

CONTRIBUTIONS FOR REPORTS

**Submission of the
follow-up document
to the United Nations
Human Rights Com-
mittee in relation
to the Concluding
observations on the
Third periodic report
of Serbia**



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SUBMISSION OF FOLLOW-UP DOCUMENT TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE IN RELATION TO THE CONCLUDING OBSERVATIONS ON THE THIRD PERIODIC REPORT OF SERBIA (CCPR/C/SRB/CO/3)

Belgrade, 13 March 2019

Introduction

1. A 11 – Initiative for Economic and Social Rights appreciates the opportunity to respond to the Republic of Serbia's report received in follow-up to the Committee's concluding observations to the Third Periodic Report of Serbia.
2. At the end of 119th session the UN Human Rights Committee requested Serbia to provide the Committee with follow-up information on implementation of recommendations contained in paragraphs 15 (Roma exclusion), 33 (refugees and asylum seekers) and 39 (freedom of expression) of the concluding observations.
3. During its 122nd session held in March-April 2018, the Committee sent [reminder](#) to the State party to provide above-mentioned information by 18 July 2018.
4. On 14 January 2019 Serbia submitted its follow-up report, which has been published on 13 February 2019.
5. On this background, in accordance with the Note by UN Human Rights Committee on the procedure for follow-up to concluding observations,¹ according to which NGOs and other stakeholders, wishing to provide specific comments to the reply submitted by the State party

¹ CCPR/C/108/2.

should be given a deadline of one month to do so (from the posting of the State party's report on the website, i.e. from 13 February 2019, in current case), the A 11 – Initiative for Economic and Social Rights is submitting comments on the information received by the Republic of Serbia, with focus on Roma exclusion (Recommendation 15 of the Committee).

Comments regarding Recommendation 15

I Promotion of non-discriminatory access to opportunities and services in all fields for Roma

6. The Committee has recommended in Recommendation 15 (a) that Serbia should increase its effort to promote non-discriminatory access to opportunities and services in all fields for members of the Roma community.
7. In its follow-up report, Serbia provided uncorroborated response that “forthcoming amendments to the Anti-Discrimination Law in the Republic of Serbia will significantly improve the status of members of the Roma community”, without any further elaboration in which way their position will be improved. In the meantime, **Draft Law on the Amendments to the Law on Prohibition of Discrimination** entered into the parliamentary procedure, but it does not contain any provision supporting quoted response of the State, nor Roma inclusion. On the contrary, this Law, when adopted, **will deteriorate the institutional position of the Commissioner for the Protection of Equality and will have the negative effect on the protection from discrimination of persons from most marginalized groups.**
8. Amended Article 36 of the abovementioned Law prescribes that the Commissioner shall not take any steps concerning a complaint lodged for the protection from discrimination if the criminal complaint was brought to relevant authority (police or public prosecutor). If the relevant authority finds that the criminal complaint should be dismissed and the case should not get the judicial protection, the applicants will have no opportunity to initiate the procedure before the Commissioner.
9. Similarly, the Commissioner will not act upon complaints in cases when he/she finds there is no purpose of its reaction since it already publicly reacted in the same case. It should be noted that these public reactions are not the official decisions of the Commissioner and they serve to warn the public on specific cases of discrimination (i.e. distribution of anti-Roma leaflets, cases of family violence with fatal consequences, etc.), but not to establish the facts of the case and to decide if there has been a violation of the provisions of the Law.

10. State follow-up report does not contain any mention of the Law on Amendments to the Law on Financial Support to the Families with Children.² Nevertheless, this Law is of the immense importance for the assessment of State's compliance with the Committee's recommendation 15 (a) on Roma inclusion. Furthermore, State failed to mention Draft Law on the Amendments to the Law on Social Protection – another act which has a particularly strong human rights impact on Roma families and Roma children. Both documents contain provisions that will discriminate and further exacerbate the position of vulnerable members of Roma community. This submission draws the attention to shortcomings of these two documents which are in direct contradiction with the abovementioned Committee's recommendation.

Discriminatory provisions of the Law on Financial Support to the Family with Children

11. **The Law on Financial Support to the Family with Children**, which was amended in an urgent procedure in June 2018 and entered into force on 1 July 2018, **discriminates Roma children**. Article 25 paragraphs 1 – 6 of the said Law introduced additional conditions for parental allowance, including that children must be fully and timely vaccinated and that they must regularly attend elementary school and obligatory preschool education. Although these conditions, on the face of it, are neutral, their effects disproportionately affect vulnerable Roma children. This is clearly visible from data about school and preschool attendance and immunization coverage among Roma and non-Roma children. Only 12,7% of Roma children received all recommended vaccines, compared to 70,5% of children in general population.³ While 98% of non-Roma children attends preparatory preschool program,⁴ only 63% of Roma children attend this program.⁵ About 1 out of 6 marginalized Roma children of compulsory attendance age are still out of the education system.⁶ Completion rate in compulsory education among Roma girls is only 57%, compared to 93% among non-Roma girls and 95% among non-Roma boys.⁷ These data clearly suggest that **these conditions for parental allowance will have disparate impact upon Roma children**. These conditions will affect not only Roma children who are out of the education system or who are not covered by immunization – they will also exclude their brothers and sisters, since Article 25 of the Law stipulates that family will not be able to exercise the right to parental allowance if at least one child in a family is not fully vaccinated or does not attend obligatory education and preparatory preschool program.

² *Official Gazette of the Republic of Serbia*, no. 113/2017 and 50/2018

³ UNICEF and Statistical Office of the Republic of Serbia, *2014 Serbia Multiple Indicator Cluster Survey and Serbia Roma Settlements Multiply Cluster Survey, 2014, Final Reports*, Belgrade, Serbia, p. iv, available at: https://mics-surveys-prod.s3.amazonaws.com/MICS5/Europe%20and%20Central%20Asia/Serbia%20%28Roma%20Settlements%29/2014/Final/Serbia%20%28National%20and%20Roma%20Settlements%29%202014%20MICS_English.pdf.

⁴ *Ibid*, p. 167

⁵ *Ibid*. P. 173.

⁶ UNDP, Roma at glance, Serbia, available at:

https://www.google.com/url?q=http://www.eurasia.undp.org/content/dam/rbec/docs/Factsheet_SERBIA_Roma.pdf&sa=D&source=hangouts&ust=1541498169882000&usq=AFQjCNF_B1337qwA9_ETdGLr83i3F3l82w, p. 2.

⁷ *Ibid*, p. 4.

12. Roma children who remain outside education system and who are not covered by immunization are, without doubt, one of the most marginalized groups in Serbia. Instead of increasing efforts to promote non-discriminatory access to opportunities and services in all fields for Roma, unfair provisions of the Law put them in even worse situation and increase the gap between them and other children. Despite the fact that primary objective of the Law is not to reduce poverty, but rather to increase birth rates among the population in Serbia, excluding the most vulnerable children is unacceptable, discriminatory and contrary to the need to improve the adequacy of the social benefit system to provide more effective support for parts of the population most in need.⁸
13. Discriminatory provisions of the Law on Financial Support to Family with Children resulted in **protests**⁹ and several submissions to the Constitutional Court (**a proposal for the assessment of the Constitutionality of the Law, submitted by the Commissioner for Protection of Equality**¹⁰ and **initiatives for assessment of constitutionality** submitted by A 11 Initiative¹¹ and several civil society organizations¹²). Competent Ministry of Labor, Employment, War Veteran and Social Affairs announced changes of the Law, in order to amend some provisions of this law that proved to be discriminatory towards women and new mothers. However, Article 25 paragraphs 1-6, which discriminates Roma children and Roma families, is not included in the announced amendments. As long as this provision remains in force, situation in Serbia will not be in compliance with the need to ensure non-discriminatory access to rights and services for members of Roma community.
14. **Submitting organization urges the Committee to recommend to the State to amend its Law on Financial Support to the Family with Children so as to remove discriminatory Article 25 which excludes marginalized Roma children and prevents them from exercising the right to parental allowance.**

II Non-discriminatory access to social protection and compulsory labor for beneficiaries of financial social assistance

15. In the field of social protection, position of population the most in need (and Roma community in particular, as a group the most likely to depend on social benefits) is deteriorated by the 2014 Decree on measures of social inclusion of beneficiaries of financial social assistance.¹³ Namely,

⁸ Please note that in spite the fact that formal beneficiary of parental allowance is a mother or a father of a child, final beneficiaries of this form of support are children.

⁹ N1, *Mothers Rule protest in central Belgrade*, available at: <http://rs.n1info.com/a423259/English/NEWS/Mothers-Rule-condemns-Serbian-ruling-party-MP.html>.

¹⁰ Commissioner for Protection of Equality, *Statement about Proposal for the assessment of constitutionality*, available at: <http://ravnopravnost.gov.rs/en/statement-about-proposal-for-the-assessment-of-constitutionality/>.

¹¹ A 11 – Initiative for Economic and Social Rights, *Initiative A 11 submitted initiative for the assessment of the constitutionality of the Law on financial support to the Family with Children*, available at: <http://www.a11initiative.org/sr/inicijativa-a-11-podnela-inicijativu-za-ocenu-ustavnosti-zakona-o-finansijskoj-podrsi-porodici-sa-decom/>.

¹² NORBS – Nacionalna organizacija za retke bolesti Srbije, MODS – Mreža organizacija za decu Srbije, SUPS – Savez udruženja pacijenata Srbije and association Hrabriša.

¹³ *Official Gazette of the Republic of Serbia* no. 112/2014.

contrary to the prohibition of forced labour, above-mentioned Decree prescribes that the recipients of financial social assistance who are fit for work must be included in community service, or service in local communities,¹⁴ and if they refuse this type of engagements, their right to social assistance will be reduced or suspended. **Beneficiaries of financial social assistance included in this type of activity are neither paid nor insured during their engagement.** Described situation could be even further deteriorated with forthcoming amendments to the Law on Social Protection. In July 2018, the Ministry of Labor, Employment, Veteran and Social Affairs published **the Draft Law on the Amendments to the Law on Social Protection which opens up a risk of various human rights violations.** One of the most concerning elements of the Draft Law is the introduction of measures from the above-mentioned Decree, i.e. **conditioning of the right to social assistance by performing obligations which are contrary to the prohibition of forced labour and discrimination.**

16. By providing that person who is capable to work can be granted the right to financial social assistance only if he/she has not refused to perform unpaid work, **the above-mentioned 2014 Decree and 2018 Draft Law amending the Law on Social Protection are in contravention with the prohibition of forced labour from Article 8 (3) of the International Covenant on the Civil and Political Rights.**
17. From February to September 2018, the A 11 – Initiative for Economic and Social Rights conducted a **research on the implementation of the 2014 Decree.** According to the results, rather than facilitating their employment or social inclusion, its implementation leads to stigmatization and violation of dignity of the beneficiaries of financial assistance. From the day the Decree entered into force, **at least 9,436 of the most severely poverty-stricken citizens of Serbia who are users of financial assistance were forced to do unpaid work** that does not improve their skills in any way nor increase their employability.¹⁵
18. Having in mind the widespread poverty among Roma and particularly Roma IDPs,¹⁶ and the fact that they are more likely to depend on social security assistance than the general population, abovementioned measures have disproportionate effect on Roma, and are in contradiction with the Committee's recommendation 15 and need to ensure non-discriminatory access to rights and services for Roma community.
19. The list of provisions with adverse effect on Roma does not end with forced labor as a condition for social assistance. The Draft law on the amendments to the Law on Social Protection contains other provisions with adverse effect on Roma. Article 37 of the Draft law **conditions the right to financial social assistance by regular school attendance and achievement of the success**

¹⁴ Article 2 para. 1 item 5) of the Decree on the measures of social inclusion of beneficiaries of financial social assistance.

¹⁵ For more details, please see A 11 – Initiative for Economic and Social Rights, *In focus: Four years of forced labour in Serbia – Results of the implementation of the Decree on Social Inclusion Measures for Recipients of Financial Welfare Assistance*, available at: http://www.a11initiative.org/wp-content/uploads/2018/10/Uredba_ENG.pdf.

¹⁶ http://www.unhcr.rs/media/docs/Support_for_IDPs_in_Serbia_ENG_S-01-IZMENE-01-11-2016.pdf.

within the education system. This is in contradiction with the prohibition of discrimination and undermines the purpose of social benefits. This type of material support should aim to protect children from poverty and to provide them with a chance to live in dignity and achieve appropriate development, rather than reward particularly successful children and sanction those facing difficulties in education. Above all, this provision has a disproportionately negative effect on children belonging to Roma minority who often face numerous challenges in the field of education often related to their life in poverty. This is yet another example of announced changes not mentioned in the State follow-up report, which will prevent or limit access to social services to the members of Roma community, in contradiction of the Committee's recommendation.

20. **Submitting organization urges the Committee to recommend the State to increase its efforts to ensure access to social protection on non-discriminatory basis, especially for members of marginalized population and to withdraw the Draft Law on the Amendments to the Law on Social Protection**

III Roma Housing

21. In the follow up report, State informed the Committee about the number of issues related to the right to adequate housing for Roma population. However, no information on the implementation of the new Law on Housing and Building Maintenance¹⁷ were provided. Republic of Serbia failed to adopt the National Housing Strategy, pursuant to Articles 112 and 136 paragraph 2 of the said Law. By failing to adopt the Strategy one year after the Law on Housing and Building Maintenance entered into force, Serbia failed to set up the effective system of the protection of the rights of especially vulnerable population in access to housing and other basic services. Furthermore, this prevented local self-governments from adopting local housing strategies that would operationalise provisions of the national Law on Housing and Building Maintenance and the national Strategy.
22. In addition, the first case of relocation of Roma communities under the new procedure for relocation and resettlement of informal settlements proved that there is still need for the improvement of the legal framework and the administrative practice in cases of relocations of Roma communities. **On 28 December 2018 City of Belgrade evicted the community of Roma waste pickers living on Vinča landfill for decades.** Relocation of this settlement was followed by the lack of consultations with the affected community, the lack of transparency and the lack of cooperation with other relevant authorities and the monitoring of human rights organisations. Finally, this procedure resulted with **four Roma families left homeless without access to basic services¹⁸ and the rest being provided with unaffordable and inadequate housing units without electricity.**

¹⁷ Official Gazette of the Republic of Serbia no. 104/2016.

¹⁸ Families of V.A, Z.M, J. Dj. and I.K. were left homeless after this eviction. Interviews with the affected families on file with the submitting organization.

IV position of Roma from IDP community

23. Notwithstanding the adoption of numerous strategic and policy measures, a large number of IDPs are still facing problems in accessing their basic human rights. This is particularly the case for internally displaced Roma. It is estimated that almost all internally displaced Roma households are at risk of poverty. According to the report "Situation and Needs of Internally Displaced Persons" of September 2017, social vulnerability of internally displaced Roma is extremely high because as much as 87% of them have a monthly income lower than 20,000 dinars [app. 170 EUR] and almost 50% are below the poverty line, with less than 10,000 dinars [app. 85 EUR] per month.¹⁹
24. The amendments to the Law on Property Tax²⁰ introduced in July 2014, prescribed taxes on rent in social apartments and the housing intended for refugees and internally displaced persons, thus practically imposing a **"poverty tax" on socially vulnerable people without permanent housing solutions**, as the very consequence of being socially vulnerable and not having permanent housing solutions.²¹ On many occasions, the A 11 Initiative witnessed the fact that the costs of this tax overburden the budgets of households who were given leases to social apartments.²² In addition, in a certain number of cases, internally displaced persons who registered residence outside Kosovo and were given leases to social apartments built in local communities, often find it difficult to pay the housing expenses because they are not affordable for the most vulnerable categories of the population. This is particularly the case in Belgrade, where the costs of social apartment leases and utilities may be as high as the average financial social assistance.
25. **Housing situation of internally displaced Roma who mostly live in informal settlements and/or informal collective centers remains unresolved.** According to the Commissariat for Refugees and Migration, more than 90% of Roma households in need either live in buildings without basic living requirements – water supply, sanitation – or in structures not intended for housing.²³ In many cases, Roma live in informal settlements and are often threatened to be forcibly evicted by the implementation of infrastructural or other projects.

¹⁹ Commissariat for Refugees and Migration of the Republic of Serbia, *Situation and Needs of Internally Displaced Persons*, September 2017, accessible at www.kirs.gov.rs/docs/.../Stanje%20i%20potrebe%20IRL%202018%20-%20EN.pdf, 34.

²⁰ *Official Gazette of the RS*, nos. 26/2001, 42/2002 – Decision by the Federal Constitutional Court, 80/2002, 80/2002 – other law, 135/2004, 61/2007, 5/2009, 101/2010, 24/2011, 78/2011, 57/2012 – Decision by the Constitutional Court of the RS, 47/2013, 68/2014 – other law and 95/2018.

²¹ In May 2015, YUCOM – Lawyers' Committee for Human Rights, filed an initiative to assess the constitutionality of the aforementioned provisions of the Law on Property Tax, but the Constitutional Court has not ruled on this matter yet. See <http://www.yucom.org.rs/podneta-inicijativa-za-ocenu-ustavnosti-odredbe-zakona-o-porezima-na-imovinu-koji-uvodi-porez-na-siromastvo/>. [Text available only in Serbian].

²² In one of the cases of taxing social housing for refugees, the A 11 Initiative filed a constitutional appeal for discrimination in the tax procedure. No ruling has been issued to date.

²³ These are the records made by the Commissariat for Refugees and Migration and municipal commissioners for refugees based on the data collected in surveys of families in their municipalities, in accordance with UNHCR's criteria for vulnerability. See: www.kirs.gov.rs/docs/.../Stanje%20i%20potrebe%20IRL%202018%20-%20EN.pdf, p. 58.

26. Most of the housing solutions implemented by the Commissariat for Refugees and Migration are inadequate for internally displaced Roma. This is primarily because a majority of housing solutions²⁴ actually consist of providing construction materials for finishing the buildings that are already in construction, and this requires that property and legal relations are sorted out, including the property right over the land on the construction site.²⁵ In most cases these are **not the requirements that the internally displaced Roma are able to meet**. The other programs that are implemented are insufficient and cannot meet the housing needs of the internally displaced Roma. An analysis of the situation and needs of internally displaced persons in Serbia revealed that **more than 90% of internally displaced Roma households live in structures lacking elementary conditions for normal life - water supply, sanitation or other utilities**.²⁶
27. **Submitting organization urges the Committee to recommend the State to improve the local integration of internally displaced Roma by adopting specific, tailor-made measures for the improvement of their access to basic services and human rights, especially in the area of housing and social protection.**

²⁴ Most of the remaining housing needs, as much as 8,300, will be addressed by providing construction materials, compared to 3,250 solutions of purchasing homesteads and 3,350 of building housing units. For more details, see the report by Commissariat for Refugees and Migration, *Situation and Needs of Internally Displaced Persons*, p. 60, May 2018.

²⁵ In contrast to these solutions, research has shown that "[T]aking into account preferences with respect to housing solutions for households of the internally displaced Roma in urgent need, it is evident that several options would be possible: village houses with gardens (for 45% of them), prefabricated houses (for 37% of them), construction materials for new housing construction (for 29% of them), construction material for rehabilitation of the existing houses (for 28% of them), and even social housing (for 40% of them). Still, when asked to choose one of the options that would suit them best, the respondents most readily chose a village house, followed by social housing," Slobodan Cvejić, *Assessment of the Needs of Internally Displaced Persons in Serbia*, p. 58, UNHCR, JIPS, Commissariat for Refugees, November 2014.

²⁶ *Supra* n. 23, p. 58.