



SLOVENIA

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW

**34TH SESSION OF THE UPR WORKING GROUP, 4-15 NOVEMBRE
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FOLLOW-UP TO THE PREVIOUS REVIEW

During its second UPR in 2014, Slovenia supported recommendations on a number of issues, including combating discrimination,¹ and ensuring an adequate standard of living and guaranteed rights of minorities, especially Roma, including their equal access to housing, water, sanitation, education and employment.² In its response to the UPR recommendations, Slovenia stated that the activities towards the implementation of many of the recommendations were already on-going and made a commitment to further develop measures aimed at combating discrimination and ensuring equal access to fundamental rights for the Roma minority.³

While a number of legislative and policy measures were indeed put in place, Amnesty International remains concerned about the depth of the implementation of these measures. Overall, Roma – especially the members of the community living in informal settlements - remain among the most vulnerable communities in Slovenia and face discrimination in all spheres of life (see also below).

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Since the previous review, the authorities in Slovenia have taken a number of positive steps, including the adoption of progressive legislation and measures to further strengthen the protection of human rights in the country. Nevertheless, human rights challenges remain primarily due to incomplete or poor implementation of these measures and, in some instances, the refusal of local authorities to comply with their legal obligations.

Right to water and sanitation

In November 2016, Slovenia adopted an amendment to the Constitution establishing the right to water as a constitutionally-guaranteed right, becoming the first EU country to do so.⁴ However, as of the date of this

¹ A/HRC/28/15 Add.1, see, for example, recommendations 115.71 (Sri Lanka), 115.78 (Argentina), 115.80 (Azerbaijan), 115.81 (Bahrain), 115.88 (Greece).

² A/HRC/28/15 Add.1, 116.67 (Slovakia), 115.72 (the former Yugoslav Republic of Macedonia), 115.75 (Venezuela), 115.82 (Brazil), 115.83 (Chile), 115.84 (China), 115.90 (Thailand).

³ Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review. 4 March 2015. A/HRC/28/15/Add.1.

⁴ Article 70a (Right to drinking water) states that “Everyone has the right to drinking water. Water resources are a public good in government management. Water resources serve the priority and sustainable supply of drinking water for households, and in this part, they are not market goods. The supply of drinking water and household water to households is provided by the state through self-governing local communities directly and non-profitable. See: The Constitution of the Republic of Slovenia

submission, concrete legislation to fulfill this right has yet to be adopted and many Roma communities living in informal settlements in the southeast of the country continue to be denied access to drinking water and adequate sanitation.⁵

National human rights institutions

The Protection from Discrimination Act adopted in 2016 introduced the independent office of the Advocate of the Principle of Equality with a mandate to conduct research, publish reports and issue recommendations on the adoption of special measures to prevent discrimination.⁶ The new legislation and the establishment of the office with investigative and decision powers (although without enforcement authority) to order an end to discriminatory practices is widely seen as a positive development.⁷

In 2017, Parliament amended the Human Rights Ombudsman Act,⁸ setting out a legal basis for the Office to apply for “A status” under the Paris Principles.⁹ In 2018, the Council of the Human Rights Ombudsman, an advisory body set up to ensure plurality, was established. However, the Human Rights Center, with a mandate to research and promote human rights and engage in human rights education, has yet to become fully functional. The office of Ombudsman has applied for the assessment leading to the acquisition of the “A status” under the Paris Principles and expects the decision by 2020.¹⁰

Integration of Roma

In May 2017, the government adopted a new National Program of Measures for Roma Integration for the Period 2017-2021, which contains a number of measures to ensure greater access of Roma to education, employment, housing, healthcare and social security.¹¹ While comprehensive, the Program falls short of setting out concrete strategic priorities, measurable goals and specific timeframes and lacks adequate financial resources for the implementation of the planned projects.¹²

In 2018, the government proposed amendments to the Roma Community Act, providing for specific rights to housing, education and employment; however, the parliamentary adoption process was suspended due to the early national elections in June 2018. Although Slovenia now has a new parliamentary majority and government, the amendments have not yet been re-launched.

(consolidated text) Official Gazette RS, No. [33/91-I](#) , [42/97](#) - UZS68, [66/00](#) - UZ80, [24/03](#) - UZ3a, 47, 68, [69/04](#) - UZ14, [69/04](#) - UZ43, [69/04](#) - UZ50, [68/06](#) - UZ121,140,143, [47/13](#) - UZ148, [47/13](#) - UZ90,97,99 and [75/16](#) - UZ70a, Art. 70a, http://pisrs.si/Pis_web/pregledPredpisa?id=USTA1. See also: The Guardian, “Slovenia adds water to constitution as fundamental right for all,” 18 November 2016, <https://www.theguardian.com/environment/2016/nov/18/slovenia-adds-water-to-constitution-as-fundamental-right-for-all>.

⁵ Amnesty International, “Slovenia: Constitutional right to water ‘must flow down’ to Roma communities,” 17 November 2016, <https://www.amnesty.org/en/latest/news/2016/11/slovenia-constitutional-right-to-water-must-flow-down-to-roma-communities/>. See also: Council of Europe Commissioner for Human Rights, Report by Nils Muiznieks following his visit to Slovenia, July 2017, CommDH (2017), para. 67-71.

⁶http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/enake_moznosti/ZakonNediskriminacijaEN.pdf

⁷ See also Report of the Special Rapporteur of UN on minority issues for the 40th session of the Human Rights Council, 8 January 2019, A/HRC/40/64/Add.1, para. 18.

⁸ <http://www.varuh-rs.si/legal-framework/constitution-laws/human-rights-ombudsman-act-zvarcp-upb2/?L=6>

⁹ Principles relating to the status of national institutions for the promotion and protection of human rights, or Paris Principles, provide the international benchmarks against which national human rights institutions can be accredited by the Global Alliance of National Human Rights Institutions. See: <https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>

¹⁰ Interview with the Office conducted by Amnesty International Slovenia on 21 March 2019.

¹¹ Available here: http://www.un.gov.si/fileadmin/un.gov.si/pageuploads/NPUR_2017_2021.pdf

¹² Peace Institute, “Annual evaluation of the National program for Roma integration for the period 2017-2021, November 2018, http://www.un.gov.si/fileadmin/un.gov.si/pageuploads/Evalvacija_NPUR_17-21_MI1.pdf

Legal definition of rape

The legal definition of rape in the Criminal Code is based on force, threat of force or coercion,¹³ rather than the lack of consent, and is therefore not in line with international human rights law and standard.¹⁴ The UN Committee on the Elimination of Discrimination against Women (CEDAW) has in the past five years urged several European states to bring their legislation on rape in line with international law and standards, including the Council of Europe Convention on preventing and combating violence against women and domestic violence, and to define rape on the basis of the absence of consent.¹⁵

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Amnesty International sets out specific concerns in relation to the persistent discrimination against the Roma minority and, in particular, the continued challenges in their ability to access education, housing and other essential services. Another major concern is Slovenia's unlawful treatment of asylum-seekers and migrants who have been transiting through or arriving in the country in greater numbers since the closure of the so-called "Balkans Route" through Hungary in 2015.

DISCRIMINATION AGAINST ROMA

Discrimination against and social exclusion of a large proportion of the Roma community continues, especially in the southeast of the country. The government still does not officially collect desegregated data on minorities, and the consequent lack of reliable information about the size of the Roma population and their underlying socio-economic conditions, limits the ability to develop and execute targeted measures to address and improve their situation.¹⁶

Access to education

With the exception of enrollment rates of Roma in primary schools, the authorities do not systematically collect data on Roma pupils, making it difficult to produce reliable analysis of challenges faced by Roma children in their access to education and success rates, and to develop targeted and meaningful measures to address them.¹⁷ However, despite the lack of information and evidence-based analysis, the authorities have been funding various measures targeted at Roma pupils, such as the establishment of a number of outreach pre-school education centres and the appointment of Roma assistants. While such measures are envisaged to help integrate Roma children into primary school, it is doubtful that these pre-school centres, which operate solely in the Roma settlements and exclusively serve children of Roma ethnicity, genuinely facilitate their integration. Rather, they

¹³ Article 180. The text of the Criminal Code is available at https://sherloc.unodc.org/cld/document/svn/criminal_code_of_slovenia.html.

¹⁴ According to international human rights law and standards, a comprehensive definition of rape should include all non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object. See Amnesty International, Right to be free from rape, Overview of legislation and state of play in Europe and international human rights standards, pages 9 and 12, available at <https://www.amnesty.org/download/Documents/EUR0194522018ENGLISH.PDF>. Also, see Istanbul Convention, art 36(1)(a). Slovenia ratified the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) in December 2014.

¹⁵ See: United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee), Concluding Observations, Romania, July 2017, CEDAW/C/ROU/CO/7-8.

¹⁶ The Slovenian law on protection of personal data prohibits collecting or maintaining records of persons based on national or ethnic affiliation. In his 2017 report on Slovenia, Council of Europe Commissioner for Human Rights also expressed concern about the lack of reliable data. See Council of Europe Commissioner for Human Rights, Report by Nils Muiznieks following his visit to Slovenia, July 2017, CommDH (2017), para. 61. See also Report of the Special Rapporteur of UN on minority issues for the 40th session of the Human Rights Council, 8 January 2019, A/HRC/40/64/Add.1.

¹⁷ Meeting with Ministry of Education, Science and Sports, Ljubljana, 31 August 2017. The discussion at the meeting of the Governmental commission for the protection of the Roma community reaffirmed this, 13 December 2018.

risk contributing to de-facto long-term segregation.¹⁸ Although the number of Roma pupils enlisted in primary schools in Slovenia is close to 2000, data suggests that over 60 percent of Roma have not completed primary education.¹⁹

Roma children also continue to be overrepresented in special needs schools and as recipients of integrated special needs assistance in mainstream schools. In the Ribnica Primary school, for example, Roma students in the school year 2016/17 made up only 4.3 percent of all pupils, yet 14.7 percent of all pupils receiving integrated special needs assistance within the classes were Roma.²⁰ Roma students also tend to be overrepresented in special schools designed for children with mental disabilities.²¹ Almost 11 percent of all Roma students enrolled in primary education in the school year 2016/17 attended special education schools, compared to 1.5 percent of children from the majority population.²² This number rose to 12.2 percent in 2017/18 and 12.9 percent in the 2018/2019 school year.²³ This indicates a persistent, and troubling, trend of the disproportionate placement of Roma children in special education classes and schools.²⁴ While the authorities regularly conduct individual testing and assessment of all children, including Roma, such tests are administered solely in Slovenian language, which is not the native language of most Roma. While there are no reliable analyses conducted by the government on the matter, it is widely believed that the lack of Slovenian proficiency among Roma children is one of the key drivers behind their placement in special education schools in such high numbers.

Lack of political participation at the local level

The difference in legal definition between the so-called “autochthonous”, or traditionally settled, and “non-autochthonous” Roma population, and their ability to exercise or access specific rights under the Slovenian Constitution, remain significant obstacles for meaningful Roma integration. The Local Self-Government Act of 2007, which sets out obligations for the 20 municipalities in areas with “autochthonous” Roma populations to include at least one Roma representative in municipal councils, does not include a number of urban municipalities with significant Roma population, such as Ljubljana, Maribor, Škocjan and Ribnica, leaving these without Roma representation. Under the Roma Community Act of 2007, the “non-autochthonous” Roma have no status and no specific rights that are otherwise guaranteed to the “autochthonous” Roma. This legal distinction has also affected the ability of large, yet considered “unsettled”, Roma communities from enjoying their political rights and representation.

A number of Council of Europe bodies have expressed concerns that the legal difference constitutes a form of discrimination and prevents large Roma communities from enjoying their political rights. In its 2014 report on

¹⁸ This was reinforced by the Council of Europe Human Rights Commissioner who expressed concern in his 2017 report that these centres might perpetuate de-facto segregation. Report of the Commissioner for Human Rights (CommDH (2017) 21), para 84.

¹⁹ Report of the Commissioner for Human Rights following his visit to Slovenia (CommDH (2017) 21), 11 July 2017, para 78.

²⁰ Email response by the Ribnica Primary School to Amnesty International Slovenia’s and Mladina weekly magazine freedom of information act request, 25 August 2017 and 1 September 2017.

²¹ Ministry of Education, Science and Sports, Data related to students with special needs in primary schools with special professional assistance, available at http://www.mizs.gov.si/fileadmin/mizs.gov.si/pageuploads/podrocje/posebne_potrebe/pdf/OSPP_statistika.pdf; http://www.mizs.gov.si/fileadmin/mizs.gov.si/pageuploads/podrocje/posebne_potrebe/pdf/Tabela_ucenci_s_posebnimi_potrebami.pdf

²² AIS Interview with Ministry of Education, Nov, 2017. Similar figures were noted in the Report of the Commissioner for Human Rights (CommDH (2017) 21), para 84.

²³ AIS has been for years unable to clear the methodology questions on data analysis with the Ministry of Education, Science and Sports. <https://www.irssv.si/demografija-8/2013-01-11-18-12-72/stevilo-romskih-otrok-glede-na-vrsto-osnovnosolskega-izobrazevanja>.

²⁴ In a case that was documented by Amnesty International Slovenia, a family from Škocjan which has 15 children, eight of whom are eligible for primary education, all eight have been referred to special education classes. AIS research and work with Roma communities indicates that this family is not an isolated case, but rather a trend that affects many Roma families with children.

Slovenia, the European Commission against Racism and Intolerance (ECRI) called on the authorities to stop using this distinction.²⁵

Lack of access to adequate water and other essential services

The vast majority of Roma in southeast Slovenia live in makeshift and isolated settlements, many of which have existed for decades. The precarious legal status of these settlements and the lack of security of tenure mean that Roma living there are at permanent risk of forced eviction and denied access to essential public services, including water, sanitation, and electricity. Roma in settlements in some parts of the country have to collect water from nearby streams, often polluted with sewage, or from petrol stations or cemeteries.²⁶ The persistent challenges in accessing water and adequate sanitation, as well as the pervasive poverty among many Roma families, constitute a serious impediment to their greater social inclusion and their full realization of their human rights.

REFUGEE AND MIGRANT RIGHTS

Slovenia is failing to consistently respect, protect and promote the rights of refugees and migrants.

Amnesty International has found that many asylum-seekers irregularly entering Slovenia are denied access to asylum, fined for irregular entry and forcibly returned – without any procedure and frequently in groups – to neighbouring Croatia.²⁷ Such collective expulsions, which are illegal under international law,²⁸ formally take place under the bilateral Readmission Agreement between Slovenia and Croatia, which provides for so-called “informal returns” of migrants who enter the country irregularly and do not apply for asylum. However, Amnesty International’s findings suggest that throughout 2018, the Slovenian authorities frequently ignored asylum-seekers’ intention to apply for international protection, failed to provide information or adequate translation assistance to those arriving at the border and handed them over to Croatian police, without appropriate procedural safeguards against *refoulement* and despite credible reports of widespread violence and abuse committed by the Croatian police.²⁹

The Slovenian authorities continue the practice of detention of unaccompanied children. Despite a 2016 government decision providing that unaccompanied children, regardless of their migration status, should be accommodated in alternative accommodation in student dormitories, official data indicate that in 2018 alone, at least 300 children were detained in the Centre for Foreigners in Postojna.³⁰

In January 2017, the National Assembly adopted amendments to the Aliens Act allowing special measures to be triggered in cases of threats to public order or national security. Under these measures, Slovenia would be able to deny entry to people arriving at its borders and automatically expel migrants and asylum-seekers who enter irregularly, without assessing their asylum claims or risks upon return.³¹ Such measures have yet to be invoked, but continue to raise concern in case the number of asylum-seekers and migrants trying to transit through or enter Slovenia increases.

²⁵ ECRI Report on Slovenia 2014, para 87.

²⁶ This was also documented by the CoE Human Rights Commissioner in his report on Slovenia, 2017, para 67.

²⁷ See Amnesty International, “Slovenia: Pushbacks and denial of access to asylum”, June 2018, <https://www.amnesty.si/media/uploads/files/Slovenia%20-%20Pushbacks%20and%20denial%20of%20access%20to%20asylum,%20Amnesty%20International,%20July%202018.pdf> .

²⁸ European Court of Human Rights, *Georgia v Russia*, App no 13255/07 (ECtHR 03 July 2014). See also Amnesty International, AIRE Centre, ECRE, ICJ, *Third party intervention before European Court of Human Rights, N.D. & N.T v. Spain*, 17 September, 2018, (EUR 41/9109/2018), <https://www.amnesty.org/en/documents/eur41/9109/2018/en/>, and Amnesty International, *Human cost of fortress Europe: Human rights violations against migrants and refugees at Europe’s borders*, 9 July 2014, (EUR 05/001/2014), <https://www.amnesty.org/en/documents/EUR05/001/2014/en/>

²⁹ Amnesty International, “Pushed to the edge: Violence and abuse against refugees and migrants along the Balkans route,” 13 March 2019, EUR05/9964/2019.

³⁰ Information received via electronic mail by the head of the Aliens Centre, Police, on 30th November 2019.

³¹ Amnesty International, “Slovenia: Amendments to Aliens Act denies protection of refugees,” 26 January 2017, <https://www.amnesty.org/en/latest/news/2017/01/slovenia-amendments-to-aliens-act-denies-protection-to-refugees/> Report of the Commissioner for Human Rights following his visit to Slovenia (CommDH (2017) 21), para 19-20.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Slovenia to:

WITH RESPECT TO ROMA

- Amend relevant national legislation to require the authorities to collect data disaggregated by the prohibited grounds of discrimination in order to be able to meaningfully assess the conditions and needs of minority groups;
- Remove the distinction in legislation and other measures between “autochthonous” and “non-autochthonous” Roma communities, as this contributes to the continued discrimination experienced by some Roma communities and deepens their social exclusion;
- Adopt measures to confer security of tenure to Roma people living in informal settlements;
- Adopt measures to ensure full access to water, sanitation and electricity for all Roma communities;
- Analyse and address the disproportionately high percentage of Roma pupils requiring special needs assistance or attending special needs schools with the goal of facilitating better integration of Roma into mainstream education;
- Take steps to operationalize the National Program of Measures for Roma Integration for the Period 2017-2021, including setting clear targets for specific integration activities, a timeframe for specific activities and securing steady funding to ensure that targets are met.

WITH RESPECT TO REFUGEES AND MIGRANTS

- Ensure that all asylum-seekers have access to fair and effective asylum procedures in accordance with the Slovenian International Protection Act and international law;
- Conduct prompt, independent and impartial investigations into all allegations of denial of access to asylum procedures, pushbacks and collective expulsions;
- Refrain from returning persons to other countries without providing procedural safeguards against returns that could put people at risk of human rights violations in the country to which they may be directly or indirectly returned;
- Ensure that police and border guards provide adequate information to asylum-seekers and migrants about relevant procedures and their rights in the language(s) that they understand;
- Remove the provisions concerning “informal returns” from the Readmission Agreement with Croatia, as these breach EU and international law and fail to provide the necessary safeguards against *refoulement*;
- Stop the detention of children and families with children solely on the grounds of their migration status, and replace this by child-sensitive non-institutionalized care solutions.

WITH RESPECT TO THE LEGAL DEFINITION OF RAPE

- Revise the definition of rape in the Criminal Code so that it is based on the absence of consent, bringing it in line with international human rights law and standards, such as set out in the Council of Europe Convention on preventing and combating violence against women and domestic violence.