



**ADF INTERNATIONAL**

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## Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.
2. This report stresses the urgent need for the government of Montenegro to intensify its efforts to eradicate the practice of prenatal sex selection in the country. It highlights that the skewed sex-ratio at birth has its roots in Montenegro's prevalent culture of son-preference, and suggests recommendations to tackle the root causes of the practice of sex selective abortion.

### (a) Prenatal Sex Selection

3. Estimates indicate that the number of 'missing females' in the world has more than doubled over the past 50 years, rising from 61.0 million in 1970 to an estimated 142.6 million in 2020.<sup>1</sup> These numbers reflect 'sex ratio imbalances at birth as a result of sex-selective abortion combined with excess female mortality stemming from postnatal sex selection'.<sup>2</sup>
4. While its cumulative trajectory has improved slightly over the past decade, Montenegro maintains one of the 10 highest sex ratio imbalances at birth in the world.<sup>3</sup> According to government statistics, 107.8 boys were born for every 100 girls in 2021,<sup>4</sup> compared to 108.8 in 2017, 108.0 in 2018, 109.6 in 2019, and 107.3 in 2020.<sup>5</sup> Regrettably, these fluctuations reflect a lack of substantial improvement in the eradication of this abhorrent in recent years. These figures continue to exceed the natural sex ratio at birth, which is estimated at 105 boys for every 100 girls.<sup>6</sup>
5. During the previous cycle of the Universal Periodic Review, Montenegro received two recommendations concerning the effective enforcement of the country's ban on sex-

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<sup>1</sup> See, among others, the UNPFA '2020 State of World Population Report' (2020), pgs. 49-51 <[https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA\\_PUB\\_2020\\_EN\\_State\\_of\\_World\\_Population.pdf](https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA_PUB_2020_EN_State_of_World_Population.pdf)>.

<sup>2</sup> Ibid.

<sup>3</sup> Radio Free Europe/Radio Liberty 'Montenegro Continues to Fumble it's 'Son Preference', Sex Selective Abortion Problems' (June 2021) <<https://www.rferl.org/a/montenegro-sex-selective-abortions-boys-demographics/31294610.html>>.

<sup>4</sup> Montenegro Statistical Office (MONSTAT) 'Vital Statistics in Montenegro: Statistics of birth and death 2021' (2021) <<https://monstat.org/uploads/files/demografija/pr.kretanje/2021/Vital%20statistics%20in%20Montenegro%202021.pdf>>.

<sup>5</sup> MONSTAT, 2017:

[http://monstat.org/userfiles/file/demografija/pr\\_kretanje2017/Vital%20statistics%20in%20Montenegro%202017.pdf](http://monstat.org/userfiles/file/demografija/pr_kretanje2017/Vital%20statistics%20in%20Montenegro%202017.pdf);

2018:

<https://www.monstat.org/userfiles/file/demografija/pr%20kretanje%202018/Vital%20statistics%20in%20Montenegro,%202018%20eng.pdf>

2019:

[http://monstat.org/userfiles/file/demografija/pr\\_kretanje2019/Vital%20statistics%20in%20montenegro,%202019.pdf](http://monstat.org/userfiles/file/demografija/pr_kretanje2019/Vital%20statistics%20in%20montenegro,%202019.pdf);

2020:

<http://monstat.org/uploads/files/demografija/pr.kretanje/Vital%20statistics%20in%20Montenegro%202020.pdf>.

<sup>6</sup> Radio Free Europe/Radio Liberty 'Montenegro Continues to Fumble it's 'Son Preference', Sex Selective Abortion Problems' (June 2021) <<https://www.rferl.org/a/montenegro-sex-selective-abortions-boys-demographics/31294610.html>>.

selective abortion, as well as calls for improved prevention, control and transnational coordination mechanisms. Montenegro accepted these recommendations; however, little has been done to implement them effectively over the reporting period.<sup>7</sup>

#### *Legal framework*

6. Article 8 of the Constitution of Montenegro asserts that ‘direct or indirect discrimination on any grounds shall be prohibited.’<sup>8</sup> Article 18 further commits the State to ‘guarantee the equality of women and men’, while Article 19 asserts that ‘Everyone shall have the right to equal protection of the rights and liberties thereof.’<sup>9</sup>
7. Article 18 of the 2009 Law on the Terms and Procedure for Termination of Pregnancy prohibits selective abortions on the basis of sex. It further prohibits the use of genetic testing to determine the sex of a child before the tenth week of gestation, except in cases of proven risks of hereditary diseases.<sup>10</sup>

#### *Root causes of prenatal sex selection*

8. Montenegro’s skewed sex-ratio can be attributed to the prevalent culture of son-preference in the country. This set of beliefs revolves around perceiving male children as inherently advantageous to a family, both economically and in terms of social status, while female children are viewed as detrimental and entailing burdens on the wellbeing of the family. This results in discrimination against women and girls, who are viewed as inferior or subordinate to men and boys.
9. In certain regions of Montenegro, it is a common practice for families to seek legal procedures to exclude daughters from inheritance. This phenomenon is also reflected in common family discourse, where daughters are referred to as ‘sons’ or excluded entirely from enumerations of children.<sup>11</sup>
10. A 2020 study on media discourse surrounding sex selective abortion observed that the national media response to the phenomenon was predominantly passive, acknowledging the practice but failing to identify it as a major concern. Empirical evidence also shows a society-wide lack of engagement on the issue.<sup>12</sup>

#### *The prohibition of sex-selective practices in international human rights law*

11. Like all sex selective practices, prenatal sex selection constitutes an egregious violation of the dignity and human rights of girl children, including their human rights to life and non-discrimination. Article 6 of the Convention on the Rights of the Child recognizes the inherent right to life of every child and establishes the obligation of states to ‘ensure to the maximum extent possible the survival and development of the child.’<sup>13</sup> Article 2

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<sup>7</sup> Human Rights Council ‘Report of the Working Group on the Universal Periodic Review – Montenegro’ UN Docs A/HRC/38/13, rec. 104.6 and 105.108.

<sup>8</sup> Constitution of Montenegro (2007), art. 8.

<sup>9</sup> Ibid, art. 18 and 19.

<sup>10</sup> Law on the Terms and Procedure for Termination of Pregnancy (2009), art. 18.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC), art. 6.

further requires states to 'respect and ensure' child's rights 'without discrimination of any kind, irrespective of the child's ... sex ... birth or other status.'<sup>14</sup>

12. According to Article 1 of the Convention, a child is defined as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.' This provides an upper limit as to who is a child, but does not provide a lower limit on when the status of 'child' attaches. Viewed in the context of the Preamble of the Convention, which recognizes that, 'the child ... needs special safeguards and care, including appropriate legal protection *before as well as after birth*', these provisions clearly imply the recognition of the personhood of the unborn child, and the rights attached to that status.<sup>15</sup>
13. The obligation to defend the equal right to life of unborn girl children is echoed in several international agreements. The Beijing Platform for Action calls on states to 'enact and enforce legislation protecting girls from all forms of violence, including female infanticide and prenatal sex selection.'<sup>16</sup> In addition to clarifying that there is no human right to abortion, the Programme of Action of the International Conference on Population and Development (ICPD) states that, 'in no case should abortion be promoted as a method of family planning,' including evidently when motivated by sex selection.<sup>17</sup>
14. Pursuant to the Programme of Action of the ICPD, Montenegro committed to 'eliminate ... the root causes of son preference, which results in harmful and unethical practices regarding female infanticide and prenatal sex selection.'<sup>18</sup> This requires 'an integrated approach that addresses the need for widespread social, cultural and economic change, in addition to legal reforms.'<sup>19</sup> To this end, Montenegro should redouble efforts to initiate, invest in, and support awareness-raising and education campaigns aimed at reshaping harmful socio-cultural narratives and affirming the inherent dignity and equal status of women and girls, born and unborn.

## **(b) Recommendations**

15. In light of the aforementioned, ADF International suggests the following recommendations be made to Montenegro:
  - a. Guarantee full respect for the right to life of girl children, before and as well as after birth, in accordance with the Convention on the Rights of the Child;
  - b. Ensure the effective enforcement of laws prohibiting abortion on the basis of sex, and adopt policies to prevent and tackle circumvention of these laws, including through enhanced cross-border cooperation;
  - c. Further strengthen controls on the performance of prenatal genetic testing to detect the sex of the unborn child, in order recourse to sex-selective abortion;

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<sup>14</sup> Ibid, art. 2.

<sup>15</sup> Ibid, Preamble.

<sup>16</sup> World Conference on Women 'Beijing Declaration and Platform for Action' (1995), art. 283(d).

<sup>17</sup> International Conference on Population and Development, 'Programme of Action' (Cairo, 1994), art. 8.25.

<sup>18</sup> ICPD, 'Programme of Action' (Cairo, 1994), art. 4.16(a).

<sup>19</sup> ICPD, 'Key Actions for the Further Implementation of the Programme of Action of the International Conference on Population and Development' (New York, 1999), art. 48.

- d. Develop programmes and policies that foster norms and attitudes of zero tolerance for harmful and discriminatory attitudes, including son preference, and in this regard enhance and support the role of family members, especially parents and other legal guardians, in strengthening the self-image, self-esteem and status and in protecting the health and well-being of girls, in accordance with the Programme of Action of the International Conference on Population and Development;
- e. Redouble efforts to promote awareness-raising and educational initiatives to eliminate prejudices and harmful practices perpetuating the culture of son preference.



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