

SERBIA

CONTINUING IMPUNITY FOR WAR CRIMES AND DISCRIMINATION AGAINST ROMA

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INTRODUCTION

In this submission, prepared for the UN Universal Periodic Review (UPR) of Serbia in January-February 2013, Amnesty International assesses progress made by Serbia in implementing recommendations made to it during its previous UPR in December 2008, concerning discrimination, freedom of expression and impunity for war crimes.

Amnesty International also comments on the normative and institutional framework in Serbia, including the establishment of the Commissioner for the Protection of Equality and designation of a National Preventive Mechanism in accordance with the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

With respect to the human rights situation on the ground, Amnesty International sets out its concerns about the failure of the Serbian authorities to promote and protect the right to adequate housing of the Romani people. Many Roma living in informal settlements without security of tenure or access to basic amenities have been the victims of forced evictions carried out in violation of international standards regarding prior notice, meaningful consultation, access to legal remedies and compensation, and adequate resettlement.

FOLLOW UP TO THE PREVIOUS REVIEW

During the first UPR of Serbia in December 2008, other states made recommendations on a range of issues, including on cooperation with the International Criminal Tribunal for the former Yugoslavia and the arrest of suspects indicted by the Tribunal,¹ impunity for war crimes,² freedom of expression,³ protection of human rights defenders, including those working on behalf of lesbian, gay, bisexual and transgender (LGBT) people,⁴ and discrimination.⁵ The government accepted most of these recommendations.⁶

Since 2008 some progress has been made with respect to each of these issues. However, with some exceptions, further measures are needed with regard to the implementation of legislation.

DISCRIMINATION

A number of positive measures have been taken to tackle discrimination, including the adoption of an Anti-Discrimination Law in March 2009 and the establishment of the Office of Commissioner for the Protection of Equality in May 2010.⁷ Nevertheless, in practice vulnerable groups, including minority communities, continue to suffer discrimination and face difficulties exercising their rights.

FREEDOM OF EXPRESSION

Amnesty International notes that those responsible for attacks on journalists are more frequently brought to justice. However, concerns remain about political control of the media, including through the introduction of restrictive legislation and alleged interference with the media, as well as through the ownership of print and some electronic media by individuals with close links to political parties. Moreover, the government has failed to guarantee the rights of LGBT people to freedom of expression and assembly, for example by cancelling the 2011 Belgrade Pride event at short notice, and failing to effectively investigate threats to Pride organizers and participants and to bring the perpetrators to justice.⁸ In October 2012, the new government similarly banned the Belgrade Pride.⁹

IMPUNITY FOR WAR CRIMES

Serbia has made progress in its cooperation with the International Criminal Tribunal for the

former Yugoslavia, particularly with the arrests of Ratko Mladić and Goran Hadžić, the two remaining suspects indicted by the Tribunal, in May and July 2011, respectively.¹⁰ Amnesty International remains concerned, however, about the continued impunity for crimes under international law which took place across the region during the 1990s, and Serbia's slow progress in bringing perpetrators to justice in domestic courts. Amnesty International considers that the previous UPR failed to sufficiently address this longstanding human rights concern and regrets that Serbia rejected recommendation made in 2008 "to combat impunity" on the basis that they had already surrendered 46 suspects indicted by the Tribunal.¹¹

Amnesty International is concerned that the number of prosecutions concluded in the Special War Crimes Chamber at Belgrade District Court remains low, despite the appointment of additional prosecutorial and support staff in 2010.¹² Although the Chamber was established in 2003, as of 26 June 2012 only 25 cases had been concluded at the second instance, resulting in the conviction of 56 defendants and the acquittal of 10 persons. Seven cases were at appeal, and prosecutions continued in eight cases.¹³ The Office of the War Crimes Prosecutor continues to face considerable challenges in its investigations, particularly into allegations against former police officials. It has received threats and has had little government support. There are also concerns about the capacity of the witness protection unit to provide adequate protection.¹⁴

In May 2011, the Human Rights Committee reminded Serbia of its obligations to investigate serious human rights violations, including under Articles 6 and 7 of the International Covenant on Civil and Political Rights, and to bring those responsible to justice.¹⁵ The Committee also urged the authorities to ensure that all victims and their families receive adequate compensation;¹⁶ however, Amnesty International is concerned that only few victims of crimes under international law have received reparations. Many suits have been dismissed on the basis of the statute of limitations, although this is prohibited in international law.¹⁷ Where compensation has been awarded, material damages are seldom commensurate with the gravity of the crimes. The Committee also recalled recommendations made in 2004 that Serbia investigate and prosecute all those responsible for the transfer to Serbia of the bodies of ethnic Albanians killed in Kosovo in 1999.¹⁸ To Amnesty International's knowledge, no such investigations have been opened by the Office of the War Crimes Prosecutor since those recommendations were made.¹⁹

NORMATIVE AND INSTITUTIONAL FRAMEWORK IN SERBIA

In 2011, the post of Minister of Human and Minority Rights was abolished and the functions of the ministry downgraded to a department within the Ministry of Human and Minority Rights, Public Administration and Local Self-Government. In September 2012, following their election in May, the new government abolished the department, replacing it with an Office of Human and Minority Rights.

The Protector of Citizens (Ombudsperson) was designated in July 2011 as a National Preventive Mechanism in accordance with Article 19 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.²⁰ Since then, Memoranda of Understanding have been agreed with NGOs, forensic and other procedures have been established, and a small unit has been set up to serve the functions of such a mechanism. By June 2012, 20 visits had been conducted.

The Commissioner for the Protection of Equality, established in May 2010, is empowered to receive and act on complaints of discrimination. Since taking office, the Commissioner has most frequently addressed complaints relating to labour and employment, more specifically related to

alleged discrimination on the basis of ethnicity, and membership or non-membership of political parties and unions. Although the office remains under-resourced, it has made some significant decisions, including in connection with hate-speech against LGBT people, which is prohibited under domestic law.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

FORCED EVICTIONS AND THE RIGHT TO ADEQUATE HOUSING²¹

According to preliminary results from the 2011 census, there are around 780 Romani settlements in Serbia, of which 100 are located in Belgrade. These settlements lack the benefits of legalization or regularization, including access to water, sanitation, electricity and amenities such as roads, street lighting and rubbish removal. The population in these settlements includes some of the most disadvantaged Roma, including Roma displaced from Kosovo, who make up around 17 per cent of the population of informal settlements, and Roma who have been forcibly returned from Western Europe.

Roma living in informal settlements face considerable difficulties getting access to basic documentation, such as birth certificates,²² and registering as residents. Legislation introduced in 2011 which would have enabled those living in informal settlement to register their residency has not been implemented. Consequently Roma are frequently denied access to services, such as education, health, social insurance and employment.

Progress towards the legalization of informal settlements remains extremely slow, despite a number of programmes in several municipalities based on the 2003 Poverty Reduction Strategy and the 2007 Guidelines for the Improvement and Legalization of Informal Roma Settlements,²³ and the assistance of grant funding.

In April 2012, almost 1,000 Roma living in an informal settlement at Belvil in Belgrade were forcibly evicted by the city authorities. The authorities failed to apply crucial safeguards prior to the eviction, including consultation with the affected communities to explore all feasible alternatives to eviction and resettlement. They failed to provide people with information, even on the reason for the eviction, adequate notice or legal remedies, and failed to provide adequate housing options for resettlement.²⁴ Since April 2009, Amnesty International has monitored 17 forced evictions of more than 2,500 mainly Romani people from informal settlements in the city of Belgrade.²⁵ These evictions have been conducted by the city authorities or other municipal authorities in the city.²⁶ The government has consistently failed to prevent such forced evictions or to protect Roma from forced evictions.

Since 2009, forcibly evicted families have been resettled in metal containers in racially segregated settlements on the outskirts of Belgrade. These container sites are isolated from other communities and often far away from health clinics, schools, municipal offices, shops and other amenities, with no adequate transport available. The metal containers grossly fail to meet the criteria for adequate alternative housing, as set out by the Committee on Economic, Social and Cultural Rights,²⁷ and yet more than 1,000 people evicted during 2009 continue to live in such containers almost three years on. The authorities' practice of placing Roma communities in isolated and racially segregated settlements exacerbates and perpetuates the discrimination they suffer. Amnesty International is also concerned at proposals to build segregated permanent settlements for Roma forcibly evicted from informal settlements, including from Belvil. Although the provision of permanent solid housing for Roma is a positive development, the locations chosen for these settlements include some of the most isolated container sites, and other sites

on the outskirts of the city, and will result in the creation of racially segregated settlements.

Because the majority of the resettlement sites are far away from the city and from sources of work, this results in the loss of livelihoods and lack of access to employment in contravention of international standards.²⁸ Some are now worse off than before their eviction, especially with regard to employment. There is also often no opportunity for Roma to collect and re-sell scrap or recyclable materials. Affected Roma were informed that they could not take any of the scrap materials from which they earned a living with them, and they were forbidden from collecting and storing scrap at the new container sites.²⁹

Romani individuals and families who are not registered in Belgrade have been excluded from resettlement options in Belgrade and returned to Southern Serbia in violation of their rights to freedom of movement, residence and adequate housing.³⁰ The Committee on Economic, Social and Cultural Rights has emphasised that all persons who cannot provide for themselves must be provided with adequate alternative housing. Therefore the authorities cannot draw a distinction among affected people on the basis of their residency status. Further, according to the Committee, evictions must not “render individuals homeless or vulnerable to the violation of other human rights”.³¹ However, despite this, many Roma have been returned to inadequate accommodation, or in other cases, have been made homeless following a forced eviction. Municipalities in Southern Serbia face considerable challenges in ensuring the rights of Roma to education, employment, adequate housing and other human rights are realized.

Following the eviction of Blok 72 in Belgrade, internally displaced Roma and Ashkali from Kosovo were not provided with alternative housing, but were told by the authorities, including the Commissariat for Refugees, to return to Kosovo. Several of the families remain homeless in Serbia. Amnesty International notes that UNHCR, in their current eligibility guidelines on return to Kosovo, has identified that Roma should not be returned.³²

In late 2011, the Ombudsperson issued a recommendation to the Ministry for Human and Minority Rights, Public Administration and Local Self-Government to draw up guidelines for the conduct of evictions. Regrettably, the Ministry’s “Conclusions and Recommendations”, published in May 2012 and based only on the forced eviction of Blok 72 in Belgrade, fall far short of international human rights standards, including the UN Basic Principles and Guidelines on Development-based Evictions and Displacement.³³

Amnesty International’s research has revealed that the lack of safeguards against forced evictions under Serbian national laws has a disproportionate impact on Romani communities. Many Roma, including internally displaced Roma from Kosovo, live in informal settlements or in other situations where they lack security of tenure. Amnesty International considers that Serbia is failing to guarantee the right to adequate housing without distinction on the basis of ethnicity, including by failing to adopt positive measures and to put in place adequate systems to ensure that there is no segregation or discrimination in housing. Article 10 of the 2009 Law on Social Housing stipulates that the housing needs must be provided for of “persons who are homeless or persons without adequate housing” and lists a range of eligibility criteria, including housing status, income and membership of a vulnerable group, and Amnesty International considers these are applicable to Roma living in informal settlements.

These findings concur with the Concluding Observations of the Committee on the Elimination of Racial Discrimination issued in March 2011.³⁴ The Committee expressed concern at the discrimination faced by the Roma population with regard to the right to adequate housing and urged Serbia to “ensure that any resettlements do not involve further forced evictions and that procedural protections which respect due process and human dignity be put in place”... and to “avoid residential segregation of minorities”.³⁵ To Amnesty International’s knowledge, the government has yet to take measures to implement these recommendations.

The authorities have also consistently failed to explore alternatives to eviction. They fail to

provide those affected with adequate prior notice, information, access to legal remedies and compensation, in contravention of Serbia's international human rights obligations. Following their forced evictions from informal settlements in Belgrade, Roma have suffered violations of other rights, including their right to adequate housing, to work, to social insurance, to education, to healthcare, to water and sanitation, and to freedom of movement and residence.

With one exception, Amnesty International's research shows that evictions have lacked meaningful consultation to identify alternatives to eviction, and in almost all cases they have resulted in grossly inadequate resettlement.³⁶ In some cases, no provision has been made for alternative housing and the evicted families have been left homeless with no option but to move into another informal settlement, where they would again be at risk of forced eviction.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Serbia:

Impunity for war crimes:

- To ensure that all persons, including senior police, military personnel, and political officials, reasonably suspected of having committed or being complicit to crimes under international law, are brought to justice in domestic courts in proceedings that meet international standards, and that the victims are guaranteed access to reparations, including compensation.

Forced evictions and the right to adequate housing:

- To end the practice of forced evictions;
- To amend existing legislation and introduce new legislation to prohibit forced evictions, and to set out safeguards that must be complied with prior to any eviction, consistent with the UN Basic Principles and Guidelines on Development-Based Evictions and Resettlement and other international human rights standards;
- To increase funding and resources to municipal authorities for the implementation of measures to enable the legalization or regularization of informal settlements and the upgrade of water, electricity, roads and other services wherever possible;
- To identify options for the resettlement of people living in informal settlements which cannot be regularized, and to ensure that any relocation complies with international standards, including the UN Basic Principles and Guidelines on Development-based Evictions and Displacement, and that the alternative housing provided is adequate and does not result in the creation of racially segregated settlements;
- To guarantee access to all forms of housing, including low cost or social housing, without discrimination, to Roma living in informal settlements and in recently created segregated container settlements in Belgrade;
- To ensure the right to an effective remedy to all persons who have been forcibly evicted, subjected to discrimination or other violations of their rights, including to adequate housing.

ENDNOTES

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Serbia*, A/HRC/10/78, 8 January 2009, paragraph 57.14 (United Kingdom, Canada, Switzerland) (A/HRC/10/78).

² A/HRC/10/78, paragraph 57.7 (Croatia).

³ A/HRC/10/78, paragraph 57.19 (Sweden, Ireland, Canada).

⁴ A/HRC/10/78, paragraph 57.20 (Sweden, Canada, Switzerland, France, Czech Republic, Germany, Norway, Netherlands, Ireland).

⁵ A/HRC/10/78, paragraph 57.2 (Mexico, Hungary); Recommendation 57.22 (Finland, Canada).

⁶ In the course of its first UPR, 22 recommendations were made to Serbia, of which 17 were accepted, and two were neither accepted nor rejected. Serbia rejected recommendations relating to impunity, conscientious objection and the promotion and protection of religious freedom. See Human Rights Council, *Report of the Working Group on the Universal Periodic Review- Serbia, Addendum*, A/HRC/10/78/Add.1, 18 March 2009 (A/HRC/10/78/Add.1).

⁷ The Anti-Discrimination Law entered into force 7 April 2009. Provisions relating to the Commissioner for Equality entered into force 1 January 2010.

⁸ In the period since the last review, two major LGBT events have had to be cancelled at the last minute: organizers of the 2009 Belgrade Pride had no option but to cancel the event after the government changed the location of the event at the last minute. The 2010 Pride went ahead, with more than 1,000 police deployed to protect the participants from attack from several thousand right-wing groups. In 2011, the authorities failed to investigate threats made ahead of the planned march, but instead cancelled it at the last minute.

⁹ *Serbia: Possible ban for 2012 Belgrade pride march*, <http://www.amnesty.org/en/library/info/EUR70/019/2012/en>; *Serbia: Further information: 2012 Belgrade pride march banned*, <http://www.amnesty.org/en/library/info/EUR70/020/2012/en>.

¹⁰ However, in June 2012, the Chief Prosecutor of the Tribunal expressed concerns about "Serbia's lack of progress towards investigating and prosecuting individuals who assisted ICTY fugitives while at large", and called for increased regional cooperation, particularly between Serbia and Bosnia and Herzegovina. See *Address of Mr. Serge Brammertz Prosecutor, International Criminal Tribunal for the Former Yugoslavia to the United Nations Security Council*, 7 June 2012, available at http://www.icty.org/x/file/Press/Statements%20and%20Speeches/Prosecutor/120607_proc_brammertz_un_sc_en.pdf

¹¹ A/HRC/10/78/Add.1, paragraph 15.

¹² Staff were hired under the War Crimes Justice Project, funded by the EU, see <http://wcjp.unicri.it/project/>

¹³ In relation to Kosovo, for example, by February 2010 the Special War Crimes Chamber at Belgrade District Court had issued only seven final judgments in which 12 Serbian defendants and one Kosovo Albanian had been convicted; three retrials were ongoing following appeals against first instance decisions, and two cases were at the initial stage of prosecution. See the Office of the War Crimes Prosecutor at http://www.tuzilastvorz.org.rs/html_trz/predmeti_eng.htm

¹⁴ Amnesty International interviews, February 2010. These concerns have also been expressed by the Serbian NGO Humanitarian Law Centre and by the Parliamentary Assembly of the Council of Europe (PACE). See PACE, *Protection of witnesses as a cornerstone for justice and reconciliation in the Balkans*, Resolution 1784 (2011), available at <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/ERES1784.htm>

¹⁵ UN Human Rights Committee, *Concluding Observations on Serbia*, CCPR/C/SRB/CO/2, 24 March 2011, paragraph 13 (CCPR/C/SRB/CO/2).

¹⁶ CCPR/C/SRB/CO/2, paragraph 10.

¹⁷ UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968), to which Serbia is a state party.

¹⁸ CCPR/C/SRB/CO/2, paragraph 10.

¹⁹ The only related prosecution was conducted by the International Criminal Tribunal for the former Yugoslavia: in February 2011, former Assistant Interior Minister Vlastimir Đorđević was convicted of crimes against humanity and war crimes committed in Kosovo in 1999. He was sentenced to 27 years' imprisonment for persecutions on political, racial or religious grounds, murder, deportation and forcible transfer of population. He was found responsible for police crimes leading to the deportation of 800,000 Albanian civilians, the enforced disappearance of more than 800 ethnic Albanians, and for leading a conspiracy to conceal their bodies, which were transported to Serbia for reburial. The Trial Chamber found that Vlastimir Đorđević was "instrumental" in efforts to "conceal the murders of Kosovo Albanians", and "gave instructions for the clandestine transportation of bodies", Đorđević (IT-05-87/1) "Kosovo", http://www.icty.org/x/cases/djordjevic/tjug/en/110223_djordjevic_judgt_en.pdf

²⁰ Ratified by Serbia on 26 September 2006.

²¹ The Committee on Economic, Social and Cultural Rights defines a forced eviction as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of and access to, appropriate forms of legal or other protection". See General Comment 7, The Right to Adequate Housing: forced evictions, 24 May 1997, paragraph 3, (CESCR General Comment 7).

²² In September 2012, legal amendments enabled those without documentation, who were mainly Roma, to get birth certificates/secondary registration of birth, required to gain identity and other document required to access health, employment and other services, *Serbia: New law will help to end legal invisibility*, <http://www.amnesty.org/en/library/info/EUR70/016/2012/en>.

²³ These were issued by the Ministry of Environment and Spatial Planning and reissued in 2010 by the Organization for Security and Cooperation in Europe.

²⁴ Serbia: After Belvil, Serbia needs new laws against forced eviction, <http://www.amnesty.org/en/library/info/EUR70/015/2012/en>

²⁵ In cooperation with Serbian NGOs, including the Regional Centre for Minorities, Praxis and the Minority Rights Centre.

²⁶ See, for example, Amnesty International, *Serbia. Stop the Forced Eviction of Roma Settlements* (Index: EUR 70/003/2010), available at <http://www.amnesty.org/en/library/info/EUR70/003/2010/en>; Amnesty International, *Home is more than a roof over your head: Roma denied adequate housing in Serbia* (Index: EUR 70/001/2011), available at <http://www.amnesty.org/en/library/info/EUR70/001/2011/en>; Amnesty International, *Serbia: Time for a Law against Forced Evictions* (Index: EUR 70/025/2011), available at <http://www.amnesty.org/en/library/info/EUR70/025/2011/en>.

²⁷ CESCR, General Comment 7, paragraph 8.

²⁸ Committee on the Elimination of Racial Discrimination, General Recommendation 27 on Discrimination against Roma. Paragraph 31 of the General Recommendation calls on state parties "to refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other facilities." Further, the Committee on Economic, Social and Cultural Rights in General Comment 4 on The right to adequate housing, para 8 (f), has highlighted that "inadequate housing must be in a location which allows access to employment options, health-care services, schools and other social facilities".

²⁹ Basic Principles and Guidelines on Development-based Evictions and Displacement, paragraph 43, "Evictions should not result in individuals being rendered ... vulnerable to the violation of other human rights ... Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted".

³⁰ International Covenant on Civil and Political Rights, Article 12.2.

³¹ CESCR, General Comment 7, paragraph 16.

³² UN High Commissioner for Refugees, *Eligibility Guidelines for Assessing the International Protection Needs of Individuals from Kosovo*, HCR/EG/09/01, November 2009, <http://www.unhcr.org/refworld/docid/4af842462.html>

³³ The UN Special Rapporteur on Adequate Housing developed the Basic Principles and Guidelines on Development-based Evictions and Displacement, which reflect existing standards and jurisprudence on the

issue of forced eviction. See Human Rights Council, *Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, A/HRC/4/18, http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf

³⁴ UN Committee on the Elimination of Racial Discrimination, *Concluding observations on Serbia*, CERD/C/SRB/CO/1, 10 March 2011, paragraph 14 (CERD/C/SRB/CO/1), following its examination of Serbia's initial report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.

³⁵ CERD/C/SRB/CO/1, paragraph 14.

³⁶ The Directorate of Human Rights, following a recommendation by the Protector of Citizens, initiated a consultation process in connection with the eviction of more than 70 Romani families from Blok 72 in Belgrade; however, the consultation failed to result in the provision of adequate alternative housing, particularly for families of displaced Roma from Kosovo, some of whom remained homeless, whilst others had no option but to return to Kosovo.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Serbia: After Belvil, Serbia needs new laws against forced eviction (Index: EUR 70/015/2012)

Serbia: Possible ban for 2012 Belgrade pride march (Index: EUR 70/019/2012);
Serbia: Further information: 2012 Belgrade pride march banned (Index: EUR 70/020/2012).

Serbia: Further information: Romani families granted the right to water (Index: EUR 70/013/2012).

Serbia (Kosovo): Still missing after all these years
<http://www.amnesty.org/en/library/asset/EUR70/005/2012/en/bed65af9-0bd8-4458-983f-410d3c67821a/eur700052012en.pdf>(Index: EUR 70/005/2012).

Serbia: Hundreds of families face uncertainty after Belvil eviction (Index: PRE 01/225/2012).

Serbia (Kosovo): Further information: Families at renewed risk of eviction (Index: EUR 70/006/2012).

Serbia: Time for a law against forced evictions (Index: EUR 70/025/2011).

Home is more than a roof over your head: Roma denied adequate housing in Serbia (Index: EUR 70/001/2011).

Serbia: A roof over your head is a human right (Index: EUR 70/010/2011).

Serbia. Stop the Forced Eviction of Roma Settlements (Index: EUR 70/003/2010).

Serbia: Amnesty International condemns "retaliatory" arrests of Kosovo Albanians (Index: EUR 70/008/2012).

Final Hague war crimes suspect arrested (Index: PRE 01/354/2011).

Ratko Mladić arrest 'a major step towards justice' (Index: PRE01/272/2011).

Serbia: Burying the Past: Impunity for enforced disappearances and abductions in Kosovo (Index: EUR 70/007/2009).

¹ All of these documents are available on Amnesty International's website:
<http://www.amnesty.org/en/region/serbia>

