

## **I. Executive Summary**

1. This memorandum is submitted by the Roma Advocacy Network (RAN)<sup>1</sup>, established and run by Minority Rights Group International (MRG) and the Roma Democratic Development Association SONCE, in advance of the third universal periodic review (UPR) of the Republic of Macedonia by the UPR Working Group. It addresses crucial areas of human rights applied to the Roma population of the Republic of Macedonia: access to justice, access to adequate housing, and right to education. It provides information for the Working Group on the progress and shortcomings of the Republic of Macedonia in relation to the implementation of these rights. This memorandum also includes RAN's recommendations on how the Working Group should encourage the government of the Republic of Macedonia to address these issues.

## **II. Methodology**

2. The Roma Advocacy Network (RAN) is an informal anti-discrimination network which was created in June 2017 under the EU-funded Project "From Action to Equal Rights for Roma" IPA/2015/382006 by the initiative of Minority Rights Group International and the Roma Democratic Development Association SONCE. RAN develops common advocacy plans to combat discrimination against the Roma in the Republic of Macedonia. This shadow report was prepared in strong cooperation with the Network members. The Network held its annual international advocacy meeting in Skopje in June 2018 where the members discussed the priorities for this submission. Later on, during the drafting process the Helsinki Committee for Human Rights of the Republic of Macedonia, the Roma Lawyers Association, the Association of Multi-ethnic Society for Human Rights and the Institute for Human Rights contributed to the report on behalf of the Network while we were continuously consulting with all members about the content. Therefore, this submission is based on first-hand data provided by the Network members many of whom regularly conduct research on the human rights of the Roma to map shortcomings and fields to be further developed by the Government. Their reports are based on statistical data and they provide a comprehensive analysis of different human rights. Most of them work directly with the Roma community therefore they are very familiar with their problems and needs.

## **III. Access to justice**

3. The Roma Lawyers Association conducted a research on the status of Roma as defendants in criminal proceedings in terms of their procedural position, their rights as defendants in court proceedings, as well as efficiency and effectiveness of investigations performed by

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<sup>1</sup> See the list of members in Annex.

law enforcement authorities.<sup>2</sup> According to the findings, Roma are discriminated in proceedings taken by the police and their claims on police brutality are not followed by effective investigations. They face discrimination primarily during police and investigation proceedings.

4. The treatment of the Roma in the justice system deserves special attention. Roma face discrimination at different stages of the judicial process, from the treatment they receive from the police (often characterised by an excessive use of force or intimidation), to the lack of trust and weight given to claims of the Roma about the violation of their rights. The state has to ensure effective protection against discrimination by mapping and eliminating all discriminatory attitudes of the law enforcement authorities and holding them responsible for these violations when they occur.
5. An analysis of court decisions showed that there is discrimination in the broadest sense of the word regarding the inability of the Roma to appropriately use the procedural rights and powers provided in the laws, namely:
  - High number of Roma defendants are not represented by attorneys in court proceedings;
  - Roma defendants' access to justice is problematic due to lack of funds to engage an attorney to represent them in court proceedings. Therefore, they rely on legal aid provided by the non-governmental sector or they do not benefit from any legal aid;
  - There is a need for securing an interpreter in the procedure as none of the analysed court rulings referred to the fact that a Roma language interpreter was secured, which raises the question whether the defendants completely understood the charges raised against them;
  - Because of the limited financial resources of most Roma, they are unable to put together reliable or strong evidence (such as expert witness's report) to initiate proceedings before the courts because it costs money.
6. Because of a lack of knowledge of available avenues to access legal assistance and their poor economic situation, many accused Roma cannot afford to hire an attorney of their own choice in the criminal proceeding. Therefore, very often lawyers defending a Roma accused are either hired by the non-governmental sector or appointed ex officio. Given that the attorneys appointed ex officio are paid by the state only when the criminal procedure ends and their fee is fixed, they are less motivated and they do not offer a defence in good conditions for the accused Roma.
7. In order to achieve effective protection against discrimination in the criminal procedure, and especially in the police and public prosecutorial investigative procedure, it is necessary to raise awareness and sensitise judicial authorities, such as public prosecutors, police officers, social workers and judges, who act in cases in which defendants/suspects are Roma. Awareness raising and training activities must be designed with the full participation of Roma communities themselves.

#### **IV. Access to adequate housing**

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<sup>2</sup> Roma Lawyers Association, "Analysis of the Status of Roma as defendants in criminal proceedings in the Republic of Macedonia", September 2017, available at <http://cpia.mk/media/files/analysis-of-the-status-of-Roma-as-defendants.pdf>.

8. The access to adequate housing was one of the main priorities of the Decade of Roma Inclusion 2005-2015. However, ten years after the implementation of the Decade, there are no visible changes in this area. The data shows that 63% of the Roma population in these communities lives in buildings of solid construction, 7.25% of families live in improvised houses made of non-construction material (cardboard, nylon, aluminium sheets, plastic, etc.) and 29.5 % in ruined and prefabricated buildings.<sup>3</sup> The homes of Roma families are small, and they are designed only for basic needs. More than 50% of the population only have a living space of less than 5 square meters per family member.<sup>4</sup> According to the data presented in the Strategy for Roma in Republic of Macedonia 2014-2020, it is assumed that about 70% of Roma do not have ownership documentation of the property in which they live.<sup>5</sup> In view of this fact, the new Strategy 2014-2020 prepared by the Ministry of Labour and Social Policy includes legalization and urban documentation as specific strategic goal 11 which ensures the legalisation of 70% of the settlements inhabited by the Roma population until the end of 2017.<sup>6</sup>
9. In 2011, the Republic of Macedonia adopted the Law on treatment of illegally constructed buildings<sup>7</sup>, in order to create an avenue for legalisation of settlements. However, only a small proportion of applications led to legalisation under that law, which questions the effectivity of the law to open prospects for legalization of illegal settlements inhabited by Roma (and others). Given that certain settlements are not part of the urban plans of the municipalities, it can be expected that a significant number of Roma will be left homeless after their requests for legalization have been rejected, as under the Law on treatment of illegally constructed buildings their homes can be legally demolished.
10. The procedure is very slow given that since the adoption of the law until 30 September 2015, only 113,096 cases were solved, that is, only about one third of the total 344,293 applications filed for legalization of illegally constructed buildings. So far, a total of 107,681 houses have been identified as having legal status.<sup>8</sup>
11. One of the biggest obstacles to the legalization of Roma dwellings is the location where settlements are built. Many Roma settlements are located in areas where construction of houses is prohibited according to the General Urban Plan (GUP)<sup>9</sup> or the Detailed Urban

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<sup>3</sup> Strategy for Roma in Republic of Macedonia 2014-2020, June 2014, p. 57, available at <http://www.mtsp.gov.mk/dokumenti-642e295b-69e3-4291-acb1-2ce6beb8cdd8.nsp.x>.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid, p. 62.

<sup>7</sup> Law on treatment of illegally constructed buildings No. 23, 24.2.2011, available at

[http://www.mtc.gov.mk/media/files/Zakon\\_za\\_Postapuvanje\\_so\\_bespravno\\_izgradeni\\_objekti\\_23\\_24022011.pdf](http://www.mtc.gov.mk/media/files/Zakon_za_Postapuvanje_so_bespravno_izgradeni_objekti_23_24022011.pdf).

<sup>8</sup> Ombudsman of the Republic of Macedonia, Research on the implementation of the procedure for determining illegally built objects, December 2015, p.4. Available at <http://ombudsman.mk/upload/Istrazuvanja/2016/Istrazuvanje-bespravno%20izgradeni%20objekti.pdf>.

<sup>9</sup> Article 10, Law on Spatial and Urban Planning: "The general urban development plan shall be adopted for settlement area, economic complex and other areas planned for construction."

Plan (DUP).<sup>10</sup> Such municipalities only slowly manage to bring in line their urban plans with the actual situation.

12. Some municipalities, such as Shuto Orizari, which have significant Roma populations, lack the financial and professional capacity for carrying out this process. These local authorities would need the government's support. If local authorities decide to implement a new detailed urban plan in which Roma settlements will be included, the local population should be consulted and involved in the preparation of the plan as this will ensure that the urban plan will respond to the needs of the Roma population, especially in the area of access to basic utility services and sustainable urban development.

## V. Segregation in primary education

13. Discrimination against Roma in education remains and continues to be widespread. One of the most severe forms of discrimination is segregated schools and classes that, according to our findings, exists in several municipalities. In all of its reports from 2010, the Ombudsman has repeatedly denounced segregation in education on a linguistic and ethnic basis, with a particular emphasis on the segregation of Roma pupils in separate schools and classes.<sup>11</sup>
14. According to Article 46 of the Law on Primary Education<sup>12</sup>, primary schools are obliged to enrol students in the first grade from their catchment area which is defined by the local authorities. Primary schools can accept the application of students from another region or municipality if there are free places. Under Article 50 of the same law, parents can only enrol their child in a school of another region or municipality if the school accepts the application.
15. According to the Ombudsman's report, the analysis of data obtained from primary schools shows that in the municipalities the local authorities' decision on the catchment area of primary schools are not implemented consistently and equally in all primary schools. At the same time, there are primary schools in which only Roma students are enrolled because parents of other ethnicity refuse to enrol their children in that primary school to which they would belong because of the high percentage of Roma in that school.
16. The Ombudsman's report also emphasizes the disproportionate representation and segregation of Roma in special schools for children with disabilities and learning difficulties. Some municipalities also mentioned the problem of placing Roma children in classes and schools for children with disabilities. According to our information, the existing system of diagnosis of learning difficulties and disabilities proved to be inadequate and stigmatizing in practice. For a child to enrol in these schools, s/he must have a categorization document which proves that the child has a disability and/or learning difficulty. In our system this regulation is usually not respected and Roma children are

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<sup>10</sup> Article 11, Law on Spatial and Urban Planning: "The detailed urban development plan shall be adopted for particular parts of settlements and other areas for which a general urban development plan has been adopted."

<sup>11</sup> <http://ombudsman.mk/upload/Posebni%20izvestai/2015/Informacija%20Romi-Obrazovanie-2015.pdf>

<sup>12</sup> Law on Primary Education (Official Gazette of Republic of The Republic of Macedonia 103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 42/2011, 51/2011, 6/2012, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, 10/2015, 98/2015, 145/2015, 30/2016, 127/2016 и 67/2017).

enrolled without categorization and without conducting tests in such schools or in "special classes" within regular schools.

17. The Institute for Human Rights and the European Roma Rights Center conducted a survey<sup>13</sup> in the period between June and October 2016 on the situation of Roma children in primary education in five municipalities on the territory of the Republic of Macedonia: the municipalities of Bitola, Kumanovo, Shtip and two municipalities on the territory of Skopje - municipalities Gjorce Petrov and Gazi Baba. According to the findings, segregation of Roma children in primary schools exists in Bitola and Shtip. In case of Bitola and Shtip the status of a "Roma or gypsy school" is the reason that non-Roma parents enrol their children in some of the neighbouring schools.
18. One of the most obvious examples of segregation in education on an ethnic basis is the elementary school "Gorgi Sugarev", in Bitola, where children of exclusively Roma background are registered. On the other hand, parents of non-Roma children do not respect the local authorities' decision about the catchment area of primary schools and enrol their children in primary schools in other regions. Again, the most worrying fact is that no institution notifies or take any measure to prevent and respond to this type of discrimination against Roma.
19. In the Municipality of Shtip the problem is that parents do not respect the municipality's decision about the catchment area of primary schools and Roma pupils are disproportionately distributed in classes of certain schools. The difference in terms of average success rate varies from school to school but generally the rate of Roma students is much weaker.
20. In the municipality of Prilep, it was also announced that "there is a growing trend of withdrawing children of Macedonian ethnic origin from a school with a majority of Roma students."<sup>14</sup>

#### Recommendations:

1. Establish a mechanism for identifying abuses of investigative powers by the prosecuting authorities against accused Roma.
2. Conduct effective and efficient investigations in cases of suspicion of excessive use of force or misuse of power of law enforcement authorities/organs of persecution.
3. Improve inclusive access to justice, in particular by guaranteeing an efficient and free legal aid system.
4. Provide free translation of the documents and free interpretation into Roma defendants' mother tongue in court proceedings.

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<sup>13</sup> Institute for Human Rights and European Roma Rights Centre, "Segregation of Roma Children in elementary Schools in Republic of Macedonia", October 2016, available at: [http://ihr.org.mk/uploads/segregation-of-roma-children-in-elementary-school\\_EN.pdf](http://ihr.org.mk/uploads/segregation-of-roma-children-in-elementary-school_EN.pdf)

<sup>14</sup> See Ombudsman's Report, 2015, p. 34.

5. Provide training for judicial authorities about the right to equality and prohibition of discrimination based on international human rights standards and the jurisprudence of the European Court of Human Rights.
6. Local authorities should prepare new urban plans or modify the existing ones in those municipalities in which Roma settlements are not included in the urban plans.
7. The central government should play a key role by funding and providing expert assistance to those municipalities which lack the financial and professional capacity for developing new urban plans.
8. The central and local government should consult with the local Roma population and involve them in the preparation of a new urban plan through their representatives.
9. Local and national budgets should contain an item for the inclusion of the Roma in primary education.
10. Continually decrease the number of Roma children in special education and support their reintegration in standard education.
11. Conduct research to systematically document all forms of discrimination against Roma children in education in order to develop appropriate measures to address it.
12. Local authorities should take into account the number of Roma pupils and their adequate and even distribution among students from other ethnic communities in the enrolment in first grade.