

P R A X I S




Praxis, League of Roma SKRUG,

**Institute on Statelessness and Inclusion, European Network on Statelessness
and European Roma Rights Centre**

**Joint alternative report submitted to the 94th session of the Committee on the
Elimination of Racial Discrimination in relation to the second and third reports
of**

Serbia

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Statement of Interest

1. Praxis, League of Roma SKRUG, the Institute on Statelessness and Inclusion, European Network on Statelessness and European Roma Rights Centre submit this alternative report to the Committee on the Elimination of Racial Discrimination (the Committee) commenting on the second and third periodic report of the Republic of Serbia.

2. Praxis¹ is a national non-governmental organization established in 2004 that protects human rights by providing legal protection and advocating for elimination of systemic obstacles in access to rights. Praxis provides free legal aid services to marginalized and socially excluded communities, particularly the Roma population. Praxis has been particularly focused on the reduction and prevention of statelessness and protection of stateless persons. Through a human rights based approach, Praxis aims to help vulnerable groups to secure and exercise their rights so that systemic obstacles may be removed and equality for all may be realized.

3. League of Roma SKRUG² is successor of informal coalition of national non-governmental organizations - the League Roma Decade (2005). The aim of the League is to promote Roma inclusion and emancipation of the Roma community by civil society. It brings together over 60 civil society organizations in Serbia in order to ensure continuous monitoring and effective implementation of the established national strategies for improving the position of Roma and the accompanying Action Plans for its implementation.

4. The Institute on Statelessness and Inclusion (ISI)³ 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. The Institute has over the past two years, made over 40 country-submissions with its partners to the CRC, UPR and CEDAW. This is the Institute's first submission to CERD.

5. The European Network on Statelessness (ENS)⁴ 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 110 members (including 60 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.

¹ For more information about Praxis, please see the website <http://praxis.org.rs/>.

² For more information about League of Roma SKRUG, please see the website <https://www.ligaroma.org.rs/>.

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

⁴ For more information about ENS, please see the website <http://www.statelessness.eu/>.

6. The European Roma Rights Centre (ERRC)⁵ 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.

7. This submission focuses on discrimination against the Roma minority in Serbia, in violation of Serbia's obligations under CERD, drawing attention to legislation and practices which have an unjustifiable negative impact on Roma, Romani children and girls as well as those who are stateless or at risk of statelessness. In particular, this submission highlights issues of denial of the right to education in the context of segregation of Romani children; hate crime; the right to security of the person with special reference to the risk of arbitrary detention and discriminatory treatment of a stateless persons on the basis of their statelessness status; restrictions on the freedom of movement and problems with residence registration of Roma; access of Romani children to the right to nationality and birth registration; the problem of overrepresentation of Romani children in state care and early and forced marriages of Romani girls.

Article 3 and Article 5 (e) (v)

Ethnic discrimination against Romani children in their access to education

8. Romani children in Serbia are in a particularly difficult situation in terms of their access to education. They still continue to experience segregation in the educational system and are victims of bullying, prejudices and discrimination. The highest drop-out rate in primary schools is among Romani children. They are also over-represented in the so called "special schools". Serbia still does not collect disaggregated data for individual sub-populations (national, ethnic and religious affiliation), while inadequate territorial distribution of primary education institutions in the country substantially affects the availability of primary education for Romani children.

9. In its Concluding Observations of 13 April 2011, the Committee expressed its concern that members of the Roma minority continue to experience segregation with regard to access to education. It was also concerned by the fact that Roma children returnees, upon readmission agreements from Western European countries, face additional difficulties in entering the Serbian educational system, due to inter alia enrolment and placement procedures (art. 3 and 5 (e) (v)). The Committee strongly urged the State party to address *de facto* public school segregation, and carry out the necessary measures to facilitate access to quality education including through anti-discrimination training for school staff and awareness-raising for parents, increasing the number of Roma teaching assistants, preventing *de facto* segregation of Roma pupils, and other measures for the promotion of inclusive education⁶.

⁵ For more information about ERRC, please see the website <http://www.errc.org/>.

⁶ CERD/C/SRB/CO/1, para. 15.

10. The submitting organisations welcome the adoption of *The Rulebook on detailed criteria for identifying the forms of discrimination by an employee, child, pupil or third party in the educational institution*, in March 2016⁷. The Rulebook defines the notions of discrimination and discriminatory treatment⁸, forms of discrimination and their manifestation⁹, and special cases of discrimination¹⁰. The Rulebook defines segregation as a “particularly serious form of discrimination in conducting an educational process”¹¹.

11. Despite this, segregation in education remains a systematic problem in Serbia that creates a lasting negative impact, particularly on Romani children. For years, there have been no unified (general) criteria for establishing the existence of segregation in specific cases, making it difficult to prosecute cases of segregation.

12. As a result, many Roma parents still place their children in majority Roma schools due to proximity, lack of knowledge regarding other options, fear of discrimination and especially if they too were discriminated outside of their community throughout their life and therefore find that a Roma-only school would be the best and safest choice for the overall welfare of their child. Prejudices outside the curriculum and in the social sphere also serve as significant disadvantages to Romani children, who often experience marginalization and bullying in the school setting. Conversely, parents of Serbian children will pull their children out of ‘Roma schools’ to avoid their children mixing with Roma. The segregation of Roma pupils also results in a lower level of their educational attainment.

13. Segregation exists both in regular and so-called special schools. There are about 80 special schools in Serbia. The information available for the school year 2010/2011 indicates that the number of Roma pupils in the so-called special schools was 1,199, which accounts for 28% of the total number of pupils in these schools - 4,248. There are regular schools across that country which have more than 50% of Roma

⁷ The Rulebook on detailed criteria for identifying the forms of discrimination by an employee, child, pupil or third party in the educational institution (hereinafter referred to as: The Rulebook on detailed criteria for identifying discrimination (*Official Gazette of RS*, no. 22/2016).

⁸ Rulebook on detailed criteria for identifying discrimination, Art. 2

⁹ The following forms of discrimination and their manifestation have been identified: direct and indirect discrimination, breach of the principle of equal rights and obligations, prohibition of calling to account (victimization), discrimination by association, hate speech and harassment and humiliating treatment. Rulebook on detailed criteria for identifying discrimination, Art. 5, 6, 7, 8, 9, 10 and 11.

¹⁰ Special forms of discrimination recognised in the Rulebook are regulated in Art. 12-25

¹¹ Rulebook on detailed criteria for identifying discrimination, Art. 20

Segregation as a particularly serious form of discrimination in conducting an educational process exists in the following cases:

if children or pupils in the institution, or in connection to the work of the institution, are unjustifiably separated from other children or pupils, on the basis of their personal characteristics;

if separate classes or groups are formed for the reason that is not in accordance with the law;

If the structure of children or pupils in a group, class, grade or institution, in terms of belonging to different ethnic or other vulnerable groups, drastically differs from the structure of children or pupils in the territory of the institution, unless this is due to the specifics of the institution in accordance with the law.

pupils. In some schools, that number is between 82% and 97%¹². The accuracy of these estimates is affected by the inconsistent data. It is accepted that due to reluctance to declare themselves as Roma because of prejudice, stereotypes and fear of discrimination, as well as lack of documentation among many Roma, it is not possible to collect fully comprehensive data.

14. National belonging (ethnicity) is not listed as a separate category in the data sets of educational institutions, which do not collect disaggregated data for individual sub-populations (national, ethnic and religious affiliation). This makes it impossible to monitor in a satisfactory way, all dimensions of the educational policy (in particular the implementation of strategic documents in the field of education in relation to persons belonging to national, ethnic and religious minorities), or the implementation of individual measures aimed at affirming the position and the exercise of fundamental rights and freedoms of national and other minority communities in the education system¹³. The Committee previously expressed concern about the lack of disaggregated indicators on the enjoyment of the rights guaranteed in national legislation and in the Convention by various groups¹⁴. This significantly reduces the possibility of monitoring the efficiency of the education system in terms of availability, enrolment results and drop-out of national minority children from the institutions of pre-school, primary and secondary education.

15. *The Strategy for Improvement of the Status of Roma in the Republic of Serbia*¹⁵ also points to the lack of a systemic approach to recording data on national belonging within the education system¹⁶. The problem of recording data on national belonging in a systematic and uniform manner has been partly solved by adopting the *Law on Primary Education*¹⁷. In fact, this Law establishes the obligation of the school to keep records of “pupils or children, their academic achievement, exams, educational process and employees”¹⁸. Information on the pupil’s or child’s national belonging, in accordance with the law, is among the personal data of the pupil or child obtained by the school for its records¹⁹. However, the law explicitly stipulates that declaration of national belonging is not obligatory²⁰. Therefore, primary schools often do not obtain data on national belonging, i.e. they do not even ask pupils or their parents to declare national belonging, but rather rely on the provision of the *Law on the Fundamentals of the*

¹² These schools also include the following: „Vuk Karažić“ elementary school in Niš, „Petar Tasić“ elementary school in Leskovac and „Sutjeska“ school in Belgrade – Zemun, which were considered „Romani“ schools for over a decade.

¹³ National Education Council, *Education in Serbia: How to Reach Better Results, Trends in Development and Upgrading of the Quality of Preschool, Primary, General Secondary and Art Education and Upbringing 2010-2020*, Belgrade, 2011, available at: <http://www.nps.gov.rs/wp-content/uploads/2011/02/PRAVCI-srpski-A4.pdf> (20/02/2016), p. 35-36.

¹⁴ CERD/C/SRB/CO/1, para. 12.

¹⁵ *The Strategy for Improvement of the Status of Roma in the Republic of Serbia (Official Gazette of RS, no. 27/09)*, available at: <http://www.inkluzija.gov.rs/wp-content/uploads/2010/03/Strategija-SR-web-FINAL.pdf> (22/02/2016).

¹⁶ *The Strategy for Improvement of the Status of Roma in the Republic of Serbia*, p. 11.

¹⁷ *Law on Primary Education (Official Gazette of RS, no. 55/13)*.

¹⁸ *Law on Primary Education*, Art. 80.

¹⁹ *Law on Primary Education*, Art. 81, paragraph 2.

²⁰ *Law on Primary Education*, Art. 81, paragraph 3.

Education System, according to which data on national belonging is not an integral part of the records of the single information system of education.

16. The fact that data on national belonging is excluded from the set of data collected to determine the identity of pupils for the purpose of establishing a single information system of education is quite often used by schools as an excuse for keeping separate “internal” records on national belonging of their pupils. The problem of keeping separate “internal” records on national belonging lies in the fact that the way of obtaining such data is not monitored or standardised, and it remains unclear whether the records are based on the declaration of pupils or parents or on the assumption of the persons recording the data. Also, due to such legal provision, data collection is not regulated or included within the system of education in a uniform and systematic manner, which opens the space for potential abuse and arbitrariness. Furthermore, even if the information on national belonging is obtained and kept in the official records of the primary education institution, it is not an integral part of the single information system of education, given that the set of data to be obtained for the purpose of establishing this system does not include the information on national belonging according to the *Law on the Fundamentals of Education System*. This makes it more difficult to monitor the exercise of the right to education by persons belonging to national minorities and reduces the efficiency of the education system in terms of providing successful social integration and prevention of social exclusion and marginalisation of ethnic minorities.

17. Romani children are less likely to enter primary school and more likely to drop out during the obligatory eight-years education²¹. *The Strategy for Social Inclusion of Roma in the Republic of Serbia for the period 2016-2025* states that the obligatory preparatory pre-school programme covers only 63% of Roma children of pre-school age²². A special aspect of the problem of compulsory education coverage of Roma children is ensuring their regular attendance and equal participation in the educational process.

18. Inadequate territorial distribution of primary education institutions in the Republic of Serbia substantially affects the availability of primary education for members of the Roma national minority. *The Strategy for Improvement of the Status of Roma in the Republic of Serbia* highlights that “there is a

²¹ According to the data presented in the Strategy for Education Development in Serbia 2020, in 2008 the estimated drop-out rate among Roma children was 50%. The Strategy also underlines that in accordance with the standards of the European Union in the field of education the drop-out rate of children during primary education should be below 10%. According to the Multiple Indicator Cluster Survey of Women and Child, 2014, 69% of Roma children of school-entry age enter the first grade of primary school. Of the total number of Roma children who enter primary school, 85% regularly attend classes, while only 64% of them complete primary school. Secondary school is completed by slightly more than 58% of Roma pupils, while only 22% of them attend classes regularly. Available at:

https://mics-surveys-prod.s3.amazonaws.com/MICS5/Central%20and%20Eastern%20Europe%20and%20the%20Commonwealth%20of%20Independent%20States/Serbia%20%28Roma%20Settlements%29/2014/Final/Serbia%20%28National%20and%20Roma%20Settlements%29%202014%20MICS_Serbian.pdf

²² The Strategy for Social Inclusion of Roma in the Republic of Serbia for the period 2016-2025, p. 23 The Strategy states that Roma children attend irregularly the preparatory pre-school programme and in the shorter period than prescribed.

pre-school institution in less than 40% of Roma settlements (or at the distance of up to 1 km); there is a primary school located close to 55% of Roma settlements (or at the distance of up to 1 km), while 20% of Roma settlements do not have access to primary school”²³.

19. Another in a series of problems is defining the school catchment area. In fact, although the *Law on the Fundamentals of the Education System* establishes the school’s obligation to enrol each and every child in its catchment area, it does not determine the responsibility for defining the school catchment area. This legal gap raises the question on who is responsible for defining the school catchment area. *The Law on Local Self-government* provides that the municipality, through its bodies, shall establish institutions and organisations in the field of education²⁴. The special Decree also determines the responsibility of local self-governments for defining a network of primary schools²⁵. This legal gap in practice leads to a situation where the local self-governments have not been establishing the catchment areas of primary schools in their territory since the entry into force of the Law on the Fundamentals of the Education System. Consequently, the current school catchment areas do not take into account the changes in the demographic composition and structure of the population that greatly influence the structure of pupils in the institutions of primary education and the availability of educational institutions to certain groups of children, which creates one of the main reasons for existence of *de facto* segregation in primary schools.

20. In the *Special Report on Discrimination against Children*, the Commissioner for Protection of Equality of the Republic of Serbia clearly confirms that “Roma children and children with disabilities are most often exposed to discrimination”²⁶. The Commissioner for Protection of Equality states that Roma children are most often discriminated against in the field of education, i.e. in pre-school institutions and primary schools. The passivity of educational institutions, which usually do not take timely measures to prevent discrimination and often do not respond properly in the situations where discrimination has already happened, is recognised as the main reason for discrimination against Roma children in the system of primary education. In addition, Roma children are victims of peer discrimination more often than other groups of children.

Submitting organizations request the Committee to urge the government of Serbia:

I. to prepare a special protocol that will ensure a holistic approach and engagement of all relevant stakeholders (including Roma parents) in solving the problem and overcoming the challenges faced by the pupils of Roma nationality in the institutionalised education process, including guidelines for the competent institutions on how to act in cases of segregation;

²³ The Strategy for Improvement of the Status of Roma in the Republic of Serbia, p. 11

²⁴ Law on Local Self-government (*Official Gazette of RS*, nos. 129/07 and 83/14), Art. 20, para. 1, pt. 16

²⁵ Decree on the criteria for adopting the act on the network of pre-school institutions and the act on the network of primary schools, Art. 2, para. 3

²⁶ The Commissioner for Protection of Equality, *Special Report on Discrimination against Children*, Belgrade, 2013, available at: http://www.ravnopravnost.gov.rs/jdownloads/files/poseban_izvestaj_o_diskriminaciji_dece_web.pdf (26/02/2016), p. 29

II. to regulate, in the unified and systematic way, the collection and recording of data on the national affiliation of pupils within the single information system of education, by recognising the national affiliation of pupils as a piece of information required for determining the pupil's identity and by providing a unified procedure for collecting and recording data on the national affiliation of pupils in all educational institutions;

III. to ensure that Romani children are not discriminated on the basis of their national affiliation

IV. to conduct the rationalisation and optimisation of the network of primary schools and the re- definition of the catchment areas of primary schools by a special act adopted by local self- governments, thus ensuring the territorial distribution of primary schools, in line with changes in the demographic composition of population and current demographic needs;

V. to increase the number of pedagogical assistants in the schools with many Roma pupils and improve the quality of primary education through the modernization of teaching staff through interactive, participative and active working methods, in order to improve assistance to the pupils who have difficulties with learning and to reduce the disproportionately high drop-out rate among the children of Roma nationality.

Article 4 (a)

Hate crime

21. Every year a number of criminal offences committed in Serbia are based on hatred towards members of different vulnerable and minority groups - mostly Roma, LGBTI persons and members of national minorities. The level of intolerance in Serbia is high and is increasing. It is influenced by a number of factors including the yet unreconciled heritage of the conflicts of the 1990s, the state's failure to take responsibility for its former and current acts, a constant deterioration of values, an economic crisis and growing poverty.²⁷

22. In its previous Concluding Observations, the Committee urged the State to enact legislation and other effective measures to prevent, combat and punish hate crimes and speech as well as incitement to hatred and to intensify the enforcement of criminal law against racially motivated crimes. The Committee requested that the State party provide, in its next periodic report, information on the enforcement and implementation of national legislation including statistics on and analysis of prosecutions launched and penalties imposed, in cases of acts prohibited under Article 4 of the Convention.

²⁷ The phrase *hate crime* has begun to be used regularly in Serbia after the case from 1997, when 13-year old Roma boy was beaten to death on the way to his home. The crime was committed by four skinhead boys who were minors at the time. Just two of them were sentenced to six years of prison, while the other two have never been prosecuted. See more: <http://www.diskriminacija.ba/zlo%C4%8D-iz-mr%C5%BEnje-mro%C4%8Dna-stvarnost-srbije>, 12 May 2015

23. Before the introduction of hate crime to the Criminal Code of Serbia, police and prosecution used to overcome this gap by defining crimes motivated by hate as one of the following criminal offences: violation of the Freedom of Religion and Performing Religious Service (Art. 131), injury to reputation due to racial, religious, national or other affiliation (Art. 174), instigating national, racial and religious hatred and intolerance (Art. 317) and the failure to prevent crimes against humanity and other values protected under international law (Art. 384). The Criminal Code also includes criminal offences such as the violation of equality (Art. 128), racial and other discrimination (Art. 387) and violent behaviour at sport events or public gatherings (Art. 344a).

24. At the beginning of 2012, CSOs submitted an initiative for amending the Draft of Law on Amendments to the Criminal Code to the heads of parliamentary groups, the Ministry of Justice, the government and the other relevant institutions. The initiative included the text of proposed articles of the Criminal Code, justification for introducing a new institute, as well as a list of the relevant international and national legal basis.²⁸ In October 2012, the Ministry of Justice and Public Administration opened a discussion on the Draft Law on Amendments to the Criminal Code, which for the first time defined in Article 54a - hatred based on race and religion, national or ethnic origin, gender, sexual orientation or gender identity, as a motive for committing offenses prescribed as a mandatory aggravating circumstance at sentencing, unless the circumstance is prescribed as a constitutional element of the crime. In December 2012, the Government, as the official proponent, submitted the draft to the National Assembly, containing the Article 54a, and the National Assembly adopted the law. The Law came into force on 1 January 2013. This was the first time that hate crime was codified in the national criminal law.

25. Hate crime is consequently defined in the Serbian Criminal Code as follows:

*If the offense was committed out of hatred because of race and religion, national or ethnic origin, gender, sexual orientation or gender identity of another person, the court shall consider such circumstance as aggravating, unless it is prescribed as an element of a criminal offense.*²⁹

However, by the date of submission of this report, there has been no case registered where Article 54a was actually implemented. The State report also does not provide any information on implementation of Article 54a, including statistics. This is highly concerning and shows an indifferent attitude by the State towards hate crime and its consequences on vulnerable individuals and groups.

Submitting organizations urge the Committee to recommend the government of Serbia:

VI. to ensure full implementation of the Article 54a of the Criminal Code and to effectively tackle hate crime.

²⁸ Sample of submitted initiative in Serbian language: <http://gsa.org.rs/wp-content/uploads/2012/04/20120203-YUCOM-GSA-inicijativa-zlocin-iz-mrznje-2.pdf>

²⁹ The Article 54a of the Criminal Code ("Official Gazette of the RS, no. 85/2005, 88/2005 - correction, 107/2005 - correction., 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014)

Article 5 (b)

The right to security of the person, immigration detention and the lack of a statelessness determination procedure

26. The Republic of Serbia's report does not contain any mention of the planned adoption of the new Law on Foreigners, in spite of the fact that States parties are under an obligation to report fully on legislation on non-citizens,³⁰ and in spite of the fact that this law can be of huge significance for prevention of discrimination against non-citizens, particularly in relation to expulsion and forced removal. Furthermore, this law is of crucial importance for ensuring the security of non-citizens, chiefly in relation to arbitrary detention – a measure that is also addressed in the Committee's General Recommendation 30.³¹

27. If Serbia adopts the current version of its Draft Law on Foreigners,³² it could have a particularly strong human rights impact and lead to discrimination against one, particularly vulnerable category of foreigners, i.e. stateless persons. Under the Draft Law, the maximum immigration detention period is prolonged from 180 days to 12 months. The Draft Law stipulates that the initial period of detention (six months) can be prolonged for an additional six months if the foreigner's identity has not been established and if the foreigner deliberately hinders forced expulsion. These reasons are stipulated in the current law, however, the new Draft Law specifically states that the inability to establish the foreigner's identity or the lack of a travel document are examples of the individual trying to hinder their forced removal. This provision is clearly discriminatory towards stateless persons.

28. In its Handbook on the Protection of Stateless Persons, UNHCR establishes that being undocumented or not being in possession of the necessary documents cannot serve as a justification for detention. According to UNHCR, the detention of individuals seeking protection on the grounds of statelessness is arbitrary since the very nature of statelessness severely restricts access to basic identity and travel documents that citizens normally possess.³³ However, under the Draft Law on Foreigners, a person's inability to cooperate in removal procedures is equated with non-cooperation, which may result in stateless persons being punished simply for not having documents. The lack of a statelessness determination procedure to facilitate the identification of statelessness prior to and/or during detention puts stateless people and those at risk of statelessness at significant risk of being disproportionately impacted on by the Draft Law and subjects them to the risk of arbitrary detention.

29. The Article 1(3) of the Convention allows States parties to make distinctions, exclusions, restrictions or preferences between citizens and non-citizens provided that they do not discriminate against any

³⁰ Committee on the Elimination of Racial Discrimination, General Recommendation No. 30, 2004, para. 5.

³¹ *Ibid*, para. 19.

³² Draft Law on Foreigners available is here (in Serbian only): http://www.paragraf.rs/nacrti_i_predlozi/181016-nacrt_zakona_o_strancima.html.

³³ UNHCR, Handbook on protection of stateless persons under the 1954 Convention relating to the status of stateless persons, Geneva, 2014, available at: <http://www.unhcr.org/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>, p. 40.

particular nationality. Prohibition of discrimination against stateless persons clearly falls under the Convention as well – imposing unreasonable impediments for a particularly vulnerable group of non-citizens, those without any nationality, would be contrary to the purpose and the object of the Convention.

30. The identification of stateless persons is of utmost importance in preventing discriminatory treatment and arbitrary detention of stateless persons. A formal statelessness determination procedure would offer the most effective means to protect the rights of stateless persons,³⁴ particularly the liberty and security of the person and economic and social rights. Domestic laws explicitly guarantee some rights to stateless persons, such as the right to travel documents, right to work, social protection, primary and secondary education, but a necessary prerequisite for the recognition and enjoyment of these rights is the creation of a dedicated procedure suitable for determining whether an individual is a stateless person. The current lack of a dedicated statelessness determination procedure exposes stateless persons to particular risk, including the risk of arbitrary detention and destitution and impairs their access to the rights that must be enjoyed to anyone without exception. The disadvantaged position of particularly vulnerable group of non-citizens on a basis of their stateless status or as a failure of state to recognize and protect stateless persons, is not in line with the Convention’s antidiscrimination principles.

Submitting organizations urge the Committee to recommend the government of Serbia:

VII. to ensure that stateless persons are protected from arbitrary detention in Serbia, including by, ongoing reviews of detention, and vulnerability assessments;

VIII. to amend the new Draft Law on Foreigners to ensure that it contains robust mechanism to protect against the arbitrary detention of stateless persons and those at risk of statelessness in line with international legal standards.

IX. to introduce a fair and effective statelessness determination procedure in line with international standards, and ensure that it is accessible to all persons in Serbia regardless of their legal status.

Article 5 (d) (I)

Freedom of movement and registration of residence

31. The Republic of Serbia’s report states that adoption of the bylaw in relation to the procedure of registration of permanent residence at the address of a social welfare centre has provided the mechanisms and further necessary implementation of the Law on Permanent and Temporary Residence and a facilitated access to the procedure of registration of permanent residence, which is a prerequisite

³⁴ UNHCR, *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons*, 11 July 2016, available at: <http://www.refworld.org/docid/57836cff4.html>.

for issuance of personal documents.³⁵ The report also provides data on number of decision on a permanent residence at the addresses of the social welfare centres for persons from informal settlements.

32. The submitting organizations recognise and appreciate the significant improvements made with regard to the registration of residence, which is a precondition for the issuance of ID cards, establishment of territorial jurisdiction and access to many other rights guaranteed under the Convention. The major step forward was the adoption of the Law on Permanent and Temporary Residence of Citizens, which enables determination of residence at the address of Social Welfare Centre (SWC) for citizens who cannot register residence in any other way (mainly members of the Roma national minority). After the necessary bylaws were adopted, many Roma from informal settlements were able to register residence and obtain ID card for the first time, which in turn, enabled them access to rights and services such as right to work, health insurance, social protection, freedom of movement, right to vote etc. However, some problems still remain and additional measures are needed to ensure that all persons can register residence in order to obtain other necessary documents. One obstacle is connected with the arbitrary refusal of SWCs to issue permission for registration at SWC's address. Only once this permission is given, can the police department continue with the procedure for determination of residence.³⁶ The Law on permanent and temporary residence and relevant bylaws are silent about conditions and obligations of SWC in the context of refusal of permission for registration. In practice, if the competent SWC refuses to give permission, they do that without any explanation. As a consequence, Ministry of Interior (MoI) will refuse requests for determination of residence.

33. The case of one of Praxis' clients, Hisni, illustrates obstacles which arise if the SWC refuses to give the permission for registration. Hisni was a legally invisible person³⁷ and after the adoption of the Law on Amendments to the Law on Non-Contentious Procedure he finally managed to register his birth. In order to obtain an ID card, he needed to register his residence. Since he lived in an unofficial settlement, without proof of legal housing, in October 2016 he submitted a request for determination of residence at the address of local SWC. SWC refused to issue permission, without giving any reason for the refusal. The competent police department rejected his request solely because SWC refused to give permission

³⁵ CERD/C/SRB/2-5, paras. 100 and 102.

³⁶ Rulebook on the procedure of registration and de-registration of the permanent and temporary residence of citizens, registration of temporary stay abroad and return from abroad, suspension of permanent and temporary residence, forms and manner of record keeping, *Official Gazette of the RS*, No. 68/2013, and Instruction on procedure of the Ministry of Labour, Employment and Social Policy no. 110-00-271/2012-14 of 19 June 2013, Explanations of the Ministry of Interior about the way of handling citizens' requests for the registration of permanent residence at the address of the institution in which they are permanently placed or the social welfare centre in whose territory they live, of 20 July 2013.

³⁷ Legally invisible persons are persons who are not registered in birth registry books. For more information about their problems and about legal amendments adopted in order to facilitate late birth registration, please see Praxis, *Analysis of Practical Application of the Law on Non-Contentious Procedure – Determining the Date and Place of Birth*, Belgrade 2013, available at:

https://www.praxis.org.rs/images/praxis_downloads/Analysis_of_Practical_Application_of_the_Law_on_Non-Contentious_Procedure_-_Determining_the_Date_and_Place_of_Birth.pdf. See also paragraph 38 of this submission.

for Hisni's registration at the SWC's address. Hisni lodged an appeal to the Ministry of Interior, but his appeal was rejected – again, only because the SWC refused to give permission for registration on its address. Hisni has never been informed about the reasons for this refusal and he did not have opportunity to challenge them. He submitted a lawsuit to the Administrative Court in July 2017 and that procedure is still ongoing. A year after submitting the request for determination of residence, Hisni still does not have registered residence or an ID card, which prevents him from accessing many other rights guaranteed under the Convention.

34. Praxis' client Shahire faced the same obstacle. She is an internally displaced person, living at an unofficial settlement in Belgrade, without an ID card. In August 2017, she submitted a request for determination of residence, but her request was rejected. The decision of the competent police department of the Ministry of Interior states that it was determined through their field checks that Shahire lives in a barrack in the settlement where she wanted to register residence, with her common law husband and three kids. Nevertheless, her request was rejected only because the competent SWC refused to give Shahire a permission to register residence at its address. Again, no reasons for such refusal were given to the person who initiated the procedure. Just like Hisni, she can lodge an appeal to Mol, but that appeal would be ineffective because Shahire cannot challenge the reasons for refusal because she is not informed about these reasons. Furthermore, as demonstrated in Hisni's case, the second instance body is of the opinion that if the SWC refuses to give permission, the appeal can be refused on that basis only.

35. The procedure for determination of residence at the address of SWC is intended primarily for Roma, particularly the most vulnerable of Roma – those living in unofficial settlements or without legal proof for housing – with the aim to enable them equal access to the rights that other citizen enjoy. Their difficult position was the reason for introduction of that legal solution at first place, because lack of registered residence prevented them from obtaining an ID card and enjoying various other, basic human rights. If this procedure is not functioning, it affects almost exclusively Roma. SWC's arbitrary and unreasoned refusal to give permission for registration of residence leads to violation of a series of rights of Roma, guaranteed under the Convention, including right to vote (5 (c)), the right to leave any county, including one's own (5 (d) (ii)), the right to work (e (i)) and the right to medical care, social security and social services (e (iv)). What is important is the fact that such practice has a negative impact only upon one group – members of Roma ethnicity. The intention of the SWC or Mol is irrelevant, because the Convention is geared to protecting against discrimination, however motivated or caused, and it covers acts where results might unintentionally lead to discrimination. Furthermore, such practice could hardly be seen as justified since no justification for refusal of registration at the SWC's address is offered at all.

36. An additional problem in the procedures for determination of residence for persons without legal basis for housing is the length of the procedure. Even though these procedures should be completed within two months, in practice they last much longer. In one of Praxis' cases, a decision was issued as late as over one year after the request was submitted. It is of utmost importance to avoid such delays in procedures which are a precondition for enjoyment of numerous other, basic human rights.

Submitting organizations urge the Committee to recommend the government of Serbia:

X. to ensure consistent implementation of the Law on Permanent and Temporary Residence of Citizens and relevant bylaws and to take necessary measures to ensure that procedures of determination of residence for persons without legal basis for housing are conducted as a matter of urgency.

Article 5 (d) (iii)

The right to nationality and access to birth registration for Roma children

37. The Republic of Serbia's Second and Third Periodic Report to the Committee provided an overview of Serbia's performance in relation to the problem of legally invisible persons and the right to nationality (Article 5 (d) (iii) of the Convention), and the Committee's recommendation 19 under its previous review of Serbia.³⁸ The state report highlights the main improvements in this area and claims that timely activities have been undertaken to solve the status issues of Roma, Ashkali, Egyptians and returnees upon readmission agreement, as well as to inform them on the procedure for resolving citizenship status and issuing personal documents.³⁹

38. The submitting organisations recognise and appreciate all the efforts made by the state of Serbia, especially those related to the accession of the 1961 Statelessness Convention and the adoption of the Law on Amendments to the Law on Non-Contentious Procedure which makes it possible to determine the fact of birth for persons who had not been able to register for years. However, the State report does not contain information about remaining systemic gaps and unresolved issues in relation to Article 5 (d) (iii) of the Convention and access to documents for members of the Roma minority. Hence, this submission provides the Committee with further information to complement and fill out the gaps in the state party report.

39. Difficulties in accessing the right to nationality and risk of statelessness in Serbia are mostly related to lack of birth registration. The great majority of persons affected by problems with birth registration belong to the Roma community, which is one of the most vulnerable minorities in Serbia, exposed to discriminatory treatment in almost every area of life.⁴⁰ According to research conducted by the United Nations High Commissioner for Refugees (UNHCR) in 2015, 1% of the Roma living in "Roma settlements"

³⁸ CERD/C/SRB/CO/1.

³⁹ [CERD/C/SRB/2-5](#), paras. 56, 98-99, 101 and 103-104.

⁴⁰ European Commission, Serbia 2016 Report, Communication on EU Enlargement Policy, COM(2016)715, Brussels, 9.11.2016, available at:

https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf, p. 52.

(or around 700 people) are not registered in birth registry books.⁴¹ The same research also revealed that 8% of children under the age of four in “Roma” settlements are not registered in birth registry books.⁴²

40. Birth registration is a key prerequisite for accessing Serbian citizenship. The Law on Civil Registry Books and related bylaws regulate the procedure for birth registration, regardless of whether the child’s parents are known or unknown, whether the child is without parental care or adopted. However, the birth registration and personal name determination regime also contains barriers which make it impossible or particularly difficult for certain categories of person to access birth registration, thus undermining their right to acquire a nationality. Specifically, according to the bylaws,⁴³ in order to register the birth and the name of their child immediately upon birth, parents need to possess birth certificates and ID cards, or, if they are foreigners, passports. As a consequence, children of undocumented parents are left without birth registration for at least a few months.

41. In its most recent review of Serbia, the Committee on the Rights of the Child pointed out the following:

“The Committee notes as positive amendments to the Law on Non-Contentious Procedure that have corrected loopholes relevant for “legally invisible people” by establishing a court procedure for determining the date and place of birth of unregistered persons. It further welcomes the development of Guidelines for Implementing Administrative Procedures related to the birth of the child on the basis of all in one place in cooperation with the Ombudsman and UNHCR. The Committee is concerned that despite these amendments approximately 8,500 persons are not registered at birth, with the vast majority declaring themselves as Roma. The Committee is concerned that these people have limited access to basic rights such as health care, education and social protection.”⁴⁴

Indeed, despite these positive developments and the aforementioned guarantees of the right to birth registration, data on the number of legally invisible persons and unregistered children confirms that the right to timely birth registration consistently appears not to be fully implemented in Serbia.

42. In October 2016, the Serbian Ministry of Health and the Ministry of Public Administration and Local Self-Government introduced a project named ‘Baby, Welcome to the World’, whose purpose is to simplify birth registration. The simplified procedure is regulated by the ‘Instruction for implementing

⁴¹ UNHCR, Persons at Risk of Statelessness in Serbia, Progress Report 2010-2015, Belgrade, June 2016, available at: <http://www.refworld.org/docid/57bd436b4.html>, p. 19.

⁴² UNHCR, *Lica u opasnosti od apatridije – Ocena napretka 2010-2015*, Belgrade, June 2016, available at: http://www.unhcr.rs/media/docs/UNHCR_Brosura_Apatridi_SRPSKI.pdf, p. 21.

⁴³ 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 the Republic of Serbia*, 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 the Republic of Serbia*, nos. 109/2009, 4/2010, 10/2010, 25/2011, 5/2013 and 94/2013.

⁴⁴ Committee on the Rights of the Child, *Concluding observation on the combined second and third periodic reports of Serbia*, 3 February 2017, CRC/C/SRB/CO/2-3, available at: http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/SRB/CRC_C_SRB_CO_2-3_26579_E.pdf, para. 30.

administrative procedures related to the birth of the child on the basis of all in one place rule', which allows the registration also of children whose mothers⁴⁵ are undocumented. However, this Instruction is not a legally binding act. Ministry of Public Administration and Local Self-Government confirmed that this Instruction serves only as guidance for competent bodies and that competent bodies must act in accordance with the existing laws.⁴⁶ This leaves the Instruction without any practical effect for children of undocumented parents, since its relevant provisions are in contradiction to the existing and legally binding regulations. According to the existing, abovementioned bylaws, children whose parents are undocumented cannot be issued with a birth certificate upon birth with their names determined. They need to undergo one of the following procedures: determination of personal name, subsequent birth registration or determination of the date and place of birth.⁴⁷ Each of these procedures often lasts several months, while in particularly complicated cases they may last more than a year.

43. The requirement that the parents of the child have official documentation in order to register the birth of their child, leads to discrimination of Roma children. Undocumented persons in Serbia are mainly members of the Roma ethnic minority⁴⁸ and thus difficulties related to birth registration almost exclusively occur among Roma children. Children of Roma ethnicity are disadvantaged when compared with other children whose parents possess documents and who do not face problems in exercising the right to birth registration. The fact that timely birth registration is made conditional on the possession of documents of the parents constitutes indirect and institutional discrimination against the Roma. This is further indicated by data about birth registration rates: "the births of 99% of children under five years in Serbia have been registered. There are no significant variations in birth registration across different background characteristics apart from ethnicity where Roma have the lowest birth registration rate (94%)."⁴⁹ This confirms the fact that members of the Roma national minority are disproportionately affected by this problem.

44. Even though the regulation on birth registration, on the face of it, is neutral, its effects hinder access to rights to birth registration and citizenship for Roma children only and should be assessed in the light of the Committee's view that Convention covers acts where results might unintentionally lead to discrimination and that a "distinction is contrary to the Convention if it has either the purpose *or the*

⁴⁵ The fact that father does not possess documents does not represent an obstacle for the registration of child in birth registry book. If the mother is a Serbian citizen and possesses all necessary documents, it is sufficient for child's birth registration.

⁴⁶ Ministry Public Administration and Local Self-Government, Response to Praxis' freedom of information request, No. 07-00-676/2017-33, 26 September 2017.

⁴⁷ For more details on these procedures, see Praxis, *Preventing Childhood Statelessness – Remaining Problems in Serbia*, May 2015, available at: [https://www.praxis.org.rs/images/praxis_downloads/Preventing_Childhood_Statelessness - Remaining_Problems_in_Serbia.pdf](https://www.praxis.org.rs/images/praxis_downloads/Preventing_Childhood_Statelessness_-_Remaining_Problems_in_Serbia.pdf), p. 4.

⁴⁸ Members of the Roma national minority are most represented among persons without documents and those whose births have never been registered. Protector of Citizens of the Republic of Serbia, *Report on the position of „Legally Invisible“ Persons in the Republic of Serbia*, Belgrade, 2012, p. 11, available at: http://www.ombudsman.rs/attachments/2222_Izvestaj%20o%20polozaju%20%20pravno%20nevidljivih%20u%20RS.pdf.

⁴⁹ Statistical Office of the Republic of Serbia and UNICEF, *Serbia Multiple Cluster Survey and Serbia Roma Settlements Indicator Cluster Survey, 2014, Final Reports*, Belgrade, December 2014, available at: https://www.unicef.org/serbia/Serbia2014MICS_NationalandRomaSettlements_Eng_2015FINAL.pdf, xxiv.

effect of impairing particular rights and freedoms”⁵⁰ (emphasis added). The abovementioned data on birth registration rate of Roma and non-Roma children, together with conditions for birth registration which only children of undocumented (i.e. almost exclusively Roma) parents cannot fulfil, should be read in the light the Committee’s General Recommendation No. 14 which reaffirmed that “in seeking to determine whether an action has an effect contrary to the Convention, (the Committee) will look to see whether that action has a unjustifiable disparate impact upon a group distinguished by race, colour, descent or national or ethnic origin”.⁵¹

45. The Committee in General Recommendation XXVII on Discrimination against Roma recommended to States to adopt measures to ensure that legislation regarding citizenship and naturalization does not discriminate against members of Roma communities.⁵² The birth registration is a key prerequisite for accessing Serbian citizenship. Yet, the children of vulnerable and marginalized Roma in Serbia – particularly undocumented persons who themselves are stateless or at risk of statelessness – are still discriminated against and are less likely to have their births registered than the children of parents who belong to the majority population. The birth registration regime perpetuates discrimination against Roma in the enjoyment of the right to nationality and contravenes the Committee’s recommendation XXVII in relation to legislation regarding citizenship and leads to violation of Article 5 (d) (iii) of the Convention. This further prevents Roma children from enjoying other, particularly social rights and leads to violation of Article 5 (e) (iv). Without birth and citizenship certificate, Roma children cannot obtain health insurance and access to free primary health care in the most vulnerable period of life. They are not entitled to social security and material support, even in the cases of destitution of their families. In order to enable Romani children to enjoy the same rights as other children in Serbia, the first precondition is to ensure their access to birth registration and citizenship immediately upon birth.

The submitting organizations urge the Committee to recommend the government of Serbia:

XI. to carry out necessary measures, including legislative amendments, to ensure that all children born in Serbia have access to timely birth registration immediately after birth without discrimination and regardless of the legal or documentation status of their parents.

Article 5 (e) (iv)

Romani children in state care

46. The social protection system in the Republic of Serbia went through several systemic reforms, with a major focus on children. After adoption of the new Family Law in 2005,⁵³ the new Law on Social

⁵⁰ Committee on the Elimination of Racial Discrimination, General Recommendation 14, Definition of Racial Discrimination (Forty-second session, 1993), U.N. Doc. A/48/18 at 114 (1994), para. 2.

⁵¹ *Ibid*, para. 3.

⁵² Committee on the Elimination of Racial Discrimination, General Recommendation 27 on Discrimination against Roma, 16 August 2000, para. 4.

⁵³ *Official Gazette of RS*, no. 18/2005, 72/2011 - other and 6/2015

Protection⁵⁴ was adopted in 2011. Attention was paid to the transformation of institutions for children without parental care, the development of social services in local communities, improving foster care and adoption. Special emphasis was placed on the development of foster care.

47. The legal framework in the Republic of Serbia (such as the one which makes the set of relevant international documents, as well as national regulations) determines the type, method, procedure and other rules of care of children in the social welfare system that does not allow any discrimination against children on the basis of ethnicity. Despite this, the indicators of various studies show that the data of state bodies on the number of Roma children in institutional care, as well as the attitudes of a number of experts, is not in the accordance with the current legal framework. The prejudices against Roma are still prevalent, and they are perceived as disinterested, not fully dedicated parents, with no capacity to see their failures in parenting.

48. In the last 15 years the number of children placed in foster families, as well as the number of foster families, has been significantly increased. The main impetus for encouraging the development of foster care was the process of deinstitutionalization of institutions for children without parental care and their diversion to foster families, as more suitable environment for the proper development of the child. This process has given proper results, but is still very slow. From around 1800 children in about 1,200 families during 2003, the number increased to about 5,500 children in about 4300 foster families in 2013. In 2016, 5316 children were located in 4497 families.

49. However, institutions have not been fully reformed, while a large number of children in care are Roma. Where desegregated data is available, we can see that the percentage of Roma children reaches 30% - 50% of the total number of children in care. For example, the Center for Foster Care and Adoption Belgrade in September 2016 had 1,020 children in care, of whom 306 were Roma. For some municipalities within the jurisdiction of this center, such as the municipality of Šabac and city municipality of Palilula in Belgrade, that percentage was about 50%. In the facilities of the Centre for Protection of Infants, Children and Youth "Zvečanska" in Belgrade, in late October 2016, 321 children were placed, of which 91 are Roma⁵⁵. There is a similar situation in municipalities covered by the Center for foster care and adoption in Čuprija. Other centers for foster care and adoption do not maintain desegregated data.

50. Among professionals in the social welfare system there is a prevailing view that poverty itself is not a sufficient reason for the relocation of Romani children from their biological families, but in conjunction with other elements it leads to the decision on the allocation, with special emphasis on the lack of parental competence. There is also another extreme view on the situation. It shows that professionals from the social protection system are highly tolerant on poverty of Roma families. They measure poverty within Roma families to a lesser extent when deciding whether the child should be relocated, because this would mean more frequent relocation of Roma children, for whom there would be not enough

⁵⁴ *Official Gazette of RS*, nos. 24/2011

⁵⁵ According to responses to Praxis' Freedom of information requests from 2016.

foster families, and the institutional accommodation would be the only remaining choice. At the same time, the motivation of foster parents to take children of Roma origin has been increased, with a consequent reduction of the number of Roma children in institutions. Contact between Roma families and their children in care is very rare and limited. The systematic support for strengthening biological families for the return of children is completely undeveloped, and advisory-therapeutic and socio-educational services are at a very low level, which results in a very small number of Roma children being returned to their biological families.

The submitting organizations urge the Committee to recommend the government of Serbia:

XII. to establish a systemic approach to keeping records of national and ethnic origin in all social protection institutions in the Republic of Serbia, in accordance with national and international standards;

XIII. to provide the additional education of professionals in the social protection system in order to eliminate the still-existing prejudices and discriminatory treatment against the Roma population. In parallel, it is necessary to enhance comprehensive work with parents of Roma children in care and improve the existing social protection services, in order to empower them for return of their children;

XIV. to ensure full cooperation between the social protection institutions (primarily Social Welfare Centers) and the Roma community (primarily the residents of informal settlements). Special attention should be paid to the improvement of cooperation between the social protection institutions and the representatives of the Roma community at the local level (Roma coordinators, health mediators, pedagogical assistants and civil society organisations).

Article 5 (d) (iv)

Child, early and forced marriages

49. In Serbia, child, early and forced marriages (CEFM) represent a problem that almost exclusively affects the Roma community, and so far it has been insufficiently and inadequately addressed by the competent government institutions, often under the pretext that they are a part of Roma tradition, even though both the national legislation and ratified international treaties⁵⁶ impose a clear and unambiguous boundary to the occurrence of the CEFM and provide a solid base for their prevention and elimination.

⁵⁶ 1990 UN Convention of the Rights of the Child, including the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 2000, and the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)*, 2011; *International Covenant on Civil and Political Rights*, 1966, Article 23, paragraph 3; *International Covenant on Economic, Social and Cultural Rights*, 1966, Article 10, paragraph 1; *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, 1962, Article 1, paragraph 1; *Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)*, 1979, Articles 3 and 16.

50. One of the basic principles of the *Constitution of the Republic of Serbia* is gender equality (*Article 15*) and a policy of equal opportunities. The Constitution is also clear about the right to marry (*Article 62*), because it guarantees that everyone has the right to decide freely on entering or dissolving a marriage, and that marriage is based on the *free* consent of man and woman before the state body. Extramarital community shall be equal with marriage, in accordance with the law. The 2006 Constitution introduced Article 64, which guarantees that children shall enjoy human rights suitable to their age and mental maturity and, in particular, that children shall be protected from psychological, physical, economic and any other forms of exploitation or abuse. 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 child, early and forced marriage. 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 years⁵⁷, 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.

51. The Committee on the Rights of the Child recommends that a national legislative instrument should be enacted that would provide a statutory definition of the term child in line with Article 1 of the Convention. The Committee further recommends that the State party amend its Family Law to remove all exceptions that allow marriage under the age of 18 years. Further on, the Committee recommends that the State party establish a system to track all cases involving child marriages among ethnic groups, particularly Roma girls, and provide child victims with shelter as well as appropriate rehabilitation and counselling services, and develop awareness raising campaigns highlighting the harmful consequences of child marriage.

52. Since 2015, Praxis has been implementing the activities aimed at prevention and elimination of child marriages. The experience shows that the problem of the CEFM has not been seriously dealt with because it has been perceived as a part of the Roma tradition and culture, and not as the serious violation of the rights of a child.⁵⁸ Moreover, discriminatory behavior is still present among the

⁵⁷ 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.

⁵⁸ For more information, please see Praxis, *Child, Early and Forced Marriages are Not a Private Family Matter*, Belgrade, December 2016, available at:

https://www.praxis.org.rs/images/praxis_downloads/Child_Early_and_Forced_Marriages_are_Not_a_Private_Family_Matter.pdf.

representatives of the relevant institutions (schools, SWCs, etc.) and needs serious and continuous intervention in terms of sensitization trainings.

53. In its General Recommendation No. 25 on gender related dimensions of racial discrimination, the CERD noted that racial discrimination does not always affect women and men equally or in the same way and that racial discrimination may have consequences which primarily or exclusively affect women.⁵⁹ In spite of the abovementioned flows, Serbian legislation offers a solid framework for prevention of the CEFM. However, as a result of prejudices and stereotypes, the CEFM within Roma community are often perceived as part of Romani tradition and left without a proper response. The lack of effective measures aimed at prevention of the CEFM has particularly harmful effects on Romani girls. Tolerating practice of the CEFM leads to multiple discrimination against Romani girls and have detrimental effects on their access to many other basic human rights, such as the rights to education, health and work.

The submitting organizations urge the Committee to recommend the government of Serbia:

XV. to provide a statutory definition of the term 'child' in line with the Article 1 of the Convention on the Rights of the Child;

XVI. to amend the Family Law so as to remove all exceptions that allow marriage under the age of 18 years;

XVII. to ensure systematic data collection and data recording system on CEFM in relevant government institutions;

XVIII. to organize educational trainings for the employees in the competent institutions (social welfare center, police, prosecution, school, health institutions) in order to sensitize them so as they would timely identify, mutually cooperate and respond adequately to the CEFM problem 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 the CEFM and implement them consistently;

⁵⁹ CERD, General Recommendation No. 25: Gender related dimensions of racial discrimination (2000), paras. 1 and 2.