Answers to the Questionnaire on Human Rights Council resolution 29/10 on “Human rights and the regulation of civilian acquisition, possession and use of firearms”

Answers to the Questionnaire on Human Rights Council resolution 29/10 on “Human rights and the regulation of civilian acquisition, possession and use of firearms” was requested by Mr Sebastiaan Verelst, the United Nations High Commissioner for Human Rights. Namely, paragraph 3 of the Resolution requests the United Nations High Commissioner for Human Rights to present to the Human Rights Council at its thirty-second session a report on the different ways in which civilian acquisition, possession and use of firearms have been effectively regulated, with a view to assessing the contribution of such regulation to the protection of human rights, in particular the right to life and security of persons, and to identify best practices that may guide States to further develop relevant national regulation.

1. Does your country have regulations regarding the acquisition, possession and use of firearms by civilians? Please provide information on relevant legislation, regulations, administrative procedures, policies or any other measures in this regard.

Law on Weapons (Official Gazette of Montenegro 10/15) regulates the issues of acquisition, possession, carrying, collection and transfer, as well as the conditions for manufacturing, testing and marking of firearms, repair and alteration, trade and transportation of weapons, provision of sport and recreation shooting services, and training of the citizens for proper use of firearms. The following regulations for implementation of the above-mentioned Law were adopted: Rulebook on weapons related documents forms (Official Gazette of Montenegro 35/15); Rulebook on detailed manner of disassembling of weapons (Official Gazette of Montenegro 34/15); Rulebook on detailed manner of handling confiscated and surrendered weapons and ammunition (Official Gazette of Montenegro 36/15); Rulebook on detailed manner of training of citizens for proper use of firearms (Official Gazette of Montenegro 34/15); Rulebook on conditions for manufacturing, sale, repair and alteration of weapons and ammunition (Official Gazette of Montenegro 43/15), and Rulebook on conditions that have to be met by a civilian shooting range (Official Gazette of Montenegro 43/15). The Law on General Administrative Procedure (Official Gazette of Montenegro 60/03 and 32/11) applies on the procedures undertaken in accordance with the Law on Weapons.

2. Does your country have specific regulations regarding the acquisition, possession and use of firearms by civilians? Please provide information on relevant legislation, regulations, administrative procedures, policies or any other measures in this regard.

Approval for acquisition of weapons falling under the category B is issued to a legal person, if it: has a justifiable reason for acquisition of weapons (registered for the activities referring to hunting, growing of wild game, sport shooting, provision of
sport and recreation shooting services and training of citizens for proper use of firearms on civilian shooting ranges, possession and carrying of weapons, performing activities of protection of persons and property, scientific research for which weapons are required, collection of professional information on animal species, movies shooting, drama plays or traditional knights games and other, and other manifestations which present cultural heritage and similar, as well as museums; responsible person in a legal entity has to fulfil general and special requirement for weapons acquisition; room for safe storage and keeping of weapons has to be provided.

For weapons acquired upon the approval for weapon acquisition, the legal person submits the registration request, in the seat of the company, within eight days as of the day of acquisition, and he/she is issued a permit to possess the weapon, valid for ten years.

It is prohibited to carry weapons in public places, except for the legal persons (private security companies, as well as members of sport, shooting and hunting organisations), which can carry weapons during carrying out of the activities they are registered for.

We would like to underline that a legal person may lend weapons for use in order to carry activities to the persons fulfilling conditions for acquisition of weapons, to whom they issue a certificate for possession, carrying and transfer of weapons and ammunition.

3. Does your country have regulations that restrict or prohibit the import and export of firearms or certain types of firearms for civilian use? Please provide information on relevant legislation, regulations, administrative procedures, policies or any other measures in this regard.

The issues referring to control of small and light weapons are regulated by: the Law on Weapons (Official Gazette of Montenegro 10/15), Law on Prevention of Money Laundering and Financing Terrorism (Official Gazette of Montenegro 33/14), Law on Foreign Trade in Weapons, Military Equipment and Dual Use Goods (Official Gazette of Montenegro 80/08 and 40/11), Criminal Code (Official Gazette of Montenegro 70/03, 13/04, 47/06, 40/08, 25/10 and 32/11), and Criminal Procedure Code (Official Gazette of Montenegro 57/09, 49/10, 47/14, 2/15, 35/1558/15).

Natural and legal persons are not allowed to acquire, possess or carry weapons and ammunition of the Category A, or cold weapons basically intended for attack or infliction of injuries, as well as the tools suitable for infliction of injuries when carried in public places, and if the manner and circumstances of their carrying indicate that they are carried in order to be instantly used for harassment, attack or infliction of injury.

4. Has your country undertaken any regional or international commitment(s) related to the regulation of civilian acquisition, possession or use of firearms? If so, please list them and give any relevant details.

Montenegro guarantees and protects rights and freedoms exercised pursuant to the Constitution and the ratified international treaties. It cooperates and develops friendly relations with other states, regional and international organizations, based on the
principles and rules of international law. Montenegro is involved in international and regional activities against organised crime, as an important dimension in controlling small and light weapons and ammunition. Montenegro is the member state of the UN since June 28, 2006, Organization for the Prohibition of Chemical Weapons (OPCW), World Customs Organisation (WCO), International Criminal Police Organisation (INTERPOL), World Trade Organisation (WTO). Montenegro carries out relevant measures, as well as international and regional cooperation, in particular with the largest regional security organisation – OSCE, oriented towards improvement of the control in this field. It actively implements the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons. In addition, it implements Stabilisation and Association Agreement between Montenegro and the Union and its member states, thus contributing towards suppression of organised crime and improvement of security.

As the leading governmental authority in implementation of the 2013 – 2018 Strategy for the control and reducing of light arms and small weapons and its Action plan, the Ministry of the Interior signed Memorandum on understanding with the UNDP, OSCE and the NGO Centre for democratic transition, aimed at improving of the capacities of the law enforcement agencies in the field of weapons control and reduction. The Memorandum is the basis for implementation of the Project “Respect life, surrender weapons”, which is being implementating in our country. Furthermore, the Project “Respect life, surrender weapons” (the title is the same as of the previous one) is implemented in support of the OESCE and UNDP, with active participation of the NGOs, aimed at surrender of weapons possessed both legally and illegally by natural and legal persons.

The Law on Weapons which entered into force on March 19, 2015, provides for that natural and legal persons illegally possessing weapons are obliged to report to the police possession of the weapon in the place where the weapon is kept, in order to be surrendered or disabled while the Law is in force. A police officer takes over the weapon and ammunition in the place it is kept. Also, the person possessing the weapons under the Category B without the weapon certificate, can report possession of the weapon and submit the request for issuing of the weapon certificate, where he/she is stating true data related to the weapon, within two years, at the latest, as of the day of the Law entry into force, or to surrender it to the state, or to disable it and keep it as a memory. The person that surrendered the weapon or submitted the request for the weapon registration shall not face criminal charges.

In 2014 and 2015, we celebrated July 09, and destroyed 2,346 pieces of firearms in cooperation with the UNDP Office in Podgorica (confiscated and surrendered weapons). Since entry into the force of the Law on Weapons, 239 requests for registration of weapons without origin was submitted, and 200 pieces of registered weapons were surrendered to the state.

The Law on Weapons provides for the framework which is harmonised with the EU Directive 91/477/EEC and Directive 2008/51/EC and the UN standards, for which implementation secondary legislation was adopted.
5. What are the types and characteristics of firearms to which civilians can lawfully have access? Are there any limits on the number of firearms which civilians may own? Please provide details of each.

Natural and legal persons may acquire and possess weapons under the categories B, C and D.
There are no limits on the number of firearms which natural persons may own.

6. Please provide information on how firearms are categorised according to risk factors and how they are legally classified.

The weapons is classified under the categories A, B, C and D. It is not allowed to acquire, possess or carry weapons and ammunition of the Category A, or cold weapons basically intended for attack or infliction of injuries, as well as the tools suitable for infliction of injuries when carried in public places, and when the manner and circumstances of their carrying indicates that they are carried in order to be instantly used for harassment, attack or infliction of injury. It is allowed to acquire, possess, carry or transfer weapons and ammunition of the Category B – if proper weapon certificate was issued; Category C – if it is reported and; Category D – without weapon certificate and reporting.

Weapons of the Category A is the following: military missiles with explosive charge and launchers; automatic firearms; firearms disguised as other object; ammunition with penetrating, explosive, or incendiary projectiles, and projectiles for such ammunition; pistol and revolver ammunition with expanding projectiles and the projectiles for such ammunition, except for ammunition for hunting and sport shooting; military firearms; explosive firearms and their parts; all types of firearms with integrated suppressor and suppressors indented for firearms.

Weapons of the Category B je: semiautomatic or repeating short firearms; single-shot short firearms with centre-fire percussion; single-shot short firearms with rim-fire percussion that are less than 28 cm in length; semiautomatic long firearms whose magazines and chambers can together hold more than three rounds, where the loading device is removable or where it is not certain that the weapon cannot be converted, with ordinary tools, into a weapon whose magazine and chamber can together hold more than three rounds; repeating and semi-automatic long firearms with smooth-bore barrels not exceeding 60 cm in length; repeating long firearms other than those listed in point 6 of this paragraph; long firearms with single-shot rifled barrels; semi-automatic long firearms other than those listed in points 4 - 6 of this paragraph; single-shot short firearms with rim-fire percussion whose overall length is not less than 28 cm; long firearms with single-shot rifled barrels; old weapons; other single-shot firearms with combined smooth-bore and rifled barrels; semi-automatic firearms for civilian use, which is similar to the automatic firearms, other than listed above.

Weapons of the Category C is the following: gas weapons; firearms replicas which do not operate with a single cartridge; mortars; air weapons of kinetic energy exceeding 10.5 J, or projectile velocity is exceeding 250 m/s, or the calibre is exceeding 4.5 mm; arching weapons with strength of a tensioned string exceeding 450 N.
Weapons of the Category D is the following: air weapons of kinetic energy up to 10.5 J, or projectile velocity up to 250 m/s, or the calibre up to 4.5 mm; arching weapons with strength of a tensioned string less than 450 N; electric paralysers; spray guns; cold weapons.

Main parts of the weapons, when they are separate items, refer to a firearms category on which they are set up or on which they are supposed to be set up.

7. Who may lawfully possess firearms in your country? Please provide information on (a) whether civilians are required to hold a license or a certificate in order to acquire, own/possess or use a firearm, and (b) what are the minimum requirements for the issuance or renewal of license or a certificate to acquire, own/possess or use firearms?

a) Permit for acquisition of weapons under the category B is issued to a natural person for personal security or possession and carrying of hunting and sport weapons, if fulfilling general and special conditions referred to in the Law (Article 13).

General conditions for issuing permit for acquisition of weapons under the category B to a natural person are as follows: a good cause for the acquisition of weapons (personal safety, hunting and sport weapons); is at least 18 years of age; was not finally convicted for crimes against: constitutional order and security of Montenegro, humanity and other rights protected by international law; life and body, general safety of people and property, as well as the violent crimes, referring to the crimes against: property, freedom and rights of persons and citizens, sexual freedom, marriage and family, judiciary, public order, official duty, Armed Forces, environment referring to the killing and torture of animals, or if those crimes were subjects of a procedure; was not finally convicted for a misdemeanour indicating that the weapon might be misrepresented, in particular for a domestic violence related misdemeanour, and that related misdemeanour charges were not initiated; if there is no evidence that the weapons may be misused, in particular consumption of alcohol, drugs or other psychoactive substances, disturbed family relations, environmental conflict, aggressive behaviour, as well as other behavioural disorders (a police officer is seeking for and collecting information on those facts).

Special conditions for issuing permit for acquisition of weapons to a natural person are as follows: medical capability for possession and carrying of weapons; technical knowledge and skills for proper use, possession and carrying of weapons.

b) For the weapons acquired on the basis of a permit for acquisition of weapons or which is inherited, a natural person submits the request for registration in the place of permanent or temporary residence within eight days as of the date of acquisition. The natural person is issued the weapon certificate for possession for the purpose of personal safety, while a weapon certificate for possession and carrying of hunting and sport weapons is valid for ten years.

A natural or legal person with expired weapon certificate must submit a request for issuing new certificate within 30 days as of the expiry date. Namely, it is checked if the person fulfills the conditions (if that person was finally convicted or if a procedure has been initiated against him/her for some crimes or misdemeanours; if there is no evidence that the weapons may be misused and if that person is medically capable).
it is found out that the weapon owner does not fulfil the above-mentioned conditions, the weapon shall be confiscated.

8. For what purpose does the domestic legislative or regulatory framework allow civilians to have access to firearm(s)? Can civilians carry firearms in public places?

It is prohibited to carry weapons in public places, except for use in hunting area, shooting range, sport competition or in other place meant for shooting exercises; a natural person with weapon certificate for possession of weapon may transfer the weapon only for repair, alteration or if changing residence, or for a purpose of its use in a shooting range. A natural person cannot carry or use weapons under the influence of alcohol, drugs or other psychoactive substances. If a natural or legal person ceases to fulfil some of the conditions, or in case the weapon is technically defected, there is a procedure for confiscation of the weapon.

9. What are the conditions for possession of firearms by civilians (e.g. safe storage requirements reporting of theft or loss of firearm)?

Weapons and ammunition has to be stored in a place inaccessible to a non-authorised person, in particular to a minor, it has to be locked and separated in a metal locker, safe deposit or in a similar or otherwise safe place, in residential or other premises of the weapon owner, which is located in the place of temporary or permanent residence, or in the seat of a legal person. Natural and legal persons possessing weapons based on issued weapons permit, are obliged to report immediately the lost or theft of the weapons and ammunition to the police in the place where it happened, or in the place they were aware of the lost or theft (Article 39 and 40).

10. Is there a system to keep a record of firearms acquired or owned by civilians?

The Law provides for keeping of electronic records, as well as for the deadlines of data storing.

a) The Ministry of the Interior keeps records on the following: registered weapons, the European firearms pass and other weapons related documents issued in accordance with the ratified international treaties; reported weapons under the Category C; surrendered weapons and ammunition; confiscated weapons and ammunition; permits issued for: manufacturing of weapons and ammunition, trade in weapons and ammunition, brokering in weapons trade; repair and alteration of weapons, transportation of weapons and ammunition, as well as provision of sport and recreational shooting services in civilian shooting ranges, and training of citizens for proper use of firearms; certificates for individual loading of ammunition, which is issued by a hunting or shooting organisation, a state body responsible for economics activities regarding manufactured and delivered weapons and ammunition, which is permanently kept/stored.

b) Police keeps records on: reports of stealing, theft and finding weapons and ammunition; found weapons and ammunition; temporary confiscated weapons and ammunition, and weapons documents; weapons transferred across the state border and issued permits for entry of weapons and ammunition, which is stored for five years.
c) Diplomatic and consular offices of Montenegro keep records on entry of weapons and ammunition in travel documents, which is stored for five years.

A state body responsible for health is keeping records on issued medical capability certificates for possessing and carrying weapons, which is stored for five years.

Records are kept by:
(a) natural and legal persons dealing with collection of old weapons, on collected old weapons;
(b) business organisation or an entrepreneur dealing with manufacturing of weapons and ammunition, on manufactured and delivered weapons and ammunition, on testing and proofmarking of firearms and its main parts; trade in weapons and ammunition, on procured and sold weapons and ammunition; brokering in weapons trade, on procurement, sale or agreement to transfer weapons between manufacturer and weapons dealer; repair and alternation of weapons on: repaired and altered weapons, weapons testing, and permanent disabling of weapons, which are stored permanently.
(c) business organisation or an entrepreneur dealing with transportation of weapons and ammunition, on done transportations of weapons and ammunition, consignees, manufacturer, type and amount of weapons and ammunition which is transported, which is stored for five years.

In case a business organisation, other legal entity or an entrepreneur cease to exist, the records they kept on: old weapons; repair and alternation; transportation; sport and recreational shooting, are handed over to the Ministry, and the records on: manufactured weapons and ammunition, trade or trade brokering, are handed over to the state body responsible for economics activities.

11. What are the conditions for the transfer of ownership of firearms between civilians?

Weapons and ammunition may be sold or transferred only to a natural or legal person with valid permit for acquisition of weapons, that is a weapon certificate for possession of weapons, or weapon certificate for possession and carrying of weapons, or permit for possession of weapons. Weapons and ammunition may be sold to a person directly, or through weapons dealer. Weapons dealer is obliged to inform the Ministry of the sale of a weapon to a natural or legal person, and the buyer has to submit the weapon registration request within eight days as of the day of sale, that is the acquisition.

12. What measures are in place to regulate private entities engaged in selling firearms to civilians in the domestic market? What conditions are private entities required to fulfill in order to qualify for a license to sell firearms?

The following conditions are in place for issuing of permit for dealing with activities of: manufacturing of weapons and ammunition; testing and proofmarking of firearms; trade and brokering in weapons trade; repair and alternation of weapons and trade and transportation of weapons and ammunition, and provision of sport and recreation shooting services, which is issued by the Ministry, with the previous registration requirement. The conditions are as follow: responsible person in legal person or entrepreneur, or natural person, have to fulfill requirements for issuing of permit for acquisition of weapons, as well as an employee directly handling the weapon; safe room for carrying out the activity and storage of weapons, and/or ammunition; as well
as presence of a qualified person for handling the weapon. They are obliged to harmonise their activities with the law within one year, and the legal person or entrepreneur providing sport and recreation shooting services within two years as of the date of entry into force of the law.

13. How does your country monitor and enforce existing regulation of civilian access to firearms? What sanctions, if any, does your domestic legislation provide for: (a) illegal possession, (b) possession of prohibited firearms or of a number of firearms exceeding what the law allows, (c) lack of permission or license required for possessing a firearm?

Criminal Code incorporates the following crimes to sanction: Illegal use of weapons and explosive substances, manufacturing, acquiring of weapons, intended for the commission of criminal offences (Article 402); Unlawful keeping of weapons and explosives (Article 403); Unlawful manufacture of forbidden weapons (Article 433), and Use of lethal devices, explosive, chemical, biological or radiological devices and toxic (Article 447c). Namely, it is provided that anyone who without authorization manufactures, sells, procures, exchanges, carries or keeps firearms, ammunition or explosives, shall be sentenced from three months to three years of imprisonment; anyone who without authorization keeps, carries, manufactures, repairs, remakes, sells, procures, exchanges, transports or puts into circulation in any other manner firearms, ammunition, explosives, bursting or gas weapons the keeping of which is forbidden to citizens, shall be sentenced from six months to five years of imprisonment; if the subject of a crime represents a larger quantity of arms or means or it is a weapon or other means of large destructive power is concerned, shall be sentenced from one year to eight years of imprisonment (Article 403).

Criminal prosecution is regulated by the Criminal Procedure Code, and it enables fair administration of a criminal procedure, so that no innocent person is pronounced guilty, and that a criminal offender is sentenced following the legitimately conducted procedure.

Criminal Police Department – Section for fight against organised crime is competent for investigation of cases of illicit possession of weapons and explosives, when the crime is committed by a group or other form of association or criminal organisation.

Misdemeanour sanctions are regulated by the Law on Weapons.
14. Does the authorities in your country collect data on civilian misuse of firearms? If so, what data is gathered and how is it used?

Police is collecting and processing information on misuse of firearms, both legally and illegally possessed. The records involve the following information: personal information (both of perpetrators and victims, their age, gender, address), weapon related information (brand, type, serial number, if the weapon is registered or not), place of the event (indoor, outdoor) and time (day, month and year; time, which day in a week etc.). The information is used by the police in order to take necessary measures to prevent further misuse and for the purpose of international and regional cooperation.

15. What is the impact of the misuse of firearms by civilians on human rights, in particular the right to life and the right to security? What is the basis of your assessment of this impact?

The misuse of firearms threatens human rights, in particular the right to life and security of the state, region and beyond. Therefore, we are undertaking the measures to minimize the amount of weapons, both legally and illegally possessed, through actions of collecting and destroying of weapons and ammunition, and media campaigns, as well as through the registration and recording of permitted categories of weapons possessed illegally by natural and legal persons, through more strict penal policy in this field, and we undertake necessary measures for more safe and efficient managing of weapons and ammunition surplus, thus suppressing misuse of illicit possession of weapons and ammunition, which result in increase of the general security, through implementation of commitments arising from the membership in international and regional organisations, such as the UN, OESCE.

16. What measures are in place to minimize the risk of firearms being misused by civilians?

We investigate origin of the confiscated firearms and ammunition, and extend the knowledge of the smuggling methods and similar activities. Criminal police activities are directed towards enhanced actions aimed at suppressing of smuggling, illicit manufacturing and trade in weapons. The above-mentioned activities are undertaken under the Action plan for suppression of illicit possession, manufacturing, trade and smuggling of weapons and explosive substances. Training of the staff is delivered in the Judiciary Training Centre, Human resources management agency and Police Academy, as well as by participating in international seminars and workshops.

17. What is the impact of the domestic regulation of civilian firearms on the protection of the right to life and security of person? How effective is this regulation in human right protection?

We are undertaking the activities to improve the law enforcement agencies capacities in the field of control and reduction of weapons, as well as to update the electronic records, which will contribute to the more efficient performance in this sensitive field, thus contributing the security of persons, the state, region and beyond. By implementing the regulations and making more strict penal policy in this field, we will contribute to protection of the right to life and the right to security.