

Ms. E. Tendayi Achiume

Special Rapporteur on
contemporary forms of racism,
racial discrimination, xenophobia
and related intolerance
Palais des Nations
CH-1211 Geneva 10
Switzerland

By email: racism@ohchr.org

16, February 2018

SUBJECT: Submission to the Special Rapporteur's upcoming Thematic report on racial and ethnic based discrimination through nationality and citizenship exclusion

Dear Special Rapporteur Achiume,

In view of your call for submissions, we, the European Roma Rights Centre (ERRC)¹, the European Network on Statelessness (ENS)² and the Institute on Statelessness and Inclusion (ISI)³, welcome this opportunity to inform the Special Rapporteur's upcoming *Thematic report on racial and ethnic based discrimination through nationality and citizenship exclusion* and hereby respectfully submit our comments and recommendations.

Our submission relates to the statelessness, discrimination and marginalisation of Romani people in the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia) and Ukraine. It draws on research and advocacy conducted by our three organisations and partners in each of the research countries, over the last two years.

Please find below, a summary of the main findings and recommendations from our research. These draw on the recently published report, '*Roma Belong: Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine*'⁴, and forthcoming country reports on Ukraine and Albania (currently in draft). These reports explore the nexus between statelessness, discrimination and marginalisation of Romani people in European Union candidate and neighbourhood countries in the Western Balkans and Ukraine and form part of the 'Roma Belong' partnership project, which aims to:

- Understand the causes of Roma statelessness and the obstacles that stand in the way of solutions;
- Strengthen the understanding and capacity of Roma rights organisations and activists to mobilise to end Roma statelessness;
- Facilitate and bolster international, regional and national responses to Roma statelessness.

¹ For more information about ENS and its activities visit: <https://www.statelessness.eu/>

² For more information about ERRC and its activities visit: <http://www.errc.org/>

³ For more information about ISI and its activities visit: <http://www.institutesi.org/>

⁴ ENS, ISI, ERRC (2017), *Roma Belong: Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine*, available at <http://www.errc.org/cms/upload/file/roma-belong.pdf>

The regional report and two draft country reports are also attached to this submission. Furthermore, the regional report is available via the following link: <http://www.errc.org/cms/upload/file/roma-belong.pdf>

A) MAIN FINDINGS

Despite strong international treaty accession records, and reasonably strong domestic legal frameworks, norms and standards are not universally and equally applied to protect Roma from discrimination and statelessness in the research countries.

In identifying some of the key causes of Romani statelessness in the Western Balkans and Ukraine, the impact of displacement, conflict and state succession on the risk of statelessness have been examined. For example, the legacy of conflict and family histories of displacement continue to impact disproportionately on Roma in the Western Balkans, the lack of documentation among former USSR citizens or challenges for those internally displaced by the current situation, perpetuate the risk of statelessness among Roma in Ukraine.

The underlying themes of systemic discrimination and exclusion of Roma, barriers to accessing justice, and bureaucratic challenges, all emerged to varying degrees from the research conducted in the target countries. The findings point both to the specific challenges of discrimination faced by Roma, as well as to more general administrative challenges – overly-complex and bureaucratic civil registration procedures for example – constraining the realisation of individual rights in practice, which have a disproportionate impact on Roma.

Additionally, the lack of reliable data on both statelessness and Roma populations in all of the research countries has made it more difficult to plan an adequate response and easier to deny the seriousness of the issue.

Finally, two key issues emerged strongly as disproportionately impacting on the ability of Roma to solve their documentation issues:

- barriers to accessing documentation, such as birth registration, identification and permanent residence; and
- marginalisation, poverty and exclusion underpinning many of the challenges facing Roma across the region.

The research shows how responsibility and blame for the problems Roma face with access to documentation are perceived differently by different interviewees. State actors tend towards stereotypical views, blaming Roma communities' lack of education, awareness or willingness, rather than discrimination or problems with the system. Roma interviewees, on the other hand, clearly articulate their frustrations with how the lack of documentation impacts on their daily lives, citing bureaucracy, cost, and discrimination and exclusion as the main barriers to resolving their documentation issues.

In light of the above, we recommend that national governments:

- **nominate a dedicated lead with responsibility for protecting the rights of Roma whose mandate includes the reduction and prevention of statelessness among minorities. National Human Rights Institutions and Ombudspersons should have a mandate to monitor and report on these issues;**
- **guarantee access (in law and practice) to fundamental rights for all Romani people on their territory, irrespective of documentation or citizenship status;**
- **take concrete steps to simplify complex civil registration procedures impacting disproportionately on Roma communities, including where these prevent Roma from registering the births of their children;**

- **collect fully anonymized data disaggregated by ethnicity including on birth registration, documentation status, and access to fundamental rights;**
- **implement dedicated statelessness determination procedures.**

For the complete list of recommendations please refer to the '*Roma Belong: Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine*' report.⁵

B. SPECIFIC SITUATION IN ALBANIA AND UKRAINE

As part of the Roma Belong project, specific country reports on Albania and Ukraine, looking closer at the situation and challenges Roma face in these countries, are forthcoming. Below is a short summary of the main issues and gaps that emerged during the research carried out in these two countries.

1) ALBANIA

Albania is party to almost all the relevant regional and international human rights instruments relating to statelessness, including both the 1954 Convention on the Status of Stateless Persons, and the 1961 Convention on the Prevention and Reduction of Statelessness. However, it does not have a dedicated procedure in law by which stateless persons can be identified and granted protection, making it impossible to comply with obligations under the 1954 Convention. Albanian nationality law also falls short of the standards in the 1961 Convention, as it makes the right of a child born stateless in Albania to acquire nationality contingent on the legal status of the parents, thus allowing for the possibility of children to be born stateless on its territory.

Also, while the legal framework in Albania is non-discriminatory, pervasive negative stereotypes continue to undermine social and official attitudes towards Roma, and institutional racism against Roma is reflected both in the way their inclusion is perceived and pursued by state authorities and by the lack of urgency to address some of the most critical challenges that are disproportionately faced by this community.

The well documented marginalisation faced by Romani people in Albania⁶, is also both a cause and a consequence of risk of statelessness that mutually reinforce each other.⁷ Indeed, many of the bureaucratic requirements and procedures disproportionately disadvantage Roma, as they do not appropriately accommodate their specific circumstances. Complex procedures and cost, time, distance, and bureaucracy requirements heighten the barriers to documentation faced by Roma in Albania and increase dramatically their risk of statelessness. This indirect discrimination exacerbates the barriers to documentation and birth registration faced by Roma and the failure of the Albanian authorities to address these challenges condemn Roma to pass on to their children their exclusion and undocumented status.

This is particularly true with regard to birth registration when the parents are undocumented. A further example of how the Albanian Government fails to uphold principles of non-discrimination and the best interests of the child to ensure that children are not penalised or disadvantaged as a result of requirements that cannot be met by their parents, is the situation faced by Albanian Roma families

⁵ ENS, ISI, ERRC (2017), *Roma Belong: Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine*, available at <http://www.errc.org/cms/upload/file/roma-belong.pdf>

⁶ See for example, Government of Albania (2016) *National Action Plan for Integration of Roma and Egyptians in the Republic of Albania 2016-2020*, <http://www.al.undp.org/content/albania/en/home/library/poverty/national-action-plan-for-integration-of-roma-and-egyptians-in-th.html>; ERRC (2017) *Families Divided: Romani and Egyptian children in Albanian institutions*, <http://www.errc.org/article/families-divided-romani-and-egyptian-children-in-albanian-institutions/4606>

⁷ ENS, ISI and ERRC (2017), *Roma Belong: Statelessness, discrimination and marginalisation of Roma in the Western Balkans and Ukraine*, <https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/roma-belong.pdf>, p.22

returning with children who have been born abroad, particularly in Greece. Romani children with a right to acquire the Albanian nationality of their parents find themselves at risk of statelessness because their birth is not registered, and their right to nationality is therefore not recognised.

Finally, state legal aid is currently only available to those who can produce proof of income and identification documentation. Roma are particularly affected by these requirements as lack of documentation, discriminatory attitudes and marginalisation represent obstacles almost impossible to overcome. Furthermore, the State Commission on Legal Aid lacks capacity and resources to respond effectively to the rights of the Roma population. Even the small number of people who receive legal aid face a real risk of not having effective representation⁸, as legal aid lawyers tend to lack competence and are poorly paid.⁹

The challenges summarised above have a direct impact on the enjoyment of a host of fundamental rights. Undocumented Romani adults face significant challenges obtaining identity cards and establishing their permanent residence. This places them at increased risk of arrest, detention and expulsion, feeds into discriminatory and exclusionary attitudes, and often results in them not being able to (or having any incentive to try to) participate in the social and political life of the nation. Also their right to education is affected as despite documentation in theory not being a barrier to undocumented children being able to attend school, in practice it prevents them from obtaining school and university degrees attesting their education. Access to formal employment and social housing programmes are also precluded, as well as access to health care insurance.

To address some of these challenges, the Albanian Government should introduce a central computerised registry system, strengthen cooperation with other states and improve joint-working across Government to address the documentation issues facing Roma children and children born abroad, and provide free legal aid to those affected to ensure their births are registered and citizenship recognised.

B. UKRAINE

Ukraine is party to nearly all the UN human rights instruments¹⁰, including the 1951 Convention relating to the status of Refugees, the 1954 Convention relating to the status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Despite Ukraine's strong international treaty accession records, these national, regional and international norms and standards are not universally and equally applied to protect Roma from discrimination and statelessness. According to UNHCR estimates, Ukraine has one of the largest stateless populations in Europe.¹¹ Roma are considered to be one of the largest groups of undocumented persons in the country.¹² In most cases, Roma have the right to Ukrainian nationality under the law, but without documents, they cannot prove this right.

⁸ TLAS, *Raport Mbi Ndhmën Juridike Në Shqipëri (Report on Legal Aid in Albania)*, 2013. Available at: <http://www.tlas.org.al/en/studies> (in Albanian)

⁹ TLAS, *Enhancing the protection of the rights of accused - Policy paper*, July 2016. Available at: <http://www.tlas.org.al/en/studies>

¹⁰ In particular, Ukraine acceded to the International Covenants on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1973; the International Convention on the Elimination of All Forms of Racial Discrimination in 1969; the Convention on the Elimination of All Forms of Discrimination against Women in 1981; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1987; the Convention on the Rights of the Child in 1991; the Convention on the Rights of Persons with Disabilities in 2010; and the Convention for the Protection of All Persons from Enforced Disappearance in 2015.

¹¹ UNHCR, *Population Statistics*. Available at http://popstats.unhcr.org/en/persons_of_concern; UNHCR, *Populations*, Available at: <http://globalfocus-interim.unhcr.org/population>.

¹² International Renaissance Foundation, *Roma Program Initiative and Coalition of NGOs, The Conditions of the Implementation on the Roma State Policy*, 2015, p. 10. Available at:

Moreover, despite the fact that the legal framework in Ukraine is non-discriminatory, Roma are subject to pervasive negative stereotypes and antigypsyism on a daily basis. A pattern of institutional racism is reflected both in the way Roma inclusion is perceived and pursued by state authorities and in the lack of urgency to address some of the most critical challenges that are disproportionately faced by this community. Despite this, discrimination is not necessarily perceived in Ukraine as a cause and consequence of Roma statelessness.

Additionally, statelessness is not recognised as a significant issue by stakeholders in Ukraine. There is no one state entity with the mandate to address it, and the various entities responsible for different aspects of the issue have a fragmented and limited perspective. As a result, those who are undocumented have very few options, and their undocumented status is also inherited by their children, thus creating a vicious cycle.

Another challenge relates to burdensome bureaucracy, for example, with regard to the birth registration procedure. Undocumented parents cannot register the births of their children before first establishing their own citizenship through either a court procedure or before the competent ministry. If parents are unable to provide any medical proof of the child's birth (for example if the child is born at home), a court decision establishing the fact of the child's birth is required for birth registration, which is costly and time-consuming. For Roma, these requirements may be particularly problematic due to a lack of awareness of state registration procedures, fear of applying to state authorities, discrimination, marginalisation and isolation from the majority society. This particularly concerns Roma who are stateless or at risk of statelessness, as in most cases their lack of documentation is not only a consequence of their marginalisation, but reinforces prejudicial stereotypes and is used to justify their exclusion.

Finally, with regard to the specific political context of Ukraine, it should be noted that the annexation of Crimea and the armed conflict in the East and the dissolution of the Union of Soviet Socialist Republics (USSR) also play a critical role in the challenges Roma face with regard to their documentation and risk of statelessness.

In particular, while over 25 years have passed since the dissolution of the USSR, there are still many people in Ukraine with no identity documents except for their passport or birth certificate of the former USSR. Due to their marginalisation, lack of awareness, and life in informal communities, Roma face serious obstacles in meeting the conditions set out by the law to successfully acquire Ukrainian nationality (for example official proof of their permanent residence in the territory of Ukraine at the time of the independence).¹³

To address some of these challenges, the Ukrainian Government should:

- **introduce a procedure to identify and protect stateless persons;**
- **take proactive measures to address structural discrimination;**
- **implement a cost-free, accessible procedure to establish the Ukrainian citizenship of all those who face barriers to accessing documentation, including those who hold documents of the former USSR or who cannot access documentation or proof of citizenship for other reasons;**
- **guarantee universal access to birth registration and documentation procedures, including by establishing a computerised system for birth registrations, which enables the direct reporting of births from healthcare centres to the registry;**
- **conduct outreach campaigns to directly learn from Roma about the barriers they face.**

http://www.ombudsman.gov.ua/files/alena/ZVIT_ROMA.pdf. (In Ukrainian). – According to the Report, 17% of Roma are undocumented.

¹³ The Law of Ukraine “On Citizenship of Ukraine” of 2001, Art. 2 establishes the affiliation to the Ukrainian citizenship for all former USSR citizens, who at the moment of declaration of independence of Ukraine (August 24, 1991) or the entry into force by the Citizenship Law of Ukraine (November 13, 1991), resided permanently in the territory of Ukraine.

Respectfully,

Amal de Chickera
Co-Director of the Institute on
Statelessness and Inclusion

Handwritten signature of Amal de Chickera in black ink, featuring a stylized 'A' and 'C'.

Chris Nash
Director of the European
Network on Statelessness

Handwritten signature of Chris Nash in black ink, written in a cursive style.

Đorđe Jovanović
President of the European
Roma Rights Centre

Handwritten signature of Đorđe Jovanović in blue ink, featuring a large, stylized 'D' and 'J'.