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DISCRIMINATION**

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## EXECUTIVE SUMMARY

Amnesty International is submitting this briefing in advance of the Eighty-eighth session of the Committee on the Elimination of Racial Discrimination (CERD). In this submission, Amnesty International provides information relevant to the examination of the State party report of Slovenia, and evaluates the situation of ethnic and national minorities, particularly the Roma and non-citizens (specifically the “erased”), and makes recommendations calling on the government to act on key institutional and human rights concerns. In particular, it demonstrates that the government has failed to adequately address the Committee’s concerns and recommendations in these areas from its last examination of Slovenia in 2010.

Amnesty International notes with concern that the legal and institutional human rights framework is not effective in upholding the right to non-discrimination, or providing effective remedies for its violation.

Roma communities continue to be discriminated against, in particular regarding access to adequate housing and safe drinking water and sanitation. The Slovenian authorities fail to guarantee security of tenure for people living in informal settlements. There are no legal rules to effectively protect individuals from forced eviction. The living conditions of Roma in informal settlements remains concerning.

The government has failed to implement legislation to recognize the rights of the “erased” and restore their status. Children of “erased” persons born outside the territory of Slovenia are deprived of their right to claim permit for permanent residence in Slovenia, leading to a continuous violation of the right to private and family life. Financial compensation and other forms of reparation are generally only available to those persons who had their status restored before July 2013, resulting in over half of the victims being denied any form of reparation.

## THE SITUATION OF MINORITIES, ESPECIALLY THE ROMA

### NATIONAL LEGAL FRAMEWORK, POLICIES AND PROGRAMMES AGAINST RACIAL DISCRIMINATION

Prevention of discrimination against ethnic and national minorities, particularly the Roma remains a systemic problem due to the ineffective national human rights framework.

Several institutions are tasked with ensuring non-discrimination, including the Human Rights Ombudsman, the Advocate of the Principle of Equality, various inspectorates and the courts. The mandates of these institutions remain limited and fail to address ongoing systemic failings. There is a lack of coordination at the government level leading to the failure of implementing the National Programme of

Measures for Roma People, including to improve the housing conditions of the Roma as recommended by the CERD in 2010.<sup>1</sup>

The Ombudsman is the main human rights body established by the Constitution. However, it is only competent for actions by state agents and has no oversight function of actions by the private sector or non-state actors. It is only mandated to take action when it receives an individual complaint. Whilst the mandate of the Ombudsman is broad in respect of the human rights issues it can investigate, this is undermined by the fact that its recommendations are not legally binding. Consequently, if the recommendations are not acted on, the Ombudsman cannot impose sanctions.

## SECURITY OF TENURE

Approximately a third of the 10,000-12,000 Roma are concentrated in the south-east of the country, where they live in isolated and segregated settlements in rural areas. Dwellings are often poorly constructed, sometimes only amounting to a small wooden hut providing basic shelter at best.<sup>2</sup> Many of the settlements are informal at least in part, as although some buildings may have been regularized, the majority of residents lack security of tenure. They continue to have limited access to services such as water, electricity, sanitation and transport facilities.

Roma settlements are often established in an irregular manner and on land that is not classified for residential use and does not have the required building permits. This leads to a lack of security of tenure for the residents and consequently lack of access to essential public services, such as water, sanitation and electricity since a legal title and a building permit are pre-conditions for such access. Amnesty International notes that many settlements were formed decades ago during the period of the former Yugoslavia<sup>3</sup>, but that the Slovenian state has subsequently and continuously failed to address these concerns.

Brezje-Žabjak (Novo mesto), Goriča vas (Ribnica), Loke and Rimš (Krško) and Dobruška vas 35 and 41 (Škocjan) are some of the many Roma settlements that are still not regularized and whose residents have not been provided with even a minimum degree of security of tenure, despite the fact that Romani communities have lived there for decades, often following decisions by local authorities to let them settle in those locations. Roma living in this situation cannot control what happens to their homes and cannot improve their housing conditions.

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<sup>1</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/SVN/CO/6-7, 20 September 2010.

<sup>2</sup> *Roma and Roma settlements in Slovenia, Short report on results of the survey done by the Expert Group for solving Spatial issues of Roma settlements in Slovenia* (Romi in romska naselja v Sloveniji, Kratko poročilo o rezultatih raziskave v okviru dela Strokovne skupine za reševanje prostorske problematike romskih naselij v Sloveniji).

<sup>3</sup> Ibid.

According to data collected in 2010 by the expert group on Roma settlements appointed by the government, one third of Slovenia's Roma settlements were still irregular. Out of 107 settlements across the country, buildings in 43 were not regularized; they were not in line with regulations in another 20.

In these conditions Roma remain constantly vulnerable to eviction and demolition of their property, which instils in them a permanent fear about their future. At the same time, it negatively affects the quality of their housing due to their reluctance to enlarge or upgrade their homes, knowing that their investment could well be in vain. Residents of Žabjak and Dobruška vas told Amnesty International that inspectors monitor whether anything new is built or upgraded in the settlement and then give orders to demolish it.<sup>4</sup>

One such case is from 2014, when a Roma individual living in the Dobruška vas settlement in Škocjan municipality appealed to the competent Administrative court against the demolition order issued on his home. The court stopped the proceeding and referred the Act on building constructions (Zakon o graditvi objektov) to the Constitutional Court to evaluate whether it was in line with the Constitution because the law failed to take into account specificities of Roma settlements. A decision is still pending.

In the summer of 2015, the Roma settlement Rimš in the Krško municipality, lying on agricultural land, was sold by the Catholic Church to a private agricultural company with the purpose of exploiting the land. The land was sold with the Roma settlement and its inhabitants, who have no access to water or electricity – on it. The Roma living in the settlement have not been contacted and genuinely consulted and it remains unclear if the settlement will be evicted or regularized. Local authorities failed to step in to find a solution in consultation with the affected community, and to provide adequate alternative housing, should an eviction take place.

## PROTECTION FROM FORCED EVICTION

The Housing Act only regulates eviction from rented apartments and social housing. The General Property Code stipulates that eviction from land which is not owned by the residents can only be carried out on the basis of a court decision. However, in practice this provides little or no protection for Roma communities living in informal settlements.

Crucially, Slovenian legislation does not prohibit forced evictions and does not include the minimum procedural requirements to protect residents against eviction, stipulated in international law. The lack of such safeguards affects the Roma living in informal settlements disproportionately, and is entrenching their position at the edge of Slovenian society. In several Roma settlements, including Trata pri betonarni, Goriča vas, Loke and Dobruška vas residents are potentially at risk of eviction. Additionally, despite informal public reassurances, it is unclear what will

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<sup>4</sup> *Parallel lives: Roma denied rights to housing and water in Slovenia*. Amnesty International report, Index: EUR 68/005/2011, March 2011.

become of the Rimš settlement.

A particularly concerning case is that of the Dobruška vas settlement, which has been continuously inhabited by Roma with the tacit consent of the authorities. In 1963, the Novo mesto municipality settled the first Roma family on the land that is now the informal Roma settlement Dobruška vas 41; by 1984 23 families were living there. In 1986 the Institute for Social Planning Novo mesto prepared a plan to regularize the settlement. However, the Agricultural Association Krka and the local community of Škocjan objected to this step, arguing that the land in question was designated for agricultural purposes. The Agricultural Association Krka owns approximately one half of the land, while the other half of the settlement is in the ownership of the Škocjan municipality.

In January 2011, the mayor of Škocjan stated that a government decision in 2001 had designated the land for business purposes, and in May 2013 the municipality received state and EU funds to build a business zone and a waste-water cleaning facility on the site of the Roma settlement. The Roma community were not informed about or consulted on these developments.

At the same time, the Agricultural Association Krka initiated criminal proceedings, resulting in first instance convictions of Roma for illegal acquisition of real-estate (*protipravna prilastitev nepremičnine*). 12 families were convicted, with some appealing the decision. The convictions took place by way of an accelerated procedure (*postopek za izdajo kaznovalnega naloga*) used for simple cases which do not require a court hearing. Instead, the only procedure was conducted by the police, where the Roma gave initial statements without adequate legal representation. Contrary to their right to have a proper judicial determination of the serious criminal charges against them, to date the Novo mesto court has not heard the cases.

In mid-2014, the first three Roma families were successfully relocated partly outside and within the settlement as their houses stood in the way of the first phase of the project (a waste-water cleaning facility). It remains unclear what will become of the settlement as a whole; the inhabitants are at risk of forced eviction as the second phase of the project (a business zone establishment) is expected to continue. It is scheduled to be concluded by November 2016; so far no consultation has been carried out at all with the participation of the affected Roma families and no project plans have been made public.

## ACCESS TO WATER AND SANITATION

Under Slovenian law, citizens can only obtain access to communal public services if they own or hold other legal claims to the land on which they live, along with a building permit. Many Roma are therefore denied even minimum levels of access to water and sanitation, as well as utilities such as electricity.

The denial of their rights to adequate housing, water and sanitation, whilst also negatively impacting other rights such as education, work and health, feeds into a cycle of poverty and marginalization. Widespread prejudice against Roma, including children and women persist on the grounds of their lack of access to basic sanitation. Following a mission to Slovenia in 2010, the UN Special Rapporteur on

the human right to safe drinking water and sanitation described the lack of access to water and sanitation as “devastating for the communities.”<sup>5</sup> Similar conclusions were produced by the Ombudsman in its Special report on Roma from 2012.<sup>6</sup>

Yet despite repeated criticism, Slovenia has so far failed to implement relevant recommendations in this area from both the Universal Periodic Review<sup>7</sup> and the UN Special Rapporteur on the right to water and sanitation.

Some Roma communities are forced to collect water from petrol stations, cemeteries or polluted streams, often far away from where they live.<sup>8</sup> Some of them are only able to collect up to 20 litres a day with others only able to obtain a daily amount of 10 litres which is below the recommended minimum in humanitarian emergencies and well below the normal recommended minimum by the WHO for daily personal and domestic use. Ponova vas, Rimš and Goriča vas are three Roma settlements entirely deprived of access to water and in many others such as Dobruška vas the majority of Roma have no access to water.

Contaminated water is a cause of serious illnesses, including diarrhoea. Roma families living in the Dobruška vas settlement in Škocjan told Amnesty International that they are often forced to use water from a polluted local stream for drinking, cooking and washing. Roma have reported that sewage flows into the stream as well as waste from a nearby slaughterhouse.<sup>9</sup> A 2011 Ministry of health report expressing concerns about the health impacts was presented to a governmental commission for Roma in November 2011 but has not been followed up by specific measures to address the concerns, as the government decided not to intervene arguing that actions regarding the settlement were solely within the competence of the Škocjan municipality, thereby failing to diligently oversee actions of local authorities. The local authorities later built an access point for potable water to which they connected only three of the 19 families in Dobruška vas. However, no further action was taken despite repeated requests by other affected Roma families to increase access. The municipality, in response to an inquiry by the Ombudsman in 2012, said that “they fulfilled their duties” and that “Roma renounced access to water willingly”. However, based on interviews conducted with Roma residents by Amnesty International this latter statement is clearly false whilst completely running counter to the municipality’s obligations to the community.

Two Roma families from Škocjan and Ribnica took the issue to the European Court of Human Rights claiming violations of their rights to private and family life and

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<sup>5</sup> Report of the Special Rapporteur on the human right to safe drinking water and sanitation, A/HRC/18/33/Add.2, 4 July 2011.

<sup>6</sup> Available in Slovenian on [http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/posebna\\_porocila/POSEBNO\\_POROCILO\\_ROMI\\_-\\_maj\\_2012\\_-\\_za\\_splet.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/posebna_porocila/POSEBNO_POROCILO_ROMI_-_maj_2012_-_za_splet.pdf)

<sup>7</sup> Report of the Working Group on the Universal Periodic Review (Slovenia), A/HRC/28/15, 10 December 2014.

<sup>8</sup> *Parallel lives: Roma denied rights to housing and water in Slovenia*. Amnesty International, Index: EUR 68/005/2011, March 2011.

<sup>9</sup> Ibid.

their right to be free from inhuman and degrading treatment. Proceedings commenced against Slovenia on 8 April 2015. The Government submitted its reply by November 2015, denying a violation of the applicants' human rights.

### EFFECTIVE PROTECTION AND REMEDIES

The Slovenian authorities have yet to establish a comprehensive and effective legal and institutional framework to give victims of discrimination and other human rights violations access to an effective (accessible, affordable and timely) remedy. This is especially relevant for the most disadvantaged groups in Slovenia, such as the Roma, to effectively challenge discriminatory practices.

In order to implement EU anti-discrimination provisions, the authorities have established the Advocate of the Principle of Equality, mandated to receive and examine alleged cases of discrimination in the private and public sectors; however, the Advocate's opinions are not legally binding. Furthermore, the government has not provided the Advocate with sufficient powers and resources to provide direct assistance to victims of discrimination. For example, the Advocate is not mandated to collect specific statistics, nor to monitor the situation of vulnerable groups and coordinate state policy to combat discrimination. Amnesty International has repeatedly raised concerns about the lack of resources allocated to the Advocate. There is only one employee, namely the Advocate himself with no support staff. Amnesty International notes that a process of amending the legislation governing the Advocate's functions has started but to date it is unclear whether this will concretely address the institution's current weaknesses.

Generally, state inspectorates have powers to provide a remedy to victims of discrimination. The Market Inspectorate and the Housing Inspectorate are the competent bodies in the field of the housing. However, the Housing Inspectorate cannot deal with cases of alleged discrimination, and the Market Inspectorate can only act if the actor responsible for discrimination is a private company, but not an individual. The result is that many victims of housing discrimination cannot expect to receive an effective remedy from the Inspectorate function.

Victims of discrimination can seek judicial remedies before the lower courts as well as before the Constitutional Court. However, marginalized communities struggling to secure basic livelihoods have little access to legal aid and judicial remedy.

In light of the systemic failings highlighted above Amnesty International recommends the Slovenian government to undertake specific measures to fight persistent discrimination against Roma, in particular by urgently addressing the right to adequate housing in Roma settlements, through preventing forced evictions, and ensuring access to basic services such as water and sanitation.

Roma communities should not be criminally prosecuted for illegal occupation of land, and left in insecurity about the future of their settlements, in which they have lived often for decades. Instead, they should be meaningfully consulted and participate in any decisions affecting them. Roma individuals and organizations, as well as other non-governmental organizations should be provided with access to effective procedures that enable them to challenge discriminatory practices at the local level and obtain effective remedies.

## THE SITUATION OF THE “ERASED”

Amnesty International notes that the Committee has made extensive recommendations to Slovenia to resolve the status of “erased”, to grant victims of erasure full reparation for their removal from the list of permanent residents and to ensure the enjoyment of their economic and social rights. The organisation is concerned at the lack of implementation of these recommendations and the ongoing failure by the government to fully assume responsibility for, and remedy the violations.

The violations committed against non-citizen permanent residents referred to as the “erased” derive from the erasure process that took place on 26 February 1992. On that date some 25,671 people – more than one per cent of the population – were unlawfully removed from the Slovenian registry of permanent residents. They were mainly people from other republics of the former Yugoslavia, including Bosnians, ethnic Albanians from Kosovo, Macedonians and Serbs, who had been living in Slovenia as permanent residents but who had not acquired Slovenian citizenship following independence of the country.

Without legal status (a Yugoslav citizen's permanent residence transformed into a new Slovenian non-citizen's permit for permanent residence) they were deprived of their economic, social, civil and political rights, and many were left on the edge of society. Many lost their jobs or pension. Thousands were forcibly removed from the country or denied re-entry. By acting without any due process of law and without even notifying the “erased”, the state denied those affected to access a whole range of socio-economic goods and services including access to health services, education, employment and social benefits, together with any legal remedy to challenge these violations.

Despite repeated criticism Slovenia has failed to enact legislation to genuinely recognize the rights of the erased (even though the “erased” as a group are recognized in Constitutional Court decisions, which defined erasure as an unlawful act in 1999 and 2003). Following the Constitutional Court decisions, the authorities prepared in 2010 a special law with the aim to enable the erased to regain their status by allowing them to acquire a permit for permanent residence (Zakon o urejanju statusa državljanov drugih držav naslednic nekdanje SFRJ v Republiki Sloveniji). However, the law expired in 2013 and has not been renewed. The result is that those who continue to be “erased” now have no legal options to regularise their status.

It is estimated that roughly one half of the persons erased in 1992 have regained permanent status in the country (citizenship, permit for a permanent residence). This still leaves thousands without any legal status. By August 2015, there were 1899 applications for status restoration, 1601 by “erased”, 71 by children of “erased” and 227 by “other” individuals (those who claim to be erased yet the official definition of erasure does not encompass their cases). However, only 237 permits for permanent residence were issued while 1350 applications were either denied or rejected. 312 cases are pending. 126 applications were filed after the law

expired.<sup>10</sup>

The legal position of children must be specifically noted. Under the 2010 legislation, children of those erased born after 26 February 1992 were eligible to apply for a permit for permanent residence only if they were born in Slovenia (Art. 1a). In practice, many “erased” were deported or denied re-entry, causing children to be born abroad – and thus denying subsequent regularization of their legal status.

One of the most notorious examples is the case of Ali Berisha, who is one of the 6 successful applicants in the *Kurić v Slovenia* case before the European Court of Human Rights (see further below), which in upholding his and others’ claim made it possible for him to acquire permanent residence for himself and one of his children born in Slovenia. His wife and other 4 minor children were denied permanent residence, until the Bureau of the President of Slovenia issued an opinion on 31 December 2014 stating that their stay is in the interest of Republic of Slovenia. The family was granted permanent residence in the beginning of 2015 under the special provisions of the Foreigners Act, usually applied to athletes. This ad hoc measure however fails to guarantee equal treatment to other erased families and children born outside Slovenia after 1992. Children of the erased, regardless of the time or place of birth, should enjoy the same rights as erased regarding their legal status. The definition of “family” should be understood in this regard as widely as possible.

Amnesty International is aware of at least one more family in such a legal position, still residing in the territory of Slovenia but unable to regularize their stay (where the father was erased and restored his status with 4 minor children, but the mother and 4 children born abroad cannot). The family is currently exploring legal avenues to resolve their status. Several more families live outside of the country, but since relevant legislation expired in 2013, it remains questionable if the Constitutional Court would grant legal interest to potential applicants (after rejecting a motion from one of the associations of “erased” in 2015).

## EFFECTIVE PROTECTION AND REMEDIES

In 2012 and 2014, the Grand Chamber of the European Court of Human Rights ruled in the case of *Kurić v Slovenia* that Slovenia had violated the right for private and family life and the right to an effective remedy of the “erased” complainants. It also found that the state had discriminated against the complainants. In December 2013, following the ruling, the authorities prepared a reparations scheme for the “erased”. However, compensation measures includes only those “erased”, who have already had their status regularised (and some other minor categories who were denied status), and thus exclude approximately half of the “erased”.

The existing compensation scheme does not include other meaningful measures of re-integration and remedies, including access to housing, social services, employment and other forms of restitution, while the level of compensation is

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<sup>10</sup> Statistics on file with Amnesty International.

significantly lower than those awarded to “erased” who successfully apply to the European Court of Human Rights, following the example set out in *Kurić v Slovenia*.<sup>11</sup> No other forms of reparation, including restitution, rehabilitation, satisfaction and guarantees of non-repetition have been offered to the “erased”, including those still without status living outside Slovenia.

The 2013 Act on Compensations for Persons Erased from the Register of Permanent Residents, incorrectly defines the “erased” as persons for whom the 1991 Foreigners Act became relevant and made their registration as permanent residents redundant. This definition ignores the fact that erasure was an intentional political decision of the Slovenian authorities in 1992, a fact supported by several official documents, including one dated 4 June 1992 in which the then Minister of Interior Mr. Bavčar recommended to the government “to think away acquired rights”. Such a definition also fails to recognize the implications of the *Kurić v Slovenia* case in finding a systemic human rights violation.

There has been no recognition of erasure and it remains contested in Slovenian society. Beside the limits of recognition and protection in existing law and policies, the “erased” face a particular difficult situation in the society and everyday life.

Amnesty International recommends the Slovenian government to take urgent steps to address the situation of those “erased”, with special measures to enable access to justice and reparation for those who had not had their status restored by 2013. The government should publicly acknowledge the violation of the rights of the “erased” and expedite restoration of their status. Families affected by the act of erasure should not be subject to restrictions in accessing permanent residency rights in Slovenia. Children of “erased” persons born outside Slovenia should be allowed to access the same measures as those born on the territory of Slovenia. The levels of compensation should be appropriate to the harm suffered and be in line with the jurisprudence of the European Court of Human Rights. The process to access reparations in domestic procedures should be effective and not subject to a statute of limitations.

## RECOMMENDATIONS

Amnesty International recommends Slovenia to adopt immediate and concrete measures to combat all forms of discrimination against Roma and the “erased” and ensure equal opportunities in accessing civil and political, as well as economic, social and cultural rights.

*On Roma specifically:*

- Ensure access to adequate water, sanitation and electricity for all communities without delay;
- Confer security of tenure for people living in informal settlements;

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<sup>11</sup> Details about financial compensation available at the Slovenian Peace Institute: <http://www.mirovni-institut.si/izbrisani/odskodnine/>

- Provide all individuals with legal protection against forced evictions and effective remedies for victims;
- Legalize settlements where possible or provide adequate alternative housing following genuine consultation with affected communities;
- Prioritise participation of Roma communities living in informal settlements, as well as other disadvantaged groups, in all public housing policies and programmes, including schemes for non-profit housing and for housing subsidies.

*On the erased:*

- Officially recognize erasure as a human rights violation and provide appropriate remedies for all victims including a state apology;
- Ensure that there is a prompt, effective, impartial and independent investigation by a special investigative body or commission of truth with appropriately high competence and adequate resources into human rights violations connected to the erasure process;
- Immediately enforce the automatic return of appropriate legal status (currently a permit for permanent residence) to all erased without any additional conditions or administrative fees, and conduct an outreach campaign to inform “erased” currently living outside Slovenia;
- Ensure the full enjoyment of their economic and social rights including the access to health services, social security, education and employment;
- Regulate and enable reunification of families affected by erasure;
- Revise the compensation scheme for damages to the erased following amounts and criteria set out by the European Court of Human Rights Grand Chamber.



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