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Former Yugoslav Republic of Macedonia

Submission to the UN Universal Periodic Review

**Fifth session of the UPR Working Group of the
Human Rights Council**

May 2009



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

- In section B, Amnesty International raises concern over gaps in legislation concerning safeguards against discrimination;
- Section C highlights Amnesty International's concerns about human rights violations in the context of continued discrimination against the Romani community;
- In section D, Amnesty International makes a number of recommendations for action by the government.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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B. Normative and institutional framework of the State

No protection for Roma against discrimination

In 2004 Macedonia² joined the Decade of Roma Inclusion 2005-2015, which aims to combat the poverty, exclusion and discrimination suffered by Romani people. The government in December 2004 produced a National Roma Strategy and National Action Plan, (under revision at the time of writing), yet has largely failed to implement any of the measures set out in such plans, or identify the financial resources to put such measures into practice. Where action has been taken, it has largely been by domestic non-governmental organisations (NGOs) or international NGOs, or, less frequently, by the government in partnership with international organizations.

Discrimination against Romani women and men in Macedonia is widespread and systematic; Romani women suffer multiple discrimination on the basis of both their ethnicity and their gender. Yet no effective mechanisms exist by which persons who have suffered discrimination may have access to any effective remedies. This section briefly summarises the discrimination to which Roma in Macedonia are exposed, surveys constitutional and legislative guarantees and identifies human rights concern due to the absence of effective anti-discrimination legislation.

- Education: 39 per cent of Romani women in Macedonia and 22 per cent of Romani men have had no education, or only incomplete primary education, compared to 8 per cent of non-Roma;
- Work: 83 per cent of Romani women and 65 per cent of Romani men have never been employed in the formal economy, compared to 50 per cent of non-Roma;
- Health: 31 per cent of Romani women and 27 per cent of Romani men suffer from chronic illness, compared to 23 per cent of non-Roma.³

Articles 8 and 54 of the Constitution of the Republic of Macedonia guarantee “the basic freedoms and rights of the individual and citizen, recognised in international law and set down in the Constitution”, without discrimination on “grounds of sex, race, colour of skin, language, religion, national or social origin, property or social status”; Article 9 guarantees equality under the law and the Constitution, and Article 50 guarantees the right to an effective legal remedy in the protection of these rights and freedoms. However, no effective mechanism has been established in law or practice to ensure that such remedies can be provided.

The Law on Equal Opportunities between Women and Men introduced on 29 May 2006 prohibits both direct and indirect discrimination “based on gender in the fields of employment and labour, education, social security, culture, sport ... both in the public and in the private sector”. To date, according to information

² Macedonia was admitted as a member of the United Nations (UN) in 1993 under the name of the Former Yugoslav Republic of Macedonia (FYROM) because of objections by some states to its use of the name “Macedonia”. Amnesty International takes no position on this issue, and no significance should be taken to the use of the shorter form; this is for convenience only.

³ UNDP, *Faces of Poverty, Faces of Hope. Vulnerability Profiles for Decade of Roma Inclusion Countries*, Bratislava, 2005.

received by Amnesty International, procedures by which unequal treatment may be determined are not yet in place; nor are mechanisms enabling persons whose rights have been violated to seek redress.

Although Article 417 of the Criminal Code (CC) prohibits racial discrimination or incitement to such discrimination, and Article 319 of the CC criminalizes the promotion of national, racial or religious hatred, discord or intolerance, there is no overall comprehensive anti-discrimination legislation. A “Proposal for Adoption of a Law on Protection against Discrimination”, was drafted by NGOs in 2005;⁴ however, it was rejected by the government. Instead the government initiated a consultation process in December 2007 with the aim of producing another draft law. A draft law was completed by the Ministry of Labour and Social Policy in October 2008 and is due for presentation to Parliament. Amnesty International considers that the current draft does not provide a sufficiently robust framework by which discrimination on the grounds of ethnicity might be prohibited. It lacks a definition of discrimination in accordance with international standards, including EU Directive No. 2000/43 (“Race directive”) and EU Directive No. 2000/78 “on equal treatment in employment and occupation”. Further, the draft law applies only to state bodies and fails to prohibit discrimination in the private sphere. Further, the draft law does not provide access to effective judicial remedies, but instead relies for its implementation on the Office of the Ombudsperson. Finally, the draft law includes no effective measures to prevent and provide protection against discriminatory acts nor does it include any mechanism to monitor its implementation.

C. Promotion and protection of human rights on the ground

Macedonia is a state party to a number of international treaties which require the government to respect, protect and fulfil the rights of minorities, such as the Roma, including their rights to education, to work, to the highest attainable state of health, to be free from torture and other forms of violence, and to enjoyment of their human rights without discrimination. The Committee on the Elimination of Racial Discrimination (CERD), in its General Comment No. 27 on Discrimination against Roma, recommended a series of specific measures for states to adopt in order to combat discrimination. The failure of the Macedonian authorities to meet these obligations has been highlighted in successive reviews by the treaty monitoring bodies.

The right to citizenship and access to personal documents

Roma are disproportionately represented among stateless persons and those without citizenship in Macedonia. Roma face a variety of obstacles in obtaining citizenship, including a lack of personal documentation such as birth certificates; and are often unable to pay the costs of photographs and other supporting documents required for citizenship. A significant number of Roma without birth certificates (including children) or identity cards consequently lack the documentation required by law to access basic services, including education and health care.

The failure of the authorities to ensure Romani adults and children have access to citizenship and personal documentation enabling them to access a wide range of rights was raised in 2000 by the Committee on the Rights of the Child (CRC); in 2005 by the Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities; and in 2006 by the Committee on Economic, Social and Cultural Rights (CESCR).⁵ While some measures were subsequently taken by the government to amend

⁴ This aimed to “incorporate international standards into domestic law, provide a comprehensive basis for a legal protection against discrimination on all grounds, including in employment, education and access to legal, administrative and public health services and to other services, goods and facilities”.

⁵ *Concluding Observations of the Committee on the Rights of the Child: The Former Yugoslav Republic of Macedonia*, 23 February 2000, paras. 21-22; *Advisory Committee on the Framework Convention*, ACFC/INF/OP/I(2005)001, para. 32;

legislation which constructed barriers to citizenship, the CERD in 2007 again urged the state party “to remove all administrative obstacles that currently prevent Roma from obtaining personal documents...”⁶

The right to free compulsory education

Macedonia has failed in its immediate obligation under the International Covenant on Economic, Social and Cultural Rights to ensure that primary education is both compulsory and free, and accessible to all without discrimination. While under Macedonian law primary education is said to be free, in practice Romani children may be excluded from education because their parents cannot afford school books or because transportation to school is unavailable. Romani girls may also be discouraged from attending school because of their teachers' low expectations of them. Consequently the majority of Romani girls do not complete primary education. Few move on to secondary education or university, except through NGO programmes, which enable a small number of Romani students to continue their education, including to university level.

In 2006, the Committee on the Elimination of Discrimination against Women (CEDAW) observed that “rural women, as well as ethnic minority women, particularly Roma [emphasis added] and Albanian women, remain in a vulnerable and marginalized situation, in particular with regard to access to education, health, employment and participation in political and public life.” In a series of critical recommendations to the authorities, the Committee recognized the interconnectedness of basic rights including to education, health and employment and the extent of discrimination against rural and ethnic minority women. Their concluding comments called on the government to take “temporary special measures”, reflecting the degree of its concern about the situation of Romani and other minority women in Macedonia.⁷

In particular, the Committee recommended measures be adopted to decrease the drop-out rate of Romani girls from schools. Yet in interviews conducted by Amnesty International during 2007, government officials within the Ministry of Labour and Social Policy were unaware of their responsibility to implement such “temporary special measures”. In 2008, the Human Rights Committee again expressed concern at the “inadequate opportunities” for minorities, including Roma, and urged the state party to “take measures to prevent premature termination of schooling among such children”.⁸

The right to work

Discrimination in access to education leads to the exclusion of more than half of Romani women, and a significant number of Romani men, from formal employment, including in state institutions where a certificate of completion of primary education is required. Without such documentation, Roma are ineligible to register with unemployment offices. In addition, Roma face both direct and indirect discrimination, including discriminatory working conditions and rates of pay, if they enter the labour market.

⁶ *Concluding observations of the Committee on the Elimination of Racial Discrimination*, Seventieth Session, 19 February – 9 March 2007, CERD/C/MKD/CO/7, 13 June 2007.

⁷ “The Committee urges the State party to implement effective measures to eliminate discrimination against rural women, as well as ethnic minority women, in particular Roma and Albanian women, and to enhance their enjoyment of human rights through all available means, including temporary special measures, in accordance with article 4, paragraph 1, of the Convention, and general recommendation No. 25 of the Committee. It calls on the State party to implement measures to decrease dropout rates among Roma girls and girls living in rural areas and to reintegrate them into the educational system. The Committee requests the State party to provide, in its next report, a comprehensive picture of the *de facto* situation of rural women, as well as of ethnic minority women, in particular Roma women, in the areas of education, health, employment and participation in political and public life, and of the efforts of the Government to eliminate discrimination against these women. The Committee calls upon the State party to provide information, in its next report, on concrete projects directed at Roma women under the Decade of Roma Inclusion 2005-2015.”

⁸ *Concluding observations of the Human Rights Committee: The Former Yugoslav Republic of Macedonia*, CCPR/C/MKD/CO/2, 17 April 2008., para.19. Amnesty International notes that in 2007 the Ministry of Education and Science initiated a programme to provide free textbooks for Roma students; the Ministry of Labour and Social Policy in 2008 reported the introduction into the Law on Adult Education of a programme by which Roma who had left school early might gain certificate of elementary education.

Few Roma are employed in the public sector, except in positions related to the Roma, or as cleaners; fewer still work in the private sector. The majority of Romani women and men work in the informal economy, where they earn little money, are not protected by labour or health and safety laws, and are not eligible for social protection, including social assistance payments and, in practice, health care.

In 2006, the CESCR expressed particular concern about the lack of employment opportunities for Romani women. Like CEDAW, it recommended that Macedonia adopt temporary special measures “to ensure that women, in particular Roma and other minority women... have the same access to the regular labour market as men...”. Further in 2007, the CERD urged Macedonia to adopt measures to combat discrimination in the workplace, and urged them to introduce measures to give effect to the “Law on Labour Relations”.⁹ To Amnesty International’s knowledge, no such temporary special measures have been adopted by the authorities.

The right to health care

A disproportionate number of both Romani men and women suffer from chronic illnesses, and many cannot afford the “participation fee” imposed on almost all medical treatment and on basic medicines. Such a fee is in violation of Article 12 of the ICESCR and General Comment 14, which states that such discriminatory barriers must be removed. Romani women in particular suffer from double discrimination in the right to health care. They may not be eligible for health insurance, because of discrimination in access to formal employment which renders them ineligible for social protection, or because they lack the necessary documentation. They also face direct discrimination, including verbal abuse or being refused medicines by health workers. Romani women also report discrimination in access to reproductive rights and maternal care, including in some cases access to treatment during childbirth.

The poor health of Roma is in many cases linked to the denial of other rights, including the right to adequate housing. Both the CESCR in 2006 and CERD in 2007 have recommended improvements to the infrastructure of Romani settlements. Under a local initiative, the water supply, sewage system and road infrastructure have been renewed in the predominantly Roma municipality of Suto Orizari. However, government plans to improve and legalize informal Roma settlements, and including measures to ensure adequate water supplies, to date remain unimplemented.

Violence against Women

Romani NGOs have reported a high level of domestic violence against Romani women within their community, with an estimated 70 per cent of women reportedly experiencing some form of domestic violence. In addition to violence from their husbands, they also face violence from members of their husband’s family, or in some cases, their own family. Over a third of such cases involved physical violence, just under half reported verbal abuse and psychological violence, and around 5 per cent reported sexual violence. The Macedonian authorities fail to protect women from such violence, rarely responding to calls for assistance or taking appropriate action to investigate reports and prosecute the perpetrators. Romani women seeking assistance from the authorities report further discrimination by social workers who treat them in a discriminatory or racist manner; others fearing such discrimination, rarely seek assistance and support.

In 2006, in accordance with its General Recommendation 19, CEDAW urged the government to prioritize comprehensive measures to address all forms of violence against women. CESCR also called for such measures. While the government adopted both a Gender Action Plan and National Action Plan for the Advancement of Romani Women in 2007 and 2008, respectively, specific measures to address domestic violence against Romani women have not been implemented.

Torture and other ill-treatment

⁹ CERD/C/MKD/CO/7, 13 June 2007.

Romani men are disproportionately at risk from ill-treatment by law enforcement officers. Amnesty International has over the past decade repeatedly reported on cases of the physical ill-treatment of Romani men by law enforcement officers, and in some cases the beating of Romani women. Complaints by Romani persons – as with those made by other citizens – are rarely promptly, thoroughly or impartially investigated. Amnesty International shares the concerns reflected in reports by international and regional organizations, including the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as well as local human rights organisations, of ill-treatment in police custody and subsequent impunity of the perpetrators. In February 2008, the CPT noted the “persistent non-implementation of its recommendations by the national authorities” and requested an interim response from the government as regards combating impunity, the conditions of detention in prisons and the treatment and care of particularly vulnerable persons.¹⁰

In April 2008, the UN Human Rights Committee noted “longstanding concerns about the behaviour of certain elements of the police forces, including ill-treatment of detainees, as well as reports of deficiencies of the current police internal oversight mechanisms.” They expressed concerns about “reports of police violence against members of minority groups, in particular against Roma, and the lack of effective investigation of such cases”. The Committee called on Macedonia to ensure that “that all allegations of ill-treatment are investigated and those found responsible punished” and to establish an independent monitoring body for the police.¹¹

In May 2008, the UN Committee against Torture highlighted concerns about the failure of the Public Prosecution Office to promptly investigate allegations of torture and other cruel, inhuman or degrading treatment, and the continued absence of an independent external oversight mechanism to investigate and monitor alleged police misconduct, as well as the very low penalties imposed on persons convicted for the crimes of torture and ill-treatment while carrying out official duties.

Finally in November 2008, the European Commission noted in their annual progress report on Macedonia “the lack of effective control over special police units, notably the Alpha units, which are widely alleged to have used excessive and unjustified force, inter alia against Roma”.¹²

Such abuse is persistent and long-standing. In the past two years Macedonia has twice been found in violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms due to their failure to investigate complaints by Romani persons of ill-treatment by the police. The European Roma Rights Centre has reported that eight months following a judgement in February 2007, the applicant was in November 2007 again beaten.¹³

D. Recommendations for action by the State under review

Amnesty International calls on the government of Macedonia:

Protection against discrimination

¹⁰ Report to the Government of “the former Yugoslav Republic of Macedonia” on the visit to “the former Yugoslav Republic of Macedonia” carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 26 May 2006, CPT/Inf (2008) 5 , 13 February 2008;

¹¹ CCPR/C/MKD/CO/2, 4 April 2008.

¹² Commission of the European Communities, *The Former Yugoslav Republic Of Macedonia, 2008 Progress Report*, COM (2008)674, p. 16.

¹³ Jašar v. “the former Yugoslav Republic of Macedonia”, February 2007; Dželadinov And Others v. “the Former Yugoslav Republic Of Macedonia”, April 2008; “Macedonia Again Found in Violation of the European Convention on Human Rights”, ERRC, 14 April 2008.

- To introduce an anti-discrimination law in accordance with international and regional standards, which prohibits discrimination on all grounds and in all areas, including both public and private spheres;
- To ensure that victims of discrimination, including multiple discrimination, have access to effective judicial remedies;
- To establish systems for monitoring implementation of the law in practice.

Protection of the economic and social rights of Romani people

- To take immediate and effective measures to abide by its obligations under the Conventions to which Macedonia is party, to respect, protect and fulfil the rights of Roma, including by taking steps to implement the repeated recommendations by UN treaty bodies, such as the adoption of *temporary special measures* in the fields of education and employment.

Torture and ill-treatment

- To ensure that allegations of ill-treatment by law enforcement officers are promptly, thoroughly and impartially investigated and those found responsible punished;
- To establish a truly independent police oversight mechanism.

Appendix: Amnesty International documents for further reference¹⁴

Macedonia, "Little by little we women have learned our rights": the Macedonian government's failure to uphold the rights of Romani women and girls, AI Index: EUR 65/004/2007, 6 December 2007.

¹⁴ This document is available on Amnesty International's website: <http://www.amnesty.org/en/region/macedonia>