently residing in Montenegro regularization of the civil status of themselves or family members is required. When a person holds a birth and or citizen certificate from other former constituent countries of the SFRY the 2008 Law on Foreigners requires notification of such registrations in order to qualify for Montenegrin citizenship. There is reason to believe that there could be a substantial number of people residing in Montenegro who are oblivious of the notification requirement and the need to register to be eligible for Montenegrin citizenship.<sup>viii</sup>



25. *Because of what is stated under 20 through 24 there is doubt whether it is feasible to regularize the status of the 16,500 TPoC in time, i.e. before 7 November 2011. According to some the cases to be dealt with by 7 November could be only half of the TPoC. In addition there would be many local RAE without complete documentation, as well as an unknown number of Montenegrins with incomplete registration or uncertain status, two groups that could become stateless by stealth.*

### **3. Especially vulnerable groups within the population of concern**

26. UNICEF's mandate concerns the well-being of children, which includes advocacy that all children be registered at birth in accordance with Article 7 of the Convention on the Rights of the Child: *"The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless"*.
27. Because of the especially difficult situation of the RAE, in 2008 UNHCR, UNICEF, and UNDP signed a Memorandum of Understanding on the occasion of International Roma Day, in the presence of then the Deputy Prime Minister for European Integration of the Government of Montenegro, with the aim of strengthening cooperation in searching for durable solutions for the RAE through the facilitation of birth certificates and personal documents, as a pre-condition for their access to social security services and to further enable their social inclusion.
28. The NGO Legal Centre of Montenegro conducted a survey of RAE for UNHCR and UNICEF in 2008 to provide baseline data on identity papers held by the RAE. It covered 7,166 RAE—both local and refugee/displaced populations—representing approximately 70% of the total RAE population living in Montenegro.<sup>ix</sup>
29. A total of 2,767 persons (39%) had incomplete personal documentation, e.g. no birth and/or citizenship certificate. Out of that number 1,928 (70%) are children, while refugee/IDP RAE represent two third of all interviewed without any or with incomplete documentation. Of the total number of children lacking personal documentation, there were in total 714 lacking birth certificates, of which 663 children needed to be registered in the registry books for the first time, while another 51 children needed to re-new their birth registration.
30. While the survey appears to indicate that "local" RAE would not belong to the TPoC when they possess a birth certificate and citizenship certificate, this would only be the case if these certificates would signify adequate registration as Montenegrin citizen. However, there are "local" RAE with such certificates from other former constituent countries of the SFRY; the 2008 Law on Montenegrin

citizenship requires notification of such registrations in order to be eligible for Montenegrin citizenship.<sup>x</sup>

*Many Roma, Ashkalia and Egyptian refugees were not able to flee Kosovo with their documents. In some municipalities in Kosovo, especially in the Pec/Peja region, birth and other civil registries were destroyed or taken away by the Serbian army. At the present some of these registries are displaced in the municipalities of Southern Serbia, in the so called "Dislocated Registry Offices". The socially and economically marginalized Roma, Ashkalia and Egyptian refugees face serious obstacles in traveling to these dislocated offices in Serbia. Considering also the overall situation in Kosovo, it is highly unlikely that refugees success to renew their civil registration with the Kosovo authorities.*

*Early marriages within the Roma, Ashkalia and Egyptian refugee community also adds to the registration challenges. If a girl delivers a child before the age of 18, she cannot prove her identity, because her "internally displaced person" ID card, provided by the Bureau for the Care of Refugees (BCR), does not include a photo. Only ID cards for adults carry a photo. The issue is further complicated if the registry offices request a marriage certificate to register the child's birth. The traditional early marriages among this population are not properly registered with the authorities and thus not recognized by the state.*

*In addition, a number of Roma, Ashkalia and Egyptian refugee children are born at home and their birth is not registered. Some Roma, Ashkalia and Egyptians have lost their IDP status due to temporary return to Kosovo or have never officially obtained the IDP status. They are not entitled to health care and are obliged to pay the hospital fees for delivering a child. Without status and without sufficient income many prefer to give birth at home. Even more, some women without documents borrow the health booklet of a friend or relative to avoid fees for giving birth in a hospital. The child is consequently legally registered with a different family and it is very difficult to correct the erroneous registration later on. (Source: UNHCR, undated)*

31. According to a UNHCR survey (2010) of 1,553 refugees (out of an estimated total of 1.753) from Albania still living in Montenegro, 433 persons did not complete registration in the registry books (18 refugees from Albania were never registered in both birth and citizenship registry books, while 416 persons were not registered in the citizenship registry book).<sup>xi</sup>
32. The vast majority of these persons are children below 18 years of age (373 persons, or 90%) and most (306) of these children are born in Montenegro. These children were born after their parents fled in from Kosovo. Their parents have not been able to regulate their citizenship in the former Yugoslav constituent countries Montenegro, Serbia and Kosovo, or in Albania.
33. The group of 433 persons have problems in completing their applications for the status of foreigner with permanent residence as they cannot obtain a valid travel document without a previous registration in the citizenship registry books.

34. In total there are some 2,300RAE children and children of other ethnicity whose parents fled from Kosovo, who are without birth and/or citizenship registration being at a high risk of becoming stateless.
35. A problem with all inventories and surveys done (one of them has just started in the Konik I and II camps) is that none of them appears to address whether the registration documents the population of concern are holding concern registration in a Montenegrin register or in a register of another country of the former SFRY, which obviously makes a lot of difference.
36. ***It is hard to estimate the number of children (<18 years) in the PoC of 16,500. In the Montenegrin population at large children make up 23-24%.The percentage is 28% for the group of refugees (about 1,550) from Albania (whose status was changed to IDPs). The percentage of children among the RAE is much higher at 52% of the total. The incidence of non-registration among displaced persons (about 5,500 in total) is unknown. Our estimate is that the total number of children within the TPoC is 5,700 of which 4,300 have no or incomplete registration (see the table in Attachment 5). The great majority of children within the PoC were born in Montenegro. Therefore, within the TPoC, the odds for qualification for FWPRS of parents in a family are better than for their children.***<sup>xii</sup>
37. ***In addition, the lack of registration or incomplete registration, which is the actual object of this report, is also known to exist among the local RAE. Their number (the internally displaced RAE not included) would be 6,200 according to a recent census (Monstat, 2008), but could be as large as 15,500 according to other sources.***<sup>xiii</sup> ***The number of unregistered or incompletely registered children within this group could be 950 (low estimate) or 2,400 (high estimate). In total we estimate the number of children—in PoC as well as among other local RAE—with registration problems between 5,200 (low estimate) and 6,700 (high estimate).***
38. Attributes within the PoC which matter most are those with regards to age (many children have never lived anywhere else than in Montenegro), family union, culture (RAE vs. others), the according to many exceptionally unfortunate fate of refugees from Albania, and those which determine whether a DP/IDP refugee would return to an environment more hostile or more welcoming respectively offering less or better living conditions. For example: It would seem fruitless to attempt and persuade a refugee from Kosovo of Serb ethnicity to return to Kosovo from where the small Serb minority has fled, while Kosovo has an economy providing its people with per capita incomes only at 1/3 of the level in Montenegro. As far as the RAE are concerned the group is traditionally known for its transient character. This perhaps explains why return programs for Kosovars have only been successful for the RAE within the group of IDPs from Kosovo.

#### 4. The international, regional and Montenegrin legal framework

39. Montenegro has ratified the main international human rights instruments including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Montenegro is a signatory by succession to the 1954 Convention Relating to the Status of Stateless Persons (2006). Montenegro also signed and ratified the 1997 European Convention on Nationality.
40. UNICEF's mandate is for the well-being of the world's children. Montenegro signed and ratified the 1989 Convention on the Rights of the Child (CRC) immediately upon its declaration of independence, also in 2006. The CRC is an important instrument of international law, which protects children of minorities such as the RAE, and in several articles addresses what is important to refugee and displaced children. The relevant articles are shown in the text boxes on pages 11 and 12. It is especially against the background of these protections that UNICEF Montenegro has commissioned this report.
41. Montenegro still needs to indicate whether and when it will accede to the 1961 Convention on the Reduction of Statelessness. Another area of concern is that Montenegro, while it signed and ratified the Council of Europe Convention on the avoidance of Statelessness in Relation to State Succession, including its retro-active application, it has done so with the interpretation by its parliament that *"Montenegro is not bound to grant its citizenship to persons who would otherwise become stateless as a result of the dissolution of the State Union Serbia and Montenegro, as Serbia is the succeeding state and thus obliged to award the citizenship to these persons."*
42. Montenegro has accepted international obligations to initiate programmes and activities in order to ensure adequate protection of the rights of the RAE population and to guarantee them additional rights whilst recognising their particularly vulnerable position in society. This commitment is reflected by the adoption of a number of policy documents and strategies which have been introduced over the past several years, aimed at improving the quality of life for the RAE population, e.g. the Decade for Roma Inclusion, the Strategy for Improving RAE status in Montenegro, 2008-2012, Montenegro's poverty reduction strategy (2003), and its Innovative Strategy for Poverty Reduction (2007).

**The rights of refugee, displaced and RAE children as per the  
Convention on the Rights of the Child**

**Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

**Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

**Article 8**

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

**Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

**The rights of refugee, displaced and RAE children as per the  
Convention on the Rights of the Child**

**Article 10**

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

**Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

**Article 30**

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

43. It is important to note that the European Convention on Nationality which has been signed by Montenegro (as does the 2009 Montenegro Law on Citizenship in similar wording) states that “*A child who otherwise would be stateless automatically requires the nationality of the country of birth, irrespective whether in that country nationality is given on the basis of the bloodline.*”
44. Following its independence in 2006 Montenegro worked on a large number of new laws. Especially in 2008 many new laws and regulations for Montenegro citizenship, civil registration, foreigners, temporary and permanent residence, asylum, travel documents, IDs and privacy were issued. A good explanation of the relevant national legal framework and government policy for the PoC is given in the UNHCR publication on statelessness gaps.<sup>xiv</sup>
45. GoM’s policy to move large numbers of the PoC towards FWPRS is raising the question how people can move on from this status towards naturalization and Montenegrin citizenship, as laid down in Montenegro law. UNHCR (2009) states: “The Law on Citizenship defines two main ways that Montenegrin citizenship can be acquired at birth: through *descent*, and through *birth on the territory* of Montenegro. The Law on Citizenship applies a combination of *jus sanguinis* and *jus soli* principles. The principle of *jus sanguinis* dominates, while *jus soli* is only exceptionally applied, i.e. when a person is *de jure* stateless and in some other exceptional situations. Acquisition of *citizenship by descent* is stipulated in Articles 5 and 6 of the law.” A child will, generally speaking, acquire Montenegro citizenship when both parents, or one, are/is Montenegrin citizen, irrespective where the child is born. Acquisition of *citizenship by birth* on the territory of Montenegro (*jus soli*) is stipulated in Article 7 of the Law on Citizenship. “*A child born, or found on the territory of Montenegro shall acquire citizenship if his or her parents are unknown, if their citizenship is unknown, or if they are stateless or if child will remain without citizenship*” (Art. 7.1). Acquisition of citizenship through the principle of *jus soli* will be an exception and not a rule as implementation of the law has shown. The procedure is that person claiming to be stateless is obliged to initiate procedure for acquisition of citizenship in the parents’ countries of origin. Only when those countries refuse to grant that person with citizenship, the *jus soli* principle will be applied in Montenegro. UNHCR is not aware of any case that acquired citizenship through this article. [...] Acquisition of *citizenship by admittance* for stateless persons is specifically addressed under Article 14 of the law, which exempts stateless persons from three of the requirements under Article 8: to be discharged from the citizenship of another state, to have accommodation and a guaranteed source of income in Montenegro, to have knowledge of the Montenegrin language and have the ability to engage in basic communication.<sup>cxv</sup>
46. Montenegro’s Law on citizenship (2008, Art. 8), opens the door to naturalization: The Montenegrin citizenship may be granted to a person, in accordance with the interests of Montenegro, if he or she submits a request for acquiring Montenegrin citizenship and fulfils the following requirements: 1) that he or she is over 18 years of age; 2) that he or she was discharged from the citizenship of another state; 3)

that he or she has lawful and uninterrupted residence in Montenegro over a period of 10 years, before submitting the request for Montenegrin citizenship; 4) that he or she has accommodation and guaranteed source of income in Montenegro, in the amount that guarantees material and social security; 5) that he or she has not received a prison sentence, either in Montenegro or in another state, exceeding one year, for criminal offence which is subject of ex officio prosecution, or if the legal consequences of his or her conviction no longer apply; 6) that he or she has knowledge of Montenegrin language and can make basic communication in that language; 7) that there are no legal obstacles for the reasons of the public order and the security of the state; 8 ) that (s)he has settled tax and legal obligations.

47. UNHCR has established the following regarding naturalization *for stateless persons*: “While no persons have yet been granted citizenship based upon their lack of nationality, Article 14 of the Law on Citizenship requires that stateless persons may be granted citizenship if they are: older than 18 years; have lawful and uninterrupted residence in Montenegro for 10 years at least, are not criminally sentenced, are without unsettled tax obligations, and that there are no legal obstacles for the reasons of public order and the security of the state. The most obvious gap in the construction of this article is that it is hard to conceive how a stateless person could acquire 10 years of lawful and uninterrupted residence in Montenegro. After five years of temporary residence in Montenegro foreigners (i.e., not stateless persons) have right to permanent settlement which brings right on employment, education and right on health and pension insurance (Art. 54, Law on Foreigners). While the other naturalization provisions in the law are available to stateless persons (based upon marriage, habitual residence, national interest, or their recognition as refugees under the Law on Asylum, among others), most of these provisions require the renunciation of former citizenship (or in this case proof of statelessness), which could be difficult or impossible to obtain.
48. “Intelligent” application of the Law on Foreigners (2008, Art. 48) could provide a way towards preservation of the (nuclear) family union and granting family members provisional residential status based on FWPRS granted to one of the family members (e.g. the breadwinner), while regularization of the status of the other members of the family can follow after 7 November: “A temporary residence with the purpose of family reunification may be granted to a foreigner, who is a close family member of a Montenegrin citizen *or of a foreigner to whom a permanent residence or a temporary residence in Montenegro has been granted*. Close family members pursuant to paragraph 1 of this Article are: the spouse, minor children born in the marriage or outside the marriage, minor stepchildren and adopted children. As an exception to paragraph 2 of this Article, a close family member may also be another relative, if there are special, personal or humanitarian reasons for reunification of the family in Montenegro. This could reduce Mol’s “caseload with a factor four or five.



## 5. Foreigner with permanent residence status, problems to obtain it and problems that may follow from it

49. On the 17<sup>th</sup> of September 2009 GoM adopted the “*Action Plan for Resolution of the Status of Displaced Persons from the Former Yugoslav Republics and of the Status of Internally Displaced Persons from Kosovo in Montenegro*”. (The “(I)DP Plan” mentioned in pt. 6)
50. This (I)DP Plan creates a mechanism for “displaced persons” and “internally displaced persons” to have privileged, although difficult, access to the status of foreigner with permanent residence (FWPRS). This status provides the full spectrum of rights as Montenegrin citizens with the exception to the right to vote.
51. In accordance with the (I)DP Plan, this change in status was made possible by the adoption of the Law on Amending the Law on Foreigners on 23 October 2009, effective 8 November 2009.
52. “Internally displaced persons” unable to access FWPRS within two years from the entry into force of the Law on Amending the Law on Foreigners (hence, from 7 November 2011) will be considered as foreigners unlawfully staying in Montenegro.
53. However, according to the Action Plan, *it is the obligation of the Government to follow up the Action Plan’s implementation and identify solutions for “displaced” and “internally displaced persons” unable to meet these requirements.*
54. In order to obtain FWPRS re-registered “internally displaced persons” should submit applications to the Ministry of Interior (Mol). They are exempted from requirements of secured health insurance, income, and accommodation, but they must provide a valid travel document from their country of origin, along with birth and citizenship certificates, and must also have a clear criminal record in Montenegro.
55. According to one UNHCR publication the requirements, in addition, ask for a certified copy of a valid DP/IDP ID card for FWPRS, while as well a certificate issued by the Asylum Office/BCR is required which shows that the applicant had valid DP/IDP status on the 7<sup>th</sup> of November 2009.
56. According to Article 105(a)5, of the *Law on Amending the Law on Foreigners*, DPs or IDPs unable to present a valid travel document can still apply for foreigner status and will be granted temporary residence for foreigners, with all the rights accorded to the permanently residing foreigner. They will then have three years of temporary residence to obtain valid travel documents and have their status changed to that of permanent resident. At the end of the three years of temporary residence, those who will not be able to acquire a permanent residence will be considered foreigners unlawfully staying in Montenegro.
57. It is commonly understood that a large majority of displaced persons (those mostly from Bosnia & Herzegovina origin) will be able to comply with the requirements for FWPRS, will chose to stay on a temporary resident visa or will return.

58. UNHCR has identified a number of groups which face especially difficult obstacles in obtaining FWPRS: (1) IDPs from Kosovo whose re-registration was rejected in 2009; (2) DPs from Croatia and Bosnia and Herzegovina who initiated a procedure for naturalization in Montenegro; (3) DP/IDP children born in Montenegro who were registered in the citizen register before 1 January 2009; (4) disabled persons and/or persons accommodated in specialized institutions; (5) persons without basic identity documents; (6) persons who need to travel to their country of origin in order to obtain documents required for FWPRS, (7) persons rejected on the basis of considerations of national security without having been given the possibility of appeal, and (8) IDPs who obtained an “old” national ID card and registered their residence in Montenegro after 3<sup>rd</sup> of June 2006. For some of the IDPs from Kosovo it is impossible to obtain their documents because the registers within which they were registered have been destroyed.
59. The acquisition of FWPRS requires an active role of the applicants. Their actions are not very well supported by the embassies or consulates of their countries, which reportedly have limited capability and/or authority to play a role in the attempts of their citizens to obtain documents.
60. The countries of the former Yugoslavia also appear to lack (centralized) civil registration offices that are dedicated to service provision to citizens abroad.
61. Unlike what is practice in EU member states, Mol combines responsibility for civil registration and for immigration. These two responsibilities can be difficult to reconcile and require different skills sets.
62. Unlike what is practice in EU member states, Mol has chosen for a “passive” role with regards to the regularization of the status of the PoC. The immigration services of EU member states take an active role in regularizing the status of individuals in the PoC, and resort to casework.
63. Common practice is that each vital event happening to a foreigner residing abroad requires local registration, and subsequent reporting (declaration) to the country of origin. This will often require a rather complicated procedure which may involve the local ministry of justice or similar, the local ministry of foreign affairs, the local embassy of the foreigner’s home country and an office as mentioned under para 59 in the foreigner’s home country. The procedure may also include translation by a sworn translator and authentication or legalisation by a notary. Complications may arise when certain periods within which the procedure needs to take place are exceeded.<sup>xvi</sup> Reported other complications are that civil registrars are uncertain whether they should register a vital event occurring to a foreigner on Montenegrin soil, and that foreigners residing in Montenegro may not be aware that they should notify vital events for registration in Montenegrin registers.<sup>xvii</sup>
64. For a PoC family the procedures described under para 62 may retroactively be needed for several vital events (e.g. birth, marriage) and may also involve more countries than the home country and country of current residence.
65. It is for the reasons described above that we believe that many applicants for FWPRS may fail to produce the required documents before November 7 2011.

- They will then have to resort to application for temporary residence and have another three years to produce the required documents for permanent residence.
66. When individuals within the PoC will have obtained FWPRS, or enjoy prior temporary residence status, every new vital event happening to them will require local registration and reporting to their home country. Given the shortcomings in the administrative infrastructure in the countries, at embassies and consulates, and given the shortcomings in know-how among civil registrars and awareness among foreign residents (see the earlier paras 59 and 60), it should be expected that there would be an ongoing inflow in the PoC after 7 November this year, and also after 7 November 2014 when the period for temporary residence permits expires.
  67. Mol has started to look into the procedure for late (in Montenegro denoted as “subsequent”) registration of births (after the legal maximum of 30 days). Mol is concerned with the possibility of fraud, which undoubtedly is more likely at later age than at birth. However, a good balance needs to be struck or applicants for late registration will drop out.
  68. We believe that Mol will have great difficulty to work away the PoC caseload by 7 November 2011. This is mainly caused by the difficulty of handling the great heterogeneity in cases and limitations in human and financial resources.
  69. The downside of an ongoing occurrence of large numbers of people living in Montenegro without proper documentation, as experience shows, will imply a continued breeding ground for crime, child trafficking, children denied access to public services, corruption, identity theft and a heightened risk of a terrorist act. When, on the 7<sup>th</sup> November of 2011, the DP- or IDP status will cease to exist the benefits associated with this status will come to be cancelled as well. A reaction from the affected people to this loss of benefits should be anticipated. This all could very well damage Montenegro’s image and reputation, for tourism, foreign investment and economy, while it may also cause delays in country’s access to the EU.

## 6. The Roadmap

70. Any solution for avoiding the problems described in 68 needs to have the following characteristics. The solution needs to be: (1) feasible, (2) inclusive, paying special attention to children and other most vulnerable groups, (3) socially considerate, (4) secure, and (5) durable.
71. It is proposed that the “roadmap” towards a solution will consist of **three phases**: Phase 1: until 7 November 2011; Phase 2: from 8 November 2011 to a date to be determined (though before 7 November 2013) for urgent short-term measures, and, Phase 3 for medium-term measures.

### Roadmap Phase 1 (Short-term actions, until 7 November 2011)

72. The **first of four key activities of Phase 1** proposed is the intensification of the casework started by Mol<sup>xviii</sup> in the Konik Camp among the RAE, and the assumption of responsibility for any legwork, organization of travel and work with local consulates and embassies (cf. paras 53 and 62).
73. The **second key activity of Phase 1** proposed is the intensification of raising public awareness, including new messages, which convey that by 8 November 2011 Mol will take full responsibility for casework, and announcing administrative sanctions, administered fairly, for passivity of applicants for FWPRS during the period leading up to 7 November 2011 (cf. paras 53 and 62).<sup>xix</sup>
74. The **third key activity of Phase 1** proposed is to identify, prioritize and regularize vulnerable groups, assume casework for these groups and preserve family union. One good way to accelerate casework would be for *triage* to be applied to identify and prioritize a **first group** by 1) identifying (nuclear) families, 2) assume casework towards the timely processing of the FWPRS for one of the parents, and 3) grant provisional FWPRS status—awaiting formal FWPRS status—for the remaining family members when the parent is granted FWPRS (cf. para 48).<sup>xx</sup>
75. A **second group** which can be given priority eligibility for FWPRS are children born to DPs/IDPs not yet registered in their home country, because they cannot be excluded as not eligible to apply for FWPRS. Their lack of a birth and citizenship certificate from their home country does not disqualify them when late reporting/registration in their home country is not bound to a finite period. Their nationality will derive from that of their parents (see also note 17).<sup>xxi</sup>
76. A **third group** deserving active casework—or automatic granting of FWPRS—is the group of disabled and institutionalized persons within the PoC (cf. paras 53, 58 and 62).
77. A **fourth group** consists of IDPs who according to UNHCR and Red Cross reports have not been re-registered without the effective right to appeal. This number could be in the hundreds. Families could become separated as a result. It is

- proposed that the Ombudsman samples cases and publishes his findings and recommendations within the next three months (cf. para 58).
78. A **fifth group** consists of those not mentioned here but indicated in measures proposed by the EU delegation to Montenegro and UNHCR.<sup>xxii</sup>
  79. A **sixth group** consists of DPs for which their holding a travel document of their home country would void their uninterrupted stay which counts towards the period required for obtaining Montenegrin citizenship (see note 15).
  80. The **fourth key activity of Phase 1** proposed is a six-month late birth registration drive from June through November 2011. For this it is recommended that MoI will apply best practices as documented by the International Commission for Civil Status (ICCS) in Strasbourg, France, for member states of the ICCS, and the issuance of clear and practical guidelines (cf. para 67).<sup>xxiii</sup>

### **Roadmap Phase 2 (Short-term actions, from 8 November 2011)**

81. It is expected that by 7 November 2011 still a significant number of individuals within the PoC will require regularization of their status. Hence it is proposed that this situation is anticipated and planned for. The key activities and key elements of this second phase are proposed to include as the **first activity of phase 2** the drafting of a **detailed implementation plan**, based on:
  82. The **second element of phase 2**: a realistic caseload estimate and estimate of through-put time per average case in person-hours for members of MoI staff, resulting in a realistic estimate of the staff numbers required, the timeframe within which the plan can be implemented and its costing.
  83. The **third element of phase 2**: the inclusion in the plan of the re-registration of and issuance of IDs to all “foreigners staying unlawfully in Montenegro”, i.e. those who by 7 November have not been able to acquire FWPRS or a three-year temporary stay permit, and the declaration of a “*sub judice*” period for this group for a maximum of two years.
  84. The **fourth element of phase 2**: MoI to do the leg- and casework as per European practice for the remaining caseload of persons for which FWPRS still needs to be secured, as well as for those with the status of “foreigners staying unlawfully in Montenegro” (cf. paras 53 and 62).
  85. The **fifth element of phase 2**: the introduction and provision of free legal aid
  86. The **sixth element of phase 2**: a study of beneficiaries and a transitional stage for the phase-out of DP/IDP benefits (cf. para 69).
  87. The **seventh element of phase 2**: a stakeholder conference (including the EU and representatives of Bosnia and Herzegovina, Croatia, Kosovo, Serbia and Albania) on the roadmap elements (cf. paras 59 and 61)
  88. The **eight element of phase 2**: the design and costing of a public awareness campaign.

89. The **ninth element of phase 2**: a donor conference on the funding of phase 2 and 3 of the roadmap.

### **Roadmap Phase 3 (Medium term actions)**

90. Indications abound that for many “normal” Montenegrins shortcomings in civil registration may exist. The “local Roma” are probably not the only group to which this applies, given the changes that have taken place in the past two decades in the Yugoslav political map. Because of this a **national audit of civil status and civil registration** realities through a household sample survey is recommended.
91. On the basis of the findings (cf. para 90) a plan is to be drafted to improve registration and documentation of Montenegrin citizens and residents.
92. GoM to review its interpretation of the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession (cf. para 41).
93. GoM to accede to the 1961 Convention on the Reduction of Statelessness (cf. para 41)
94. GoM to reduce periods of permanent residence status required before qualifying for naturalization for families granted FWPRS status depending on their registered stay within Montenegro, including the period as refugee, DP or IDP. A point system could be developed to identify the most deserving (nuclear) families.
95. UNICEF, UNHCR, OSCE and the EU to consider in parallel to the Belgrade initiative—but with inclusion of Kosovo, Macedonia and Albania—to have a forum for cross-border civil registration matters. Both the Belgrade initiative and the parallel forum to consider observer status for the ICCS (cf. paras 59 and 60).
96. The former Yugoslav countries and Albania to be supported to develop their consular services in (other) former Yugoslav countries and for the development of dedicated offices for the registration of vital events occurring to nationals abroad as well exchange with peer offices across the former Yugoslav republics (cf. paras 59 and 60).
97. GoM to separate migration (Migration, Visas and Readmission unit) and civil registration functions, and to enhance the interoperability between civil registration and public health services (cf. para 61 and box, page 8)
98. GoM to strengthen the civil registration function by becoming a member of ICCS, learning from European practice, training of registrars, ICT development including introduction of elements of artificial intelligence (cf. note 23).
99. GoM to strengthen the migration function by learning from and introduction of European practice (cf. para 61 and note 23).

## **ATTACHMENTS**

### **Attachment 1 - Methodology**

In order to ensure that the report supports action by GoM the relevant ministries (the primary intended users) interested in this assignment, were involved in the study interviews, as well as were other stakeholders. The list of interviews was defined in consultation with the GoM: the Ministry of Foreign Affairs and European Integration (MoFAEI), the Ministry of Labour and Social Welfare (MoLSW), the Ministry of Interior (Mol) and the Bureau for the Care of Refugees (BCR) and UNHCR, Montenegro (see attachment 2). In addition the consultant conducted desk research before, during (2-11 March) and after his visit of Montenegro.

The consultancy was intentionally kept brief and served the purpose of a rapid assessment, conducted over 14 working days. This bears a certain risk, kept manageable by providing key stakeholders the opportunity of providing feedback to the draft report.

#### **Activities and tasks**

Tasks and activities of the consultancy involved:

1. Defining the list of interviewees in consultations with the relevant ministries and meeting with the agreed key stakeholders (line-ministries, Bureau for the Care of Refugees, UNHCR, EU Delegation, visiting the Konik I and II camp area and meet with field staff in the camp area). The agreed program is in attachment 2.
2. Desk review of relevant documents such as laws, strategies, action plans, reports both in Montenegro and in countries of origin, as well as available databases. Sources used are shown in attachment 3.
3. Drafting of preliminary findings for presentation to key-holders in Windows PowerPoint format for presentation on the morning of March 11, 2011.
4. Submission of the final report by March 25, 2011, with clear recommendations on the steps to be taken by GoM in order to solve the problem of children without birth and/or citizenship registration in Montenegro.

#### **Management and Organisation**

The consultant was supported by the UNICEF Economic and Social Policy Officer, Slobodan Zivkovic, providing the consultant with the necessary technical support and facilitating communication with relevant stakeholders when needed.

Bearing in mind its mandate, expertise, available data and contacts with people of concern, the consultant also closely cooperated with UNHCR Montenegro, facilitated by UNICEF.

## Attachment 2 - Meeting program

Consultancy for civil registration of children lacking birth and/or citizenship certificates in Montenegro, 2-11 March 2011.

Consultant: Drs. Jaap van der Straaten, MBA  
CEO, Civil Registration Centre for Development-CRC4D  
Delft, the Netherlands

<b>Time</b>	<b>Activity</b>	<b>Place</b>
<b>Day 1: Wednesday, 2 March 2011</b>		
14:15	Arrival to Podgorica	
16:00 – 16:30	Introductory meeting with Mr. Slobodan Zivkovic, UNICEF and Mr. Slobodan Rascanin, UNHCR	UNICEF
<b>Day 2: Thursday, 3 March 2011</b>		
08:45 – 09:10	Introductory meeting with Ms. Noala Skinner, UNICEF Representative	UNICEF
09:30 – 10:30	Meeting with Dr Suad Numanovic, Minister of Labour and Social Welfare and Snezana Mijuskovic, Deputy Minister	Ministry of Labour and Social Welfare
11:30 – 13:00	Meeting with Ms. Dawn Adie-Baird, Task Manager, EU Delegation to MNE	EU Delegation
14:30 – 16:00	Introductory meeting with Ms. Katja Saha, UNHCR Acting Representative and Mr. Slobodan Rascanin, UNHCR	UNHCR
<b>Day 3: Friday, 4 March 2011</b>		
09:00 – 10:30	Meeting with Ms. Sanja Cadjenovic, Director of NGO Legal Centre	Legal Centre
11:00 – 12:00	Meeting with Ms. Dragica Vucinic, Deputy Director of the Bureau for the Care of Refugees	Bureau for the Care of refugees
13:30 – 15:00	Field visit to refugee camps Konik I and II with UNHCR; Meeting with Mr. Mensut Krpuljevic, Red Cross, Manager of the camp	Refugee camps Konik I and II
16:30 – 17:30	Meeting with Ms. Slavica Milacic, Secretary, Department for European Integrations, Ministry of Foreign Affairs and European Integrations	Ministry of Foreign Affairs and European Integrations
<b>Day 4: Saturday, 5 March 2011</b>		
09:00 –...	Analysis of collected data	



<b>Time</b>	<b>Activity</b>	<b>Place</b>
<b>Day 5: Monday, 7 March 2011</b>		
09:30 – 10:45	Meeting with Mr. Osman Subasic, Deputy Minister of Internal Affairs and Public Administration	Ministry of Interior
<b>Day 6: Tuesday, 8 March 2011</b>		
10:00 – 11:30	Meeting with Mr. Vido Soc, representative of refugees from Albania	UNICEF
13:30 – 14:45	Meeting with Ms. Jelena Darmanovic Dubak, Secretary of the Red Cross of Montenegro and Mr. Mensut Krpuljevic, Red Cross, manager of Konik camps	Red Cross
15:00 – 16:00	Meeting with Mr. Zoran Ulama, Head of the Office for Anti-trafficking	Office for Anti-trafficking
<b>Day 7: Wednesday, 9 March 2011</b>		
09:30 – 10:30	Meeting with Mr. Sucko Bakovic, Ombudsman and Ms. Nevenka Stankovic, Deputy Ombudsman responsible for monitoring children's rights	Ombudsman Office
13:30 -14:30	Meeting with Mr. Orhan Sahmanovic, Secretary of the Ministry of Human and Minority Rights	MoHMR
15:00 – 16:00	Meeting with Mr. Osman Subasic, Deputy Minister of Internal Affairs and Public Administration, drafting the Information to the GoM	Mol
<b>Day 8: Thursday, 10 March 2011</b>		
09:00 – 10:30	Meeting with Meeting with Mr. Alexander Avnessov, UN Resident Representative and Mr. Miodrag Dragisic, UNDP	UNDP
11:30 – 12:30	Meeting with Mr. Isen Gasi, President of Roma National Council	Roma National Council
14:00 – 15:30	Meeting with Ms. Noala Skinner, UNICEF Representative, Mr. Slobodan Zivkovic, UNICEF, Katja Saha, UNHCR Acting Representative, Mr. Aleksandar Cadjenovic and Mr. Slobodan Rascanin, UNHCR	UNICEF
<b>Day 9: Friday, 11 March 2011</b>		
09:30 – 10:30	Presentation of the preliminary results and recommendations to the representatives of relevant ministries	Hotel "Podgorica"

Many of the meetings as well as the final presentation were supported by one of the following interpreters: Tamara Jurlina, Uros Zekovic and Damir Vujosevic.

### Attachment 3 - Sources used

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## Attachment 4

### The European Union Member Countries, Candidate Countries, Refugee Numbers and Country (Region) Absorption Capacity (2010-2011 data)

Countries	Population 1)	GDP 2)	TPoC 3) residing in	TPoC 3) originating from	TPoC residing in/1,000 pop	GDP/TPoC residing in (m€)
<b>Member countries</b>	<b>497,817,108</b>	<b>15,174.6</b>	<b>2,169,823</b>	<b>38,997</b>	<b>4.4</b>	<b>€ 7.0</b>
Austria	8,217,280	332.6	71,575	97	8.7	€ 4.6
Belgium	10,431,477	396.9	34,415	97	3.3	€ 11.5
Bulgaria	7,093,635	92.2	6,589	3,182	0.9	€ 14.0
Cyprus	1,120,489	23.2	7,903	13	7.1	€ 2.9
Czech Republic, the	5,259,250	187.6	3,588	3,166	0.7	€ 52.3
Denmark	5,529,888	201.4	24,811	11	4.5	€ 8.1
Estonia	1,282,963	24.7	104,856	288	81.7	€ 0.2
Finland	5,259,250	187.6	13,638	8	2.6	€ 13.8
France	65,102,719	2160.0	232,710	165	3.6	€ 9.3
Germany	81,471,834	2960.0	658,632	17,932	8.1	€ 4.5
Greece	10,760,136	321.7	50,156	83	4.7	€ 6.4
Hungary	9,976,062	190.0	6,740	3,992	0.7	€ 28.2
Italy	61,016,804	1782.0	60,123	79	1.0	€ 29.6
Latvia	2,204,708	32.2	344,358	877	156.2	€ 0.1
Lithuania	3,535,547	56.2	4,765	617	1.3	€ 11.8
Luxembourg	503,302	40.8	3,872	1	7.7	€ 10.5
Malta	408,333	10.2	7,783	9	19.1	€ 1.3
Netherlands, the	16,847,007	680.4	97,287	75	5.8	€ 7.0
Poland	38,441,588	725.2	18,587	2,306	0.5	€ 39.0
Portugal	10,760,305	247.0	439	79	0.0	€ 562.6
Ireland, Republic of	4,670,976	172.3	12,326	12	2.6	€ 14.0
Romania	21,904,551	253.3	1,773	4,779	0.1	€ 142.9
Slovakia	5,477,038	121.3	1,625	746	0.3	€ 74.6
Slovenia	2,000,092	56.8	4,459	58	2.2	€ 12.7
Spain	46,754,784	1376.0	7,278	87	0.2	€ 189.1
Sweden	9,088,728	354.0	108,067	34	11.9	€ 3.3
United Kingdom	62,698,362	2189.0	281,468	204	4.5	€ 7.8
<b>Official candidate countries</b>	<b>86,319,545</b>	<b>1,074.8</b>	<b>67,958</b>	<b>270,984</b>	<b>0.8</b>	<b>€ 15.8</b>
Croatia	4,483,804	78.5	28,305	103,409	6.3	€ 2.8
Iceland	311,058	11.9	217	5	0.7	€ 54.8
Macedonia	2,077,328	19.5	3,528	8,801	1.7	€ 5.5
Montenegro 5)	661,807	6.6	16,500	2,757	24.9	€ 0.4
Turkey	78,785,548	958.3	19,408	156,012	0.2	€ 49.4
<b>Official potential candidate countries</b>	<b>16,753,017</b>	<b>139.5</b>	<b>514,890</b>	<b>690,941</b>	<b>30.7</b>	<b>€ 0.3</b>
Albania	2,994,667	23.3	90	17,303	0.0	€ 258.9
Bosnia & Herzegovina	4,622,163	30.4	182,876	236,863	39.6	€ 0.2
Serbia	7,310,555	80.5	331,924	436,775	45.4	€ 0.2
Kosovo	1,825,632	5.3	n/a	n/a	n/a	n/a
<b>Former countries of the SFRY 4)</b>	<b>22,981,381</b>	<b>277.6</b>	<b>567,592</b>	<b>788,663</b>	<b>24.7</b>	<b>€ 0.5</b>
Ditto including Albania	25,976,048	300.9	567,682	805,966	21.9	€ 0.5
Ditto excluding Montenegro	25,314,241	294.3	551,182	803,209	21.8	€ 0.5
<b>Grand total</b>	<b>600,689,670</b>	<b>16,388.9</b>	<b>2,752,671</b>	<b>1,000,922</b>	<b>4.6</b>	<b>€ 6.0</b>

1) July 2011 est. (CIA World Factbook)

2) Generally 2010 est. PPP CIA World Factbook)

3) As at Jan. 2010, UNHCR website

4) Socialist Federal Republic of Yugoslavia (consisting of Bosnia &amp; Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia and Slovenia)

5) Estimate: 11,000 IDPs from Kosovo, 5,500 DPs from Croatia and Bosnia and Herzegovina (1,500 "Albanians" - stateless persons included in IDPs)

## Attachment 5

Estimate of non- or incomplete registration among PoC and other local RAE, 2008-2010							
		Total	<18	Adult	Un- or incompletely registered 1)		
					Total	<18	adult
PoC	Refugees from Albania (IDP)	1,753	491	1,262	470	422	49
	RAE IDP/IDP	4,458	2,309	2,149	2,244	1,695	549
	Other IDP	4,789	1,341	3,448	1,865	984	881
	DP from Croatia, Bosnia and Herz.	5,500	1,540	3,960	1,964	1,182	782
		16,500	5,681	10,819	6,543	4,282	2,261
Ex PoC	Local RAE High	15,542	8,051	7,491	4,142	2,419	1,723
	Local RAE Low	6,161	3,191	2,970	1,642	959	683
Grand total	High estimate	32,042	13,732	18,310	10,685	6,702	3,983
	Low estimate	22,661	8,872	13,789	8,185	5,241	2,944
		Total	<18	Adult	Un- or incompletely registered 1)		
					Total	<18	adult
PoC	Refugees from Albania (IDP)	1,753	491	1,262	27%	86%	4%
	RAE IDP/IDP	4,458	2,309	2,149	50%	73%	26%
	Other IDP	4,789	1,341	3,448	39%	73%	26%
	DP from Croatia, Bosnia and Herz.	5,500	1,540	3,960	36%	77%	20%
		16,500	5,681	10,819	40%	75%	21%
Ex PoC	Local RAE High	15,542	8,051	7,491	27%	30%	23%
	Local RAE Monstat	6,161	3,191	2,970	27%	30%	23%
Grand total	High estimate	32,042	13,732	18,310	33%	49%	22%
	Low estimate	22,661	8,872	13,789	36%	59%	21%

1) "Un- or incompletely registered" implies not registered in either a birth register or a citizen register, or not in both.

Source: UNICEF, State of the World's Children 2011, New York 2011 (for age structure total population, 2009 estimate)  
 UNSD (website, for age structure total population, as at 1 July 2008 estimate, "ESJD", accessed 19 March 2011)  
 Radulovic (2008) (for age structure RAE, 2003)  
 UNHCR, 2010-2 (for registration refugees/IDPs from Albania, and their age structure)  
 UNHCR et al., 2009 (for registration DP/IDP RAE and local RAE)

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## Notes

<sup>i</sup> Cf. European Commission, 2010.

<sup>ii</sup> Cf. Government of Montenegro, 2011.

<sup>iii</sup> Cf. Government of Montenegro, 2010.

<sup>iv</sup> See: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48d986> (6 March 2011). According to information obtained from UNHCR the website information is incorrect.

<sup>v</sup> The population estimate for mid 2011 is 661,807 according to CIA, 2011 (7 March, 2011)

<sup>vi</sup> Cf. UNHCR, 2009, p. 2: “During a period of less than twenty years, Montenegro has experienced two state disintegrations and four changes in the organization of the state.”

<sup>vii</sup> Cf. UNHCR et al., 2009, p. 22. The total number of RAE was estimated by Montenegro’s national statistics office in 2008, and was estimated at 10,618. Estimates by Roma NGOs indicate a total of 20,000, which has been taken as the “high estimate”. The UNHCR (2009) data indicate that non-registration rates are 23% for adults and 27% for the under eighteen. MONSTAT (2009) provides the age structure for the RAE based on sample survey, which implies that an estimated 50.8% of the RAE population is under eighteen. This is much higher than the 23-24% for the Montenegrin population at large.

<sup>viii</sup> Cf. Art. 8 and Art. 41 of the Law on Montenegrin citizenship. A deadline of 5 May 2011 is in place.

<sup>ix</sup> Cf. UNHCR et al., *ibid.* For a clarification “DP”, “IDP” and “refugee” a good source is UNHCR, 2010-2

<sup>x</sup> Article 54 of the 2008 Law on Foreigners states: “Nationals of the States from the territory of the former SFRY with registered permanent residence in Montenegro before 3 June 2006 have the right to permanent residence, without being required to submit an application or to acquire a specific approval, but are obliged to file a notification for registration. A permanent residence shall be granted to a foreigner who up to the date of the application continuously resided in Montenegro for five years based upon a permit for temporary residence. Exceptionally, a permanent residence may be granted to a foreigner who up to the date of the application continuously resided in Montenegro for less than five years based upon a permit for temporary residence, if so required by humanitarian reasons or if in the interest of Montenegro.”

<sup>xi</sup> Cf. UNHCR, 2010-2

<sup>xii</sup> UNHCR reported while reviewing this report that the total number of children among the TPoC would be 3,969 (24.2%). This number strikes the consultant as too low, given the 28% for the group refugees from Albania, as well as data from MONSTAT (2009) regarding the age structure of the RAE population. In addition, the information obtained by the consultant from MoLSW was that from the 10,773 IDPs from Kosovo 3,447 were children, which—given the substantial number of RAE in this group—gives the consultant comfort about the estimate made. If the same age structure applies to DPs the consultant’s estimate is close. If the estimate for children of DPs were in fact high then it should also be borne in mind that the estimate of the total number of DPs and IDPs (the TPoC) might well be on the low side, if only because many were missed out in re-registration etc.

<sup>xiii</sup> Interview information, including information obtained from a RAE NGO representative. There seems to be a consensus that the actual number of RAE is higher than the official estimate in MONSTAT (2009).

<sup>xiv</sup> Cf. UNHCR, 2009

<sup>xv</sup> UNHCR has identified problems in the law which deprive the vast majority of refugees (“displaced persons”) from Bosnia and Herzegovina and Croatia from their eligibility for Montenegro citizenship, by stating that (s)he would obtain a identity document from their country of origin would not meet the requirement of “uninterrupted residence”, or, if they were to qualify for FWPRS, they would need to still be in Montenegro for the full period of uninterrupted residence before being eligible for citizenship (see pt. ). It appears that contradictions in laws and regulations could cause an undesired prolonging of uncertainty in civil status of many displaced persons. Cf. UNHCR, *ibid.*

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<sup>xvi</sup> For example, the Dutch government requires foreign civil registration documents to be not older than six years. In a country like Indonesia a birth certificate is issued only once, at first registration. No duplicates are issued unless a police statement can be shown that the original, first birth certificate was lost. Thus, when the birth of a child born to a Dutch national in Indonesia is reported to the Dutch civil registration office for Dutch nationals abroad (based in The Hague) this should be within six years from birth, or – as happened to the consultant - the (fictitious) loss of the first certificate needs to be reported to Indonesian police.

<sup>xvii</sup> The consultant has a principally different opinion on what in the various Montenegrin sources, including UNHCR and GoM, is considered relevant for a person to have a civil status. When the birth of a person occurs and is registered in country A the law of the country determines whether the person becomes also a national of country A. When the person does not qualify to also become a citizen of country A the reason for that can only be that the nationality of one or the two parents is not that of country A but country B. Then the birth needs to be declared in country B, for which the registration of birth in country A is required. Through the declaration of the birth in country B the person will obtain citizenship of country B. Besides this it is also possible that the law in both countries allows the person to obtain dual nationality through registration and declaration of birth in both countries. Hence, when a person belonging to the PoC has her or his birth registered in Montenegro and declaration of birth in the home country has not yet taken place the birth of the person may still be declared and the civil registration authority of the home country of the person can then issue a certificate of citizenship. Only when declaration in the home country is not within a legally required timeframe or when the declaration would be not be acceptable it is that the person is potentially stateless. Another possibility for acquiring citizenship status is that the consulate or embassy of the home country provides a citizenship certificate or (entry in a) travel document that can pass for proof of citizenship.

<sup>xviii</sup> When MoI is mentioned in the roadmap this can be read as MoI and other agencies (such as CBR) that can or ought to support the process.

<sup>xix</sup> These measures are thought to provide an incentive to individuals within the PoC to undertake the steps necessary for their regularization themselves, while fair application implies that demonstrable inabilities are taken into account.

<sup>xx</sup> This would in fact be quite similar to the provision of temporary resident status to dependents of a person granted a work and temporary stay permit on economic grounds, could substantially reduce the caseload to be dealt with, and regularize in a fairly short period the status of large numbers of the PoC, and imply a priority given to children.

<sup>xxi</sup> When for children requirements of home country birth- and citizenship certificates are not in accordance with international law, then a valid travel document will still be a requirement. Inclusion of minors in the travel document of a parent may be a possibility, depending on the country of origin.

<sup>xxii</sup> Cf. EU Delegation et al., 2011

<sup>xxiii</sup> Cf. CIEC, 2000, CIEC, 2007, OSCE et al., 2007 and CIEC, 2010, which were all provided to MoI. MoI was also provided by the consultant with electronic copies of several laws (including those of Bulgaria, Ireland and Australia), the 1992 model act used in the USA as well as a copy of the UN, 1998 publication, which includes a model act. Consultant spoke with MoI regarding late (“subsequent”) registration provisions especially, for which staff at MoI was in the process of developing a regulation. The Law on Personal Registries does not provide procedural guidelines for subsequent registration. It is not common for civil registration law to provide this detail, which usually is done in an executive annex to the law. In Montenegro the process now relies on the interpretation of the law by the employees in MoI branch offices. This lack of a clear procedure leaves space for arbitrary implementation of the law. Some MoI branch offices are active and undertake verification of the facts themselves, while other offices reject jurisdiction and refer the child’s parents to the court in order to determine their parenthood. The main problem is that the basic courts do not accept jurisdiction over such claims and state that the child’s birth, including parenthood, should be established through administrative procedure by MoI, as per the Law on Personal Registries (UNHCR, 2009). This variable practice, especially when there are as many cases as in Montenegro, needs to be resolved one way or another. In ICCS member states either one (court procedure) or the other (civil registrar enquiry) procedure is applied (see ICCS, 2007). The Belgrade Initiative countries (Bosnia and Herzegovina, Croatia, Montenegro and Serbia) discussed late registration in a roundtable in 2007 (see OSCE et al., 2007). The Center for Advanced Legal Studies, supported by UNHCR,

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the OSCE, Praxis and representatives of other NGOs in the Focus Group, in cooperation with the relevant ministries, would offer a proposal for a legal solution, which would address the situation of persons who lack recognition before the law, in the form of a model law comprehensively resolving the issue. It is unknown to the consultant whether this took place. MoI intends to limit the risk of fraud at late registration, for which the consultant referred to a study work done in ICCS states (cf. CIEC, 2000). During interviews several sources mentioned anecdotal information about individuals belonging to the PoC who undeservedly benefit from DP/IDP status in Montenegro. During the consultant's visit no mentioning was made of GoM, 2008, a strategy document on migration management, the status of which is unclear.

END