

Alternative report concerning Serbia to

The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW)

for consideration at the 72nd Pre-Sessional Working Group
(23-27 July 2018)

Joint submission by



July 2018

INTRODUCTION

1. Praxis, the European Network on Statelessness, European Roma Rights Centre (ERRC) and Institute on Statelessness and Inclusion (ISI) make this joint submission to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) in relation to statelessness, access to nationality, access to human rights, availability of free legal aid and child, early and forced marriages in Serbia.
2. Praxis is a national non-governmental organisation established in 2004 in Belgrade that protects human rights by providing legal protection and advocating for elimination of systemic obstacles in access to rights. Praxis acts in the area of status and socioeconomic rights, anti-discrimination, gender equality, migration and child rights. Praxis has spent ten years working to solve and prevent the issue of statelessness in Serbia.
3. The Institute on Statelessness and Inclusion (ISI)¹ is an independent non-profit organisation committed to an integrated, human rights-based response to the injustice of statelessness and exclusion through a combination of research, education, partnership, and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness.
4. The European Network on Statelessness (ENS)² is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 100 members (including 55 organisations) in 40 European countries. ENS organises its work around three pillars – law and policy, communications and capacity-building. The Network provides expert advice and support to a range of stakeholders, including governments.
5. The European Roma Rights Centre (ERRC)³ is a Roma-led international public interest law organisation, which monitors the human rights of Roma in Europe and provides legal defence in cases of human rights violations.
6. This joint submission focuses on the obstacles in access to rights to birth registration, citizenship, residence registration, socio-economic rights (to health care, education, employment, social protection), the issue of child, early and forced marriages and access to free legal aid by the Roma population in general, but specifically affecting Roma women and girls, who are often victims of multiple discrimination based to their ethnicity and gender.
7. The joint submission also draws on the recently published report, ‘Roma Belong: Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine’ exploring the nexus between statelessness, discrimination and marginalisation of Romani people in European Union candidate and neighbourhood countries in the Western Balkans and Ukraine.⁴ This report primarily focuses on the Western Balkan countries of Bosnia-Herzegovina, Macedonia, Montenegro and Serbia, with additional anecdotal information from Albania, Kosovo and Ukraine. It highlights gendered factors contributing to the marginalization and exclusion faced by Romani women, such as barriers to accessing healthcare for women and violence against women and girls which can also be seen as a cause and consequence of Romani statelessness.⁵

¹ ² For more information about ISI, please see the website <http://www.institutesi.org/>.

² For more information about ENS, please see the website <http://www.statelessness.eu/>.

³ For more information about ERRC, please see the website <http://www.errc.org/>.

⁴ See Roma Belong: Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine available at: http://www.errc.org/uploads/upload_en/file/roma-belong.pdf

⁵ *Ibid.*

ACCESS TO THE RIGHTS TO CITIZENSHIP AND TO THE REGISTRATION OF PERMANENT AND TEMPORARY RESIDENCE

Articles 9 and 15 (4) of the Convention

Follow-up on the Concluding observations of the Committee, paragraph 37

8. Over the years, Roma women in Serbia have been facing a large number of obstacles hindering or preventing them from exercising the right to birth registration, citizenship and personal documents. Due to an inadequate legal framework and the restrictive practices of the competent authorities, they have unsuccessfully attempted to register into birth registry books, some of them for years. However, the adoption of the Law on Amendments to the Law on Non-Contentious Procedure (in 2012) and the Law on Permanent and Temporary Residence of Citizens (2011) was a decisive factor in achieving progress in this field. The former introduced a new, simple and accelerated court procedure in the Serbian legal system for determining the date and place of birth. Thanks to this law, many Roma women have finally managed to be registered in birth registry books. On the other hand, the residents of informal settlements and non-legalised buildings, who were prevented from registering their permanent residence, benefited from the Law on Permanent and Temporary Residence of Citizens. This law allowed them to register permanent residence at the address of social welfare centres⁶ and thus obtain ID cards, without which it is impossible to access almost any right.
9. However, an uneven practice and inconsistent implementation by the competent authorities create obstacles to Roma women fully exercising their right to register in birth registry books and to obtain their personal documents. Since 2004, Praxis has been providing free legal aid to women in the procedures for birth registration, acquisition of citizenship and registration of permanent residence. Praxis also monitored the practice of the competent bodies and published reports in which it pointed out to specific problems in the procedures and obstacles in exercising the rights of Roma women to birth registration, citizenship and permanent residence (such as: lengthy procedures; issuing court orders for paying fees, although the law exempted parties from paying any costs of proceedings; omission to register citizenship in the birth registry simultaneously with the registration of the fact of birth; referring the applicants to submit a request to the non-competent body; failure to obtain evidence ex officio; etc.).⁷
10. With regard to the CEDAW Committee recommendation from the previous reporting cycle (paragraph 37) „that the State party (should) ensure that the court decisions on birth registration and citizenship of undocumented persons are effectively implemented and cannot be reversed by any executive body“,

⁶ The law also envisages the possibility of registering permanent residence at the address of spouse or parent or the “address of factual residence, provided that other requirements are fulfilled”, but practice has shown that the registration of permanent residence at these addresses is allowed very rarely.

⁷ See: *Analysis of Practical Application of the Law on Non-Contentious Procedure - Determining the Date and Place of Birth*, Praxis, 2014; *Procedures for determining the date and place of birth – a brief analysis of the remaining challenges*, Praxis, 2014; *The Right to Citizenship in the Republic of Serbia – a brief analysis of the remaining challenges*, Praxis, 2014; *Registration of Permanent Residence in the Republic of Serbia – a brief analysis of the remaining challenges*, Praxis, 2014; *Analysis of the Procedures for Determining the Date and Place of Birth and for the Exercise of Rights to Citizenship and Registration of Permanent Residence*, Praxis, 2015; *Analysis of the Procedures for Determining the Date and Place of Birth and for the Exercise of Rights to Citizenship and Registration of Permanent Residence*, Praxis, 2016; *Determining the Date and Place of Birth, Right to Citizenship and Permanent Residence Registration - Analysis of Remaining Obstacles*, Praxis 2017. www.praxis.org.rs

Praxis did not notice any case of reversing a court decision by another body (i.e. Ministry of Interior). However, the Law on Non-Contentious Procedure contains a provision that stipulates that the body which conducts the procedure for acquiring citizenship (Ministry of Interior) is not bound by a final court decision,⁸ which is unconstitutional and should be removed from the Law. Also, with regard to the implementation of court decisions, one of the frequent problems is that it takes an unreasonably long time from the date of bringing the court decision on determining the date and place of birth until the registration of data from the decision in the registries - in some cases more than a year. This additionally prolongs birth registration and acquisition of personal documents and, consequently, access to health care, social protection and employment of Roma women. A survey conducted by UNHCR in 2015 has shown that 3.9% of the residents of Roma settlements are at risk of statelessness (about 2,700 people) due to the lack of basic personal documents, and that about 700 residents of Roma settlements are not registered in birth registry books. The survey also showed that as much as eight percent of children under-four years of age living in Roma settlements are not registered in birth registry books.⁹ This information points to the fact that a considerable number of Roma children are still not registered immediately after birth, which means that the new-born children are becoming legally invisible persons.

11. The main reason for so many unregistered Roma children lies in the restrictive regulations governing birth registration. Specifically, the provisions of two bylaws¹⁰ stipulate that the data on parents are entered into birth notification and birth registry books on the basis of their birth certificates and identity cards (and marriage certificates if they are married). This practically means that if a mother does not possess such documents, it will not be possible to determine the personal name of the child and the child will remain unregistered in birth registry books. Consequently, the child will remain without citizenship. Often, Roma girls who have children before they reach the age of majority may also be unable, or too afraid, to register the births of their children.¹¹ It further means that it will be necessary to conduct at least one more procedure for the child, but usually more than one (subsequent registration, determination of personal name, acquisition of citizenship), so that the child could be registered in the birth registry book. These procedures may last for more than a year.
12. Findings from the Roma Belong: Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine' in the context of Romani statelessness in the research countries including Serbia, show how bureaucracy and institutional barriers serve to exclude Romani women from registering births and accessing documentation leaving them at risk of statelessness. Through the maintenance of overly strict, complicated, lengthy and inflexible civil registration procedures, bureaucracy plays a role in creating statelessness problems or putting Romani women at risk of statelessness. And while strict administrative procedures may affect the whole population, Roma and especially Romani women are disproportionately affected, and thus indirectly discriminated against, due

⁸Article 74k of the Law on Non-Contentious Procedure

⁹ See: S. Cvejic, *Persons at Risk of Statelessness in Serbia – Progress Report 2010-2015*, UNHCR, 2016

¹⁰ Article 5 of the Rulebook on the procedure for the issuance of birth notification and form of the issuance of birth notification in a health care institution (*Official Gazette of RS*, nos. 5/2011, 9/2016, 16/2016 and 36/2016) and points 10 and 24 of the Instruction on administering registry books and forms of registry books (*Official Gazette of RS*, nos. 109/2009, 4/2010, 10/2010, 25/2011, 5/2013 and 94/2013).

¹¹ See Roma Belong: Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine available at: http://www.errc.org/uploads/upload_en/file/roma-belong.pdf

to their marginalisation, transforming the exercise of basic rights into complex, burdensome and long drawn out interactions with the state.¹²

12. This further undoubtedly leads to the violation of the principle of the best interests of the child and also constitutes the violation of the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, which stipulate that every child has the right to be registered into birth registry books and to have a personal name immediately after birth.¹³ Other international organizations, states and treaty bodies have also been pointing to the obligation of Serbia to ensure that every child is registered in the birth registry immediately after birth: Universal Periodic Review from 2018 (recommendation 114.28), Concluding observations on the combined second and third periodic reports of Serbia by the Committee on the Rights of the Child from 2017 (recommendation 31), Annual progress report of the European Commission for Serbia from 2018 (page 29). Furthermore, Serbia has also committed to fulfil the Sustainable Development Goals, one of them being to provide “legal identity for all, including birth registration” (Goal 16.9).
13. In late 2016, the Ministry of Public Administration and Local Self-Government and the Ministry of Health presented the project *Baby, Welcome to the World*, which aimed to simplify the registration of birth and citizenship in birth registry books and make the registration of permanent residence and health insurance easier, without parents having to go to the registry office to register their child’s birth. Besides, the new system of birth notification was supposed to allow the registration into birth registry books also for children whose mothers did not possess personal documents. In 2017, Praxis conducted a survey on whether the new way of birth notification was implemented in practice, that is - whether it became possible to also register in birth registry books the children of undocumented women. Unfortunately, the survey has shown that nothing has changed in this regard and that these children remain unregistered.¹⁴ With regard to this project, apart from the different treatment of children whose mothers possess personal documents and those whose mothers do not possess such a document, different treatment has also been noticed in regard to children born to parents who are married and those born out of wedlock. Specifically, the new project has not specified a new solution for the latter, since for these children the old procedure applies and their parents still have to go to the competent institutions to register their child’s birth and acknowledge paternity. It remains unclear why the child cannot be registered immediately after birth, and the parents may later go to the registry office and give statements on acknowledgment of paternity. Finally, such a problem cannot be solved through a project, but rather requires systemic changes, i.e. amendments of relevant regulations.
14. In cases where a child is registered in birth registry books even though the mother does not possess personal documents (e.g. after conducting the procedure of determination of personal name), the child’s citizenship is often a problem. In fact, when the mother does not possess personal documents and a proof of citizenship, it is not possible for the child to acquire citizenship of the Republic of Serbia based on the mother’s citizenship. Even if the child’s father is a citizen of Serbia, the child cannot acquire citizenship on that basis, because the mother who does not have an ID card cannot confirm

¹²See Roma Belong: Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine available at: http://www.errc.org/uploads/upload_en/file/roma-belong.pdf

¹³ Article 7, paragraph 1 of the Convention on the Rights of the Child; Article 24, paragraph 2 of the International Covenant on Civil and Political Rights

¹⁴See. Praxis *Determining the Date and Place of Birth, Right to Citizenship and Permanent Residence Registration - Analysis of Remaining Obstacles*, 2017, pages 19-25, at www.praxis.org.rs

the father's acknowledgement of paternity, and, consequently, the data on the father are not entered in birth registry books. The existing regulations offer solutions for these situations, but unfortunately they are almost never applied in practice. In cases where neither the father is a citizen of Serbia or where his acknowledgement of paternity is not available, the problem of the child's citizenship could be easily solved by applying Article 13 of the Law on Citizenship of the Republic of Serbia, which stipulates that a child born in Serbia shall acquire Serbian citizenship by birth if both parents are unknown or of unknown citizenship or stateless or if the child would otherwise be stateless. Therefore, the registrars should enter the fact of child's citizenship in birth registry books but, as already mentioned, they almost never do.

ACCESS TO THE RIGHTS TO EDUCATION, EMPLOYMENT, HEALTH CARE AND OTHER RIGHTS

Articles 10-13 of the Convention

15. Birth registration, citizenship and possession of personal documents are particularly important in situations when one should exercise the rights to health care, social welfare, education and employment. Women and girls who do not possess personal documents will be deprived of access to these rights or it will be significantly hindered. Women's unequal access to resources in the household, more caring responsibilities, traditional gender roles, unequal access to education and administrative control over their lives makes it harder for women to access resources and be able to regularise their status.

Health care

Follow-up on the Concluding observations of the Committee, paragraph 32 (a) and 33 (a and b)

16. Thus, residence registration is still a precondition for women in Serbia to register for mandatory **health insurance** and issuance of a health insurance card. Although the Law on Health Insurance stipulates that persons of Roma ethnicity who, "due to the traditional way of life", do not have permanent or temporary residence in Serbia are considered as insured persons,¹⁵ this provision – which already embeds stereotypes about Roma – does not even apply in practice and Roma are required to have registered residence. Specifically, a bylaw that envisages that persons of Roma ethnicity should submit evidence of registration of permanent residence when applying for health insurance¹⁶, stipulates that the Roma who, due to their traditional way of life do not have permanent residence registered, must submit proof of registration of residence at the address of a social welfare centre. When deciding upon an application for health insurance, the competent bodies apply the Regulation (not the Law) and request Roma women and men to have registered residence. Thus, despite the fact that the Law has provided the possibility for Roma women without permanent or temporary residence to acquire health insurance, in practice this possibility is denied. Furthermore, this usually affects the poorest women, who are not even employed, and who cannot even access right to social welfare benefits because they lack permanent residence registration. Even if Roma women affected by this problem initiated the procedure for registration of permanent residence at the address of a social welfare centre, they would be left without health insurance until the decision in the procedure was reached. These procedures last long, from a few months to more than a year. Besides, the requests for registration of residence

¹⁵Article 22, point 11 of the Law on Health Insurance (*Official Gazette of RS*, nos. 107/2005, 109/2005, 57/2011, 110/2012, 119/2012, 99/2014, 123/2014, 126/2014, 106/2015 i 10/2016)

¹⁶Regulation on the content, form and manner of submitting a unique application for mandatory social insurance, unique methodological principles and unique codex of codes for entry of data in the unique basis of the Central Register of mandatory social insurance (*Official Gazette of RS*, nos. 54/10, 124/12, 119/13)

are sometimes rejected, usually with an explanation that the competent body could not establish the intention of the applicant to settle in a certain place and live there permanently. Moreover, the stipulation in the legislation is rooted in stereotypes about Roma. It is an example of institutional discrimination that assumes living in informal communities and housing is a matter of choice. In this way, it prevents the adoption and implementation of adequate policies to address real causes and barriers that leave Roma women excluded and at the margins.

17. With regard to the above-mentioned, it is important to emphasise that Serbia, in its Fourth Periodic Report on the implementation on the Convention wrongly claims that *“More than 90 per cent of Roma men and women exercise the entitlement to compulsory health insurance. This can be attributed to measures which enabled branches of the Compulsory Health Insurance Fund to grant this entitlement to persons of Roma ethnicity who do not have identity documents on the basis of a statement signed by two witnesses”* (paragraph 63). In fact, this manner of applying for health insurance only functioned in a short period from July 2010 to March 2012, and afterwards, the possession of permanent residence registration became compulsory again.¹⁷
18. Furthermore, when it comes to exercising the right to health protection, women who do not possess health cards are particularly disadvantaged, facing significant barriers to accessing their rights to maternity and reproductive healthcare. A health institution may not refuse to assist women without a health card in child delivery, since birth is considered an emergency, but women are routinely denied access to antenatal and postnatal care. Praxis still occasionally encounters cases where women were threatened that they would not be allowed to take the new-born from the maternity ward until all hospital bills were paid, although according to the Law on Health Care the medical assistance in such cases is paid from the budget of the Republic of Serbia.¹⁸
19. The Committee on the Rights of the Child in its Concluding observations on the combined second and third periodic reports of Serbia also warns that „mothers and young children are particularly vulnerable and continue to have limited access to adequate maternal and general health care, resulting in high mortality rates, early births and low rates of immunization against childhood diseases, and that significant challenges in regular and timely vaccine procurement lead to delays in immunization coverage for children, particularly Roma children“. Therefore, the Committee recommends that Serbia should „ensure the availability of and equitable access to quality primary and specialized health care for all children in the country, and strengthen efforts to ensure that access to adequate health care, including prenatal care for uninsured pregnant women, is extended to families living in the most vulnerable situations, particularly those living in marginalized and remote areas“ (recommendation 46a).

Social protection

20. Exercise of the right to social welfare benefits also depends on birth registration, citizenship and registration of permanent residence. If a woman does not possess personal documents, she will not be able to exercise the right to social welfare or other social protection services. If she gives birth, not only will she not be able to immediately register the child in the birth registry book, but she will also fail to access right to parental and child allowances that she would, otherwise, be entitled to. In Praxis'

¹⁷ See: Praxis, *Contribution to Social Inclusion and Combat against Discrimination of Marginalised Population in Serbia*, 2013, page 23, at www.praxis.org.rs

¹⁸ Article 18 of the Law on Health Care (*Official Gazette of RS*, no. 107/2005, 72/2009, 88/2010, 99/2010, 57/2011, 119/2012, 45/2013, 93/2014, 96/2015, 106/2015 and 113/2017)

research from 2015, 50% of the interviewed Roma women who did not exercise their rights to social protection said that the lack of necessary documents was the most common reason for not being able to exercise this right.¹⁹ Furthermore, the research results show that the right to social protection is exercised by 38% of women who are right holders and 43% of men. In addition, 27% of women responded that their spouses/common-law partners were holders of the rights to social protection, while the same answer was given by only 7% of men. This points to the prevalence of traditional gender roles in the family including a tendency for men to apply to be the right holders on behalf of their families. This only further aggravates the already difficult position of Roma women and exacerbates their economic dependence on their partners. Their lack of financial control and access to household income can risk exacerbating patterns of controlling behaviour by an abusive partner in cases of domestic abuse. The lack of autonomy and denial of access to independent income disempowers women and can trap them in abusive relationships.

Education

Follow-up on the Concluding observations of the Committee, paragraph 28 (a) and 29 (a)

21. The statistical data on the representation of Roma in the educational system of Serbia are disturbing. Thus, UNDP's Regional Roma Survey 2017 showed that only 57 % of the Roma girls finish primary school (as opposed to 93% non-Roma girls and 66% Roma boys). Only 8% of the Roma girls finish secondary school (93% non-Roma girls and 18% Roma boys) and just one of the 50 Roma women (2%) acquires higher education.²⁰ Approximately one in five Roma women above 10 is illiterate (21.2 %), while illiteracy among Roma women is more than twice as high than among Roma men (9,2%).²¹
22. In addition, child, early and forced marriages (CEFM) interrupt the education of children, especially girls at the age of 12-14. Specifically, once they are married, both boys and (more often) girls are forced to leave education, boys in search for a job and girls for taking up a role of a wife and a mother²². Furthermore, Roma girls face additional discrimination in relation to education, since adequate measures for Roma educational inclusion and prevention of school drop-out need to be created and/or implemented²³. This situation is reflected in the primary school dropout rate among girls from Roma settlements. Only half of Roma children enrolled in primary school transit to secondary school, and the gender disparity is notable. While 72% of Roma boys transit to secondary school, this applies to only 40% of girls from Roma settlements²⁴. The situation is even worse in secondary education; there is a trend of lower attainment of a secondary school education especially among poor children and Roma. The net attendance ratio is the least favourable for girls in Roma settlements and boys in the poorest wealth index quintile. Only one fifth of Roma children of appropriate age attend secondary school, and only 4.7% from the poorest wealth quintile do so²⁵.

Employment

Follow-up on the Concluding observations of the Committee, paragraph 30 (b, d) and 31 (b,d)

23. Such a poor educational structure inevitably makes the position of Roma woman in the **labour market** harder. Although there are no official and reliable statistics on employment rates in the Roma population, all available research and assessments show that the unemployment rate among Roma is

¹⁹See: Praxis, *Research on Access to Socio-economic Rights for Roma Women in Serbia, 2015*, page 7, at www.praxis.org.rs

²⁰http://www.eurasia.undp.org/content/dam/rbec/docs/Factsheet_SERBIA_Roma.pdf

²¹S. Radovanovic, A. Knezevic, *Roma People in Serbia*, Statistical Office of the Republic of Serbia, 2014, page 72 (available only in Serbian)

²²UNICEF, *Child Marriage in Serbia*, page 23

²³Ibid, page 23

²⁴Ibid, page 42

²⁵Ibid, page 42

much higher than in the total population, and the unemployment rate of Roma women even higher. Even when Roma women manage to secure employment, they often perform the lowest paid jobs, with the most unfavourable working conditions, sometimes even harmful to health. However, most Roma are not formally employed, and are forced to earn a living by collecting and selling recyclable waste materials. Aforementioned UNDP's Regional Roma Survey 2017 has shown that only 9% of Roma women are employed (30% non-Roma women and 32% Roma men).

24. In the preparation of the report "Analysis of the Main Problems and Obstacles in Access of Roma to the Rights to Work and Employment" that Praxis published in June 2013, Praxis conducted research with the aim to get a better insight in the position of Roma in the labour market, in particular the part of the Roma population that usually remains invisible to available statistics: the Roma living in informal settlements and the Roma who face difficulties in obtaining personal documents. This research, which involved 377 Roma, showed that only 12.2% of respondents had formal employment. The position of Roma women is particularly difficult: only two women surveyed by Praxis were employed and both had low-paid jobs. Although one should keep in mind the fact that these data refer to the most vulnerable part of the Roma population, the number of employed women is alarming anyway, especially if one takes into account that the situation is much better for men who also live in informal settlements or face barriers in obtaining documents. The observed differences in the position of the respondents further indicate that Roma women are often victims of double discrimination - as women and as members of the Roma minority.²⁶
25. The position of Roma women in the labour market and their employment opportunities are associated with the problems faced by the Roma population as a whole and by women in the majority population, but they are also largely conditioned by their position in the family. In fact, many Roma families are typically patriarchal, and in such families women are expected only to take care of household and children. In addition, Roma families often have a large number of children, and women start to have children very early with many already having several children as teenagers, which pushes them away from education and deprives them of employment opportunities. As many as 67.4% of women who were included in the Praxis research have never even tried to find a job or apply for a job, while 42.7% of women stated that the reason for not having tried to get employment were their caring responsibilities for young children or their household duties. As regards the women who were surveyed by Praxis and who were trying to find a job and applied for various positions, only 28.9 % of them succeeded at some point. Insufficient or no education is a particularly aggravating factor in finding employment; in addition, 12.8% of women felt that they did not get a job because of their Roma ethnicity or because of age. Unable to find work, both women and men earn a living in the informal and unregulated labour market, perform a variety of informal and seasonal jobs, and deal mostly with the collection of recyclable waste materials. A total of 27 per cent of women responded that they collected recyclable waste materials or they sometimes performed various informal or seasonal jobs.²⁷

²⁶See: Praxis, *Analysis of the Main Problems and Obstacles in Access of Roma to the Rights to Work and Employment*, 2013, page 23, at www.praxis.org.rs

²⁷Ibid, pages 66-67

ACCESS TO FREE LEGAL AID

Follow-up on the Concluding comments of the Committee, paragraph 11 (c)

26. Lack of a functional free legal aid system in Serbia hinders women's access to the right to citizenship, birth registration, healthcare, social protection, education and employment. Roma women face multiple disadvantages due to a low level of education and literacy, disempowered to access their rights without assistance, in poor financial situations that prevent them from engaging a lawyer. Therefore, free legal aid is vital to Roma women.
27. However, despite years of announcing it, Serbia has not yet adopted a law on free legal aid. In order to inquire whether and in what way competent state bodies assisted citizens who are not registered in the birth registry, in 2016 and 2017 Praxis conducted research on free legal assistance provided by local self-governments and social welfare centres to the parties in the court procedures of determination of date and place of birth. The research showed that citizens relied more on the assistance provided in these procedures by the non-governmental sector.²⁸ Bearing in mind that the assistance provided by NGOs is project-related and is, thus, uncertain and unsustainable in the long-term, the State should resume responsibility and adopt a law on free legal aid which would establish an efficient system of free legal aid available to all, and would, at the same time, be adjusted to specific rights and needs of Roma women to address the multiple forms of discrimination they face and ensure their access to justice.

CHILD, EARLY AND FORCED MARRIAGES

Article 16 of the Convention

Follow-up of the Concluding observations of the Committee, Paragraph 38

28. Child, early and forced marriages (CEFM) are a gross violation of the rights of children, particularly girls, contrary to the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. They harm the mental and physical health of girls and expose them to the risk of statelessness, domestic violence, trafficking in human beings, and lead to an increased rate of early leaving school, and later to poverty and economic dependence. CEFM prevent them from reaching their full potential and enjoying all the rights they are entitled to.
29. The UNICEF 2014 Serbia Multiple Indicator Cluster Survey shows that Roma women and girls are disproportionately impacted by CEFM, where the percentage of girls who entered into marriage before their 15th birthday is 16.9% compared to 0.8% of non-Roma girls, or 57% of Roma girls compared to 6.8% non-Roma girls who entered into marriage before their 18th birthday. However, many CEFM are unregistered or unrecorded marriages so the recorded number is likely an underrepresentation of the problem. In addition, the statistics show that 4% of women have given birth before the age of 15, and even 38% of women aged 20-24 have given birth before the age of 18. There is a widely-held

²⁸ Praxis, *Analysis of the Procedures for Determining the Date and Place of Birth and for the Exercise of Rights to Citizenship and Registration of Permanent Residence*, 2016; pages 27-28;
Praxis, *Determining the Date and Place of Birth, Right to Citizenship and Permanent Residence Registration - Analysis of Remaining Obstacles*, 2017, page 41

stereotype in Serbia that attributes CEFM to Roma “cultural traditions”, instead of seeing CEFM as linked to patterns of inequality, exclusion and discrimination, as well as the poverty and shortened life-spans which are the legacy of centuries of antigypsyism. This failure by the authorities to see CEFM from a gendered and rights-based perspective means there is no adequate response that would prevent and/or punish for the violation of the girl-child’s rights resulting from CEFM. Roma, and especially Romani women, are increasingly calling for accountability for the whole society - educational, social and health care institutions, police, prosecutor’s offices, courts, but also the Roma community and the media, to end stereotypical understandings of CEFM in Serbia and force the State to respect the rights of women and girls subjected to these practices and support their calls for change.

30. There are several laws in Serbia whose provisions guarantee that the authorities implementing them do not have the dilemma of how to act in cases of suspicion of CEFM. The Criminal Code recognizes three major offences that may cover CEFM and penalties related to them. Sexual intercourse with a child (Article 180) is punished with 3-12 years of imprisonment; cohabiting with a minor (Article 190) is punished with imprisonment for a term up to three years²⁹, and since 1 June 2017 a new criminal offence – whoever by force or threats compels another person to enter into marriage shall be punished with imprisonment in a term between three months and three years. Also, whoever brings another person abroad or induces another person to go abroad for the purpose of perpetrating this offence shall be punished with imprisonment in a term of up to two years. Other laws that are relevant in the prevention of the CEFM are the Law on Family, Law on Prohibition of Discrimination (Article 22) and all other laws and bylaws related to health, education and social protection.
31. With regard to the CEDAW Committee recommendation from the previous reporting cycle (paragraph 39), that “the State shall take all measures necessary to implement the provision of its Action Plan aimed at preventing early and forced marriages among minority groups, in particular Roma, and to increase awareness among the communities and social workers of the negative effects of early marriage on women’s health and education”, Praxis’ three-year experience gained through working with Roma parents, school children and representatives of competent institutions shows that little has been done. Concretely, discriminatory conduct of the representatives of competent institutions (primarily social welfare centres, schools, police, prosecutor’s offices, etc.) still exists, which shows the need for serious and continuous training and awareness-raising. Even though the competent institutions are obliged to respond, in accordance with their powers, they are not coordinated and the responsibilities are often transferred from one institution to another. The impression is that the main reason for this is the treatment of CEFM as a practice belonging to Roma tradition and culture and not as a gross violation of the rights of the girl-child. In regard to the CEDAW Committee recommendation from the same paragraph that the State should review its Criminal Code to ensure that concluding a void marriage and enabling to enter into unlawful marriage are prohibited and adequately sanctioned, the State has not undertaken any respective measures.

²⁹ The same punishment shall be imposed also on a parent, adoptive parent or guardian who enables or induces a minor to cohabit with another person. In case of perpetrating this offence for gain, the perpetrator shall be punished with imprisonment for a term of six months to five years. However, the Criminal Code provides that if a marriage is concluded, prosecution shall not be undertaken, and if undertaken it shall be discontinued.

32. RECOMMENDATIONS

- I. Amend the by-laws to ensure that all women can register the births of their children, immediately after birth, regardless of their status or documentation available;
- II. Ensure the correct interpretation and implementation of Article 13 of the Law on Citizenship (regulating the right to Serbian citizenship on the basis of the *jus soli* principle) in line with the 1961 Convention on the Reduction of Statelessness and the Convention on the Rights of the Child;
- III. Harmonize the practice of all bodies to ensure consistent implementation of the regulations governing birth registration and acquisition of citizenship and respect of the good governance principles in all individual cases and before all bodies, including through capacity building for frontline officials on gender equality, non-discrimination and combatting antigypsyism;
- IV. Fully enable access to health care for Roma women without permanent/temporary residence;
- V. Ensure that Roma women have full and equal access to maternity care, including antenatal and postnatal care, regardless of the possession of personal documents and health booklets;
- VI. Ensure full and equal access to pre-school, primary and secondary education of Roma girls and young women, and take proactive action to prevent girls from dropping out of formal education and encouraging Roma women to access higher and further education;
- VII. Improve measures to combat the gender gap in labour market participation, particularly for Roma women. Existing measures for active employment should be revised and new, more efficient, gendered and inclusive methods found for sustainable inclusion of Roma women in the labour market;
- VIII. Ensure an available and efficient free legal aid system, which would take into account all the specific characteristics of the procedures and of the beneficiaries in need of assistance;
- IX. Provide a statutory definition of the term 'child' in line with the Article 1 of the Convention on the Rights of the Child;
- X. Amend the Family Law so as to remove all exceptions that allow marriage under the age of 18 years;
- XI. Ensure systematic data collection and data recording system on CEFM in relevant government institutions;
- XII. Ensure that educational trainings are organized for the employees in the competent institutions (social welfare centre, police, prosecution, school, health institutions) in order to sensitize them so that they would timely identify, mutually cooperate and respond adequately to CEFM and to ensure that Local Action Plans (for youth, gender equality, social inclusion of Roma, etc.) include the activities on the prevention and elimination of CEFM and implement them consistently.