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Memorandum
The Protection
of Roma Rights in Serbia and Montenegro

Prepared by the *European Roma Rights Center (ERRC)* in association with
the UN Office of the High Commissioner for Human Rights, Human Rights Field Operation in
Serbia and Montenegro (UN OHCHR)



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with special emphasis on:

- Current deficiencies in domestic anti-discrimination law
- Physical abuse of Roma by police officers and other members of the public authority
- Violence by racist "skinheads" and other non-state actors
- Discrimination and segregation in the field of education
- Forced eviction and threats of forced eviction/other violations of the right to adequate housing

as well as appendices on:

- Discrimination in access to health care services
- Discrimination in access to employment
- Discrimination in the allocation of state social assistance
- Discrimination in access to public accommodation
- Threats to the exercise of fundamental rights caused by a lack of personal documents/statelessness among Roma in Serbia and Montenegro
- Issues particular to the large-scale forced return of Roma from Germany and other Western European Countries

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In the context of the process of creating the Strategy for Integration and Empowerment of Roma under the auspices of the Federal Ministry of National and Ethnic Communities, and the Poverty Reduction Strategy in Serbia and Montenegro, the *European Roma Rights Center (ERRC)* and the Human Rights Field Operation in Serbia and Montenegro of the United Nations High Commissioner for Human Rights (UNHCHR) would like to submit this memorandum with respect to the human rights situation of Roma in Serbia and Montenegro,¹ together with a discussion of international and domestic legal standards relevant to the most pressing areas of concern.

Expertise and Activities of *ERRC* and UNHCHR

The *European Roma Rights Center (ERRC)* is an international public interest law organisation which monitors the situation of Roma in Europe and provides legal defence in cases of human rights abuse. Since its establishment in 1996, the *ERRC* has undertaken first-hand field research in more than a dozen countries, including Serbia and Montenegro, and has disseminated numerous publications, from book-length studies to advocacy letters and public statements. *ERRC* publications about Serbia and Montenegro and other countries, as well as additional information about the organisation, are available on the Internet at <http://www.errc.org>.

The *Office of the High Commissioner for Human Rights* has prime responsibility within the UN system for the overall monitoring, promotion and protection of all human rights. OHCHR is mandated to take a leading role in regard to human rights issues and to stimulate and co-ordinate human rights activities and programmes. The *Human Rights Field Operation*, established in 1996, promotes co-operation between the Government of Serbia and Montenegro and the High Commissioner for Human Rights pursuant to General Assembly resolution 48/141 of 20 December 1993. Since the establishment of the mission the office monitors and reports to the United Nations institutions on the human rights situation in the country, provides the Government with general human rights policy advice on areas of concern, rule of law analysis and assistance in developing its national capacity to protect human rights.

This memorandum was prepared by employees, consultants, interns and volunteers of/to the *European Roma Rights Center*. Petar Antić, Marija Demić, Djordje Jovanović, Vladislava Jovanović, Perica Pešić and Svetozar Vasić conducted field research. Lydia Gall, Mirej Grčki and Branimir Pleše conducted legal research. *ERRC* field research in October and November 2002 was conducted with the support of the Belgrade and Podgorica offices of UNHCHR. Rachel O'Neill engaged in further library and internet research. Mayra Gomez of the Geneva-based non-governmental organisation *Centre on Housing Rights and Evictions (COHRE)*, a partner organisation to the *ERRC*, provided substantive comment on sections of the memorandum. Tatjana Perić co-ordinated research and prepared a draft of the memorandum. Claude Cahn conducted additional research, edited and finalised the document.

¹ As Kosovo is presently under international administration, this document will not address the situation of Roma in Kosovo and will focus only on the areas under the active jurisdiction of the governments of Serbia and Montenegro.

Preface: Romani Past, Romani Present, Human Rights
Claude Cahn²

As a human rights assessment, the document which follows aims to be a general record of the present -- an historical expression of the now in the lives of individuals. It sets down some principal areas of concern related to persons belonging to one stigmatised ethnic group that has been systemically excluded. Its only wider ambition is to throw light on some possible areas of policy and law development which might serve to begin to ameliorate the situation of Roma and bring dignity to people that have been marginalized and discriminated against.

However, there is no way entirely to be rid of the awareness that this is also partially a document recording an aftermath: the situation of Roma in the very much reduced Serbia and Montenegro after over a decade of civil wars fought in the countries of the former Yugoslavia on ethnic grounds -- wars in which Roma played a role as actors: victims and perpetrators; objectors, activists, soldiers, opportunists, hermits and agnostics; purists and equivocators.

When Bosnian Serbian forces overran eastern Bosnia in April 1992, as the former Yugoslavia came to pieces, Roma were targeted for attacks. One Romani man in a refugee camp in Debrecen, Hungary told the ERRC in 1996: "The whole Romani community of Zvornik was slaughtered. Our houses were destroyed ... It was a bear hunt at that time. There were many people who enjoyed the atmosphere." Executions of Roma are also reported to have taken place in Skočić and other villages near Zvornik. The entire Romani community of Bijeljina spent the 1990s in Berlin, unable to return due to ethnic hatred. This autumn, the UN war crimes tribunal in the Hague has heard extensive testimony from persons, such as the Yugoslav army's Slobodan Lazarević, to the effect that what was presumed by nearly all observers at the time was in fact true: that the war and killings were part of a systematic and criminal undertaking that caused gross violations of human rights and crimes against humanity, and that appears to inculpate persons in Serbia.

In 1999, a large number of Roma were ethnically cleansed from Kosovo together with Serbs and other ethnic minorities by ethnic Albanians following the end of the NATO bombing and the withdrawal of Yugoslav forces from the province. In Kosovo, say many today, Roma had, before 1999, achieved the farthest advances of Roma anywhere: There was Romani radio, there were Roma in the public administration and an apparently integrated class of Romani intellectuals. As the conflict between Serbs and Albanians heated up, Roma were, as one Romani activist from Kosovo has put it, "caught between two fires" -- Albanian separatists on the one hand and Serbian nationalists/the regime on the other.

A sizable part of the Kosovo Romani population today lives in Serbia and Montenegro, frequently in appalling conditions, unable to return to Kosovo and denied even rudimentary compensation for their suffering.³ These refugees have joined a Romani population in Serbia and Montenegro with a history in Serbia in many cases many hundreds of years long.

Further, in recent months, a number of Western European governments have -- in the contexts of (i) a migrant-hostile public mood in Western Europe and (ii) a lack of administrative clarity surrounding the status of Kosovo -- begun imposing pressure on Roma from Kosovo to "return"

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³ Prior to the June 1999 ethnic cleansing of Roma from Kosovo by ethnic Albanians, the Romani population of Kosovo is estimated to have been 100,000-150,000. UNHCR records indicate that in 2000 there were 19,551 displaced Kosovo Roma in Serbia and in 2002 there were 6492 displaced Roma in Montenegro. These figures are likely to underestimate the true number of displaced Roma in Serbia and Montenegro, who in many cases may not be officially registered. Estimates by some non-governmental organisations and other agencies have put the figure at circa 80,000 persons.

to Serbia and Montenegro. Under such pressure, many Roma from Kosovo who had previously fled to Western European countries have recently "returned" to localities in Serbia and Montenegro where, in many cases, they have never lived before, and where there is frequently no political will or adequate material means for their integration. Many such persons currently live in a state of exclusion from the provision of basic services required for the realisation of fundamental economic and social rights, and the governments of Serbia and Montenegro have to date undertaken no effective policy measures nor capacity to address the particular issues facing this extremely vulnerable group.

Estimates of the Romani population of Serbia and Montenegro vary between 100,000 to around 450,000 depending on sources.⁴ Long resident or recently arrived, Roma in Serbia and Montenegro often live in settlements fully outside the loop of local infrastructure, places where local authorities have never provided basics such as electricity and waste removal. They are frequently banned entry to public places, denied services crucial for the realisation of basic social and economic rights, and are often subjected to physical abuse by members of the police force and other state authorities. A burgeoning racist skinhead movement has repeatedly subjected Roma to attack, on at least one occasion resulting in the death of the victim.

Now and in the coming years, the human rights situation of Roma needs to be addressed by authorities in Serbia and Montenegro. A coherent legal framework must be adopted to ensure that individuals have access to remedy when their fundamental rights are violated. Comprehensive anti-discrimination law should be at the core of that legal framework. The Strategy for Integration and Empowerment of Roma, once adopted by the Governments and the Roma National Council, should be implemented in the coming years through a proper allocation of funds and resources and with clear political support. The Poverty Reduction Strategy Plan should recognise the Roma as one of the most disenfranchised groups of society and include policies that will address their specific problems. In addition, it is essential that the recently adopted Charter of Human and Minority Rights and Civic Freedoms, part of the Constitution, be implemented and enforced in a manner that provides for the proper standards of protection of vulnerable groups. Finally, the past must also be confronted, and justice provided for all victims of the recent dictatorship and the race wars it prosecuted. Peace and a just public order depend on it.

⁴ According to the Republic Statistical Office of the Republic of Serbia, "Statement number 295", December 24, 2002, on the basis of the 2002 census, there are 108,193 Roma in Serbia (1.44% of the total population of 7,498,001), where 79,136 Roma live in Central Serbia, and 29,057 live in Vojvodina. The 1991 Yugoslav census indicated a figure of 143,519, including Kosovo. Official figures are believed dramatically to under-represent the true number of Roma in Serbia and Montenegro: estimates by non-governmental organisations have placed the number of Roma in Serbia and Montenegro as high as 400,000-450,000 or more, again including Kosovo.

I. INTRODUCTION: ROMA RIGHTS AND INTERNATIONAL ANTI-DISCRIMINATION PRINCIPLES

The ban on discrimination is anchored in both international Covenants,⁵ as well as in a number of other international legal instruments to which Serbia and Montenegro is a party.⁶ The Federal Republic of Yugoslavia (FRY) joined the ICCPR and the ICESCR by succession on March 12, 2001, but before that date was bound by a range of obligations -- including those flowing from the two Covenants and a number of international Conventions -- stemming from previous commitments undertaken by the former Socialist Federal Republic of Yugoslavia (SFRY).⁷ European legal norms banning discrimination are currently in a period of dramatic expansion,

⁵ See International Covenant on Civil and Political Rights (ICCPR) at Articles 2, 14 and 26 and International Covenant on Economic, Social and Cultural Rights (ICESCR) at Article 2(2).

⁶ Most notably the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which the Federal Republic of Yugoslavia joined by succession on March 12, 2001.

⁷ The SFRY ceased to exist on April 27, 1992, when a new Constitution of the Federal Republic of Yugoslavia was adopted. Throughout the 1990s and until the fall of the Milošević regime, the Yugoslav government argued that FRY was the only legitimate successor state to SFRY. The April 1992 Constitution states that FRY has "unbroken continuity" from SFRY. The Yugoslav permanent mission to the U.N. sent a note to the U.N. Secretary General affirming that FRY would abide by all international commitments of the former SFRY. Although Yugoslavia was suspended from full, active membership in the U.N. until November 1, 2000, U.N. treaties-based bodies continued to interact with the government, in addition to explicitly reaffirming that the Federal Republic was bound by international human rights law commitments undertaken by the SFRY (see for example U.N. Human Rights Committee "Special Decisions by the Human Rights Committee concerning Reports of Particular States: Bosnia and Herzegovina, Croatia, Yugoslavia. 07/10/93.A/48/40, Annex VII. (Decision)" and U.N. Committee on the Elimination of Racial Discrimination, "Decision 1 (42) on certain States of the former Yugoslavia: Yugoslavia, Bosnia and Herzegovina, Croatia. 19/03/93.A/48/18, pg.113. (Decision)"). The Federal Republic of Yugoslavia and representatives of the government responded to requests for information from U.N. treaties-based bodies during the period. On February 3, 2003, ruling in an "Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections (Yugoslavia v. Bosnia and Herzegovina)", the International Court of Justice partially clarified issues relating to the international law obligations of the Federal Republic of Yugoslavia with respect to its succession from the SFRY and the period during which FRY was under suspension from the U.N., holding that: "[...] the difficulties which arose regarding the FRY's status between the adoption of that resolution and its admission to the United Nations on 1 November 2000 resulted from the fact that, although the FRY's claim to continue the international legal personality of the Former Yugoslavia was not 'generally accepted' [...], the precise consequences of this situation were determined on a case-by-case basis (for example, non-participation in the work of the General Assembly and ECOSOC and in the meetings of States parties to the International Covenant on Civil and Political Rights, etc.) [...] but that this [...] did not inter alia affect the FRY's right to appear before the Court or to be a party to a dispute before the Court under the conditions laid down by the Statute. Nor did it affect the position of the FRY in relation to the Genocide Convention". The Court further held that resolution 55/12 of November 1, 2000 (by which the General Assembly decided to admit the Federal Republic of Yugoslavia to membership in the United Nations) "[...] cannot have changed retroactively the sui generis position which the FRY found itself in vis-à-vis the United Nations over the period 1992 to 2000, or its position in relation to the Statute of the Court and the Genocide Convention." Future rulings may further clarify the status of the Federal Republic of Yugoslavia and its international law obligations with respect to its succession from the SFRY and the period during which FRY was under suspension from the U.N. The Federal Republic of Yugoslavia ceased to exist on February 5, 2003, when the Federal Parliament adopted the Constitutional Charter of the new state of "Serbia and Montenegro". Article 63 of the Constitutional Charter of the State Union of Serbia and Montenegro states: "Once the Constitutional Charter comes into force, all the rights and obligations of the Federal Republic of Yugoslavia shall be transferred to Serbia and Montenegro in accordance with the Constitutional Charter" (official translation, available at: http://www.mfa.gov.yu/Facts/law_implement_c1.html).

due to consensus that the dignity of an individual in a democratic society depends to a great extent on her having access to legal tools with which she may seek and secure redress in instances in which her dignity has been harmed through arbitrary treatment. The very serious harm of racial discrimination has been a particular focus of recent efforts by European lawmakers, due at least in part to the dramatic return of virulent racism to Europe following the end of Communism.

In June 2000, the Council of the European Union (EU) adopted Directive 2000/43/EC "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin".⁸ Less than six months following the adoption of the EU Directive, on November 4, 2000, the Council of Europe opened Protocol No. 12 to the European Convention on Human Rights (ECHR) for signature. Protocol No. 12 broadens significantly the scope of the Convention's anti-discrimination protection by providing for a comprehensive ban on discrimination on a number of grounds in the exercise of any right set forth by law. These new instruments supplement and expand the existing Article 14 ban on discrimination in the European Convention of Human Rights, and other European anti-discrimination provisions, including those included by the Council of Europe's Framework Convention for the Protection of National Minorities.⁹

As of February 20, 2003, Serbia and Montenegro was not yet a member of the Council of Europe. It has however had a standing application before the Council of Europe since November 7, 2000, and has therefore evinced its intention to be bound by Council of Europe standards, including the European Convention on Human Rights and the Revised European Social Charter. It has further enjoyed "special guest status" in the Council of Europe since January 22, 2001. Of particular note is the fact that the then-Federal Republic of Yugoslavia was invited to join the Council of Europe's Framework Convention for the Protection of National Minorities prior to admission to the Council of Europe and did in fact ratify the Convention on September 1, 2001.

On September 24, 2002, the Parliamentary Assembly of the Council of Europe (PACE) reviewed the then-Federal Republic of Yugoslavia's application for membership and conditionally recommended that it be invited to join. The text of PACE's recommendation states, *inter alia*: "[...] In the post-accession monitoring procedure, special attention should be paid to combating discrimination against, and promoting equal treatment of, Roma."¹⁰

⁸ By mid-2003, all EU Member States must harmonise their legislation with the norms set forth in the Directive. In addition, as part of the *acquis communautaire*, the Directive must also be integrated into internal law by all EU candidate states. Serbia and Montenegro is neither an EU Member State, nor is it currently a candidate for EU membership. However, the EU Directive is currently the European standard in laws banning racial discrimination. As such, it provides relevant benchmarks for assessing the adequacy of Serbian and Montenegrin legal provisions banning racial discrimination.

⁹ The Framework Convention on the Protection of National Minorities states:

- At Article 3(1): "Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice."
- At Article 4(1): "The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited."
- At Article 6(2): "The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity."

¹⁰ Parliamentary Assembly of the Council of Europe, "Federal Republic of Yugoslavia's application for membership of the Council of Europe", Opinion No. 239 (2002), Text adopted by the Assembly 24 September 2002 (26th Sitting).

The year 2002 brought several important developments with respect to the situation of Roma in Serbia and Montenegro. In February 2002, the Romani community in Serbia and Montenegro secured the status of national minority with the adoption of the former federal Law on the Protection of the Rights and Liberties of National Minorities. This law also envisages the formation of a Roma National Council.¹¹ Furthermore, towards the end of the year 2002, a team of international and domestic experts, established by the Federal Ministry of National and Ethnic Communities with the support of a number of intergovernmental organisations operating in Serbia and Montenegro, created a draft of the Strategy for Integration and Empowerment of Roma in Serbia and Montenegro. This document will be publicly launched in March 2003, with the aim of a wider public debate that would assist in finalising the strategy, and should then be adopted by the Government and the Roma National Council. However, despite these undoubtedly commendable efforts, an analysis of the situation of Roma rights in Serbia and Montenegro in practice gives cause for serious concern.

The memorandum presented below is organised as follows:

- First, a detailed series of recommendations to the government of Serbia and Montenegro are elaborated;
- A summary of some of the most significant features of an effective anti-discrimination law follows, with a presentation of domestic anti-discrimination law in Serbia and Montenegro as it presently exists, and deficiencies therein;
- Next, the memorandum details human rights issues facing Roma in a number of sectoral fields in Serbia and Montenegro, with a special focus on physical abuse of Roma by police officers and other members of the public authority, violence by racist "skinheads" and other non-state actors, discrimination and segregation in the field of education, forced eviction and threats of forced eviction, and other violations of the right to adequate housing;
- The document also includes appendices detailing concerns in the areas of discrimination in access to health care services, discrimination in access to employment, discrimination in the allocation of state social assistance, discrimination in access to public accommodation and threats to the exercise of fundamental rights caused by a lack of personal documents/statelessness among Roma in Serbia and Montenegro.

Redressing the many lacunae in the current anti-discrimination law framework should be a top priority of the Serbian and Montenegrin governments, as should designing and implementing human rights-based policies aimed at remedying the currently deeply distressing situation of Roma in Serbia and Montenegro.

II. RECOMMENDATIONS TO THE GOVERNMENTS IN SERBIA AND MONTENEGRO

Serious violations of the human rights of Roma occur regularly in Serbia and Montenegro. In some sectoral fields, these violations are systemic. Roma face discrimination in almost all walks of life, and enjoy little legal protection in practice. The *European Roma Rights Center* (ERRC) and the Human Rights Field Operation in Serbia and Montenegro of the United Nations High Commissioner for Human Rights (UNHCHR) invite the governments of Serbia and Montenegro to consider the adoption of the following measures and policies:

1. Adopt a comprehensive anti-discrimination law in conformity with current European and international standards; establish an effective enforcement body and guarantee its administrative independence; provide resources adequate to enable its effectiveness.

¹¹ As of February 20, 2003, the Roma National Council had not yet been formed.

2. Adopt a Law on the Court of Serbia and Montenegro, *inter alia* providing expressly for the Court's competence to rule as the final domestic instance in cases of discrimination.
3. Adopt a new and comprehensive internal affairs/police powers act, in line with the relevant international legal standards. Amend criminal legislation such as to define torture as a specific crime in line with Articles 1, 2 and 4 of the United Nations Convention against Torture, and in doing so take into account the recommendations contained in the Concluding Observations issued by the Committee against Torture with respect to the Federal Republic of Yugoslavia on 16 November 1998 and subsequent reports of that Committee.
4. Carry out thorough and timely investigations into all alleged instances of police abuse of Roma, including violence, unlawful searches and seizure of property, malicious investigation of violence against Roma, harassment and failure to investigate racially motivated crimes and/or protect potential victims of violent attacks and take appropriate disciplinary or other proceedings against the perpetrators. Take all necessary practical and/or legal reform measures required to ensure that victims of police brutality have access to effective remedies and obtain adequate compensation.
5. Promptly bring those responsible for racially motivated crimes, including racially-based "hate speech", and other instances of violent human rights abuse against Roma to justice, and ensure that, when racial animosity motivates or otherwise influences a crime, it receives due judicial recognition and effective sanctions.
6. Design and implement comprehensive school desegregation programmes. Without delay, end the segregation of Romani children in separate, sub-standard classes or into classes for mentally disabled pupils, so that all Romani children can fully enjoy the right to education; integrate all Romani students into mainstream classes and, where necessary, design and implement adequately funded and staffed programmes aimed at easing the transition from segregated to integrated schooling. Design pre-school programmes for Romani children to learn the primary language of schooling and to attain a level ensuring an equal start in the first class of primary school.
7. In cases of reported abuses in the school system, such as exclusionary practices, physical and verbal assault, humiliating treatment, and failure by teachers and school administrators to protect Romani children from peer abuse, punish the parties responsible and implement measures aimed at preventing further abuse.
8. Develop curriculum resources for teaching Romani language, culture and history in schools, and make them available to all schools, so that all children in Serbia and Montenegro can learn of the contributions Roma have made to their society.
9. Support Romani students in obtaining scholarships, books and travel expenses to attend integrated schools.
10. Develop and implement "catch-up" adult education programmes aimed at remedying the past legacies of substandard education and non-schooling of Roma.
11. Review all domestic legislation with regard to forced evictions, and ensure its compatibility with the relevant international standards.
12. Use all appropriate means to protect and promote the right to housing and guarantee protection against forced evictions. Ensure that evictions do not result in individuals being rendered homeless or vulnerable to other human rights abuses. In particular:

- Guarantee security of tenure to Romani occupants of houses and land, ensuring, *inter alia*, a general protection from unlawful or arbitrary forced evictions.
 - Guarantee due process in line with international standards related to forced evictions.
 - Guarantee non-discrimination against Roma in processes related to forced evictions.
 - Guarantee adequate pecuniary and non-pecuniary civil compensation as well as comprehensive criminal and administrative redress in cases of illegal forced evictions.
 - Make available adequate alternative housing, resettlement or access to productive land where those affected by evictions are unable to provide for themselves.
 - Encourage Municipal authorities and private corporate interest to sign a "Good Practice Charter" to mitigate the effects of Roma evictions, as the suggested "Codes of Conduct on Forced Eviction" (see Annex II) and "Eviction Impact Statements" (see Annex III).
13. Adopt policy measures ensuring that Roma are able effectively to realise rights to employment, health care, and access to social welfare payments and to public goods and services. Where appropriate, ensure affirmative action projects for vulnerable and marginalized Roma families, particularly those displaced from Kosovo.
 14. Undertake effective measures to ensure that local authorities register all persons residing *de facto* in a given municipality, without regard to race.
 15. Take measures to address problems of statelessness, registration and a lack of personal documents among Roma, with a view *inter alia* to improving the access of Roma to public services necessary for realising fundamental rights. Particular attention should be given to Roma from Kosovo.
 16. Ensure that adequate legal assistance is available to victims of discrimination and human rights abuse by providing free legal services to indigents and members of weak groups, including Roma. Promote the capacity of Roma for their own legal advocacy and representation.
 17. Proactively recruit Roma for professional positions in administration, the police force, and the judiciary in order to counter patterns of under-representation and to take steps to remedy the exclusion of Roma from decision-making. This will require affirmative action measures, including adequate budgetary allocations.
 18. Conduct systematic monitoring of access of Roma and other minorities to justice, education, housing, employment, health care and social services, and establish a mechanism for collecting and publishing dis-aggregated data in these fields, in a form readily comprehensible to members of the wider public.
 19. Conduct public information campaigns on human rights and remedies available to victims of human rights abuse, including such public information campaigns in the Romani language.
 20. Conduct comprehensive human rights and anti-racism training for national and local administrators, members of the police force, and the judiciary.
 21. At the highest levels, speak out against racial discrimination against Roma and others, and make clear that racism will not be tolerated.
 22. Undertake a public awareness campaign with civil society that focuses on the non-discrimination of Roma and tolerance.
 23. Integrate Roma into the Poverty Reduction Strategy, taking into account the needs of Romani displaced persons, notably those displaced from Kosovo.

24. Ensure the implementation of the Roma National Strategy at all levels of governments in Serbia and Montenegro, including line ministries and municipal authorities. Promote and support the effective operation of national Roma Council constituted under the Federal Law on the Protection of Rights and Freedoms of Minorities.

In particular, in the context of large-scale expulsions of Roma from Western European countries:

1. Ensure that implementation of all readmission agreements negotiated is done in a transparent way that guarantees human dignity of returnees, adequate reception arrangements for vulnerable groups or individuals, and is otherwise in full compliance with international law.
2. Refuse all expulsions of Roma and others to Serbia and Montenegro that are not carried out in full accordance with international law, including the principle of "non-refoulement".
3. In view of the present climate of insecurity and lack of adequate human rights protection in Kosovo, ensure that no Roma ex-Kosovo is forcibly returned to Kosovo or returned to a situation of internal displacement elsewhere in Serbia and Montenegro.
4. In co-operation with diplomatic offices of States with whom the authorities have readmission agreements, ensure that Roma expelled to Serbia and Montenegro obtain access to any and all personal documents, finances and material goods that may have been left inaccessible in the country of removal, due to the circumstances of forced return.
5. Inform the relevant ministries in charge of education, housing, employment, social care and health care, as well as local and municipal authorities, about the readmission process; instruct relevant authorities to provide targeted plans to ensure that Roma are able to exercise fundamental rights in these sectoral fields.
6. Without delay, and in close co-operation with Romani non-governmental organisations, adopt a comprehensive policy to address all aspects of the human rights situation of Roma expelled to Serbia and Montenegro; provide levels of funding adequate to ensure full implementation of the strategy and adequate reception and integration processes.
7. Adopt contingency plans to react quickly to any outbreaks of racially motivated violence occurring in the context of expulsions and returns of Roma to Serbia and Montenegro.
8. Facilitate the speedy provision of school enrolment certificates to Romani children educated in other countries such that they may continue their education in Serbia and Montenegro; stop the practice of returning Romani children to attend classes they had already successfully completed in countries abroad; provide supplementary classes for Romani children to learn the Serbian language, in order to assist in their integration into the educational system of Serbia and Montenegro; ensure that no racial segregation arises in schooling provisions of returnee children.

III. THE PATH TO AN ANTI-DISCRIMINATION LAW: INTERNATIONAL STANDARDS, CURRENT YUGOSLAV PROVISIONS AND RECOMMENDATIONS

International Standards

The provision of adequate laws banning racial discrimination is a *sine qua non* for addressing Roma rights issues, as are proactive policies addressing the current burdens deriving from racial discrimination faced by Roma in many areas of life. As a result in particular of the adoption of the EU Directive, but also of a range of other international legal requirements, the contours of an adequate anti-discrimination law according to European standards are now relatively clear:¹²

First, the Directive and other instruments stipulate the kinds of discrimination to be prohibited:

- The proscribed grounds for discrimination should include the full range of animating factors frequently resulting in unequal treatment, including sex, race, colour, descent, national, ethnic and social origin, language, religion or belief, disability, age, sexual orientation, political affiliation or conviction or property, birth or other status.¹³ In order to meet the requirements of the EU Directive, domestic legislation should, at a minimum, prohibit "discrimination based on racial or ethnic origin" (EU Directive Art. 2(1)).
- Anti-discrimination legislation should expressly include both "direct" and "indirect" discrimination within the scope of prohibited action (EU Directive Art. 2). For the purposes of the EU Directive, "direct discrimination" is defined as having occurred "where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin" (EU Directive Art. 2(2)(a)); "indirect discrimination" occurs "where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary" (EU Directive Art. 2(2)(b)).
- Prohibited discriminatory acts should also include victimisation and harassment (EU Directive Arts. 9 and 2(3)). By including victimisation in its ambit, the law ensures protection of individuals from any adverse treatment or consequence simply because s/he made a complaint or initiated proceedings aimed at enforcing compliance with the principle of equal treatment. Harassment, meanwhile, is defined in the Directive as "unwanted conduct related to racial or ethnic origin" with "the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment."
- The term "discrimination" should also be defined to include "instruction" or "incitement" to discriminate against persons based on the proscribed grounds (EU Directive Art. 2(4)/ICERD Art. 4(a) and (c)).

¹² The summary that follows makes primary reference to the EU Directive, but also including elements drawn from the European Convention on Human Rights (ECHR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and United Nations Model National Legislation for the Guidance of Governments in the Enactment of Further Legislation Against Racial Discrimination (UN Model Legislation).

¹³ Because of the significant overlap between racial and religious discrimination, legislation specifically directed at redressing differential treatment based on race or ethnic origin should also ban discrimination based on religion or belief, and vice-versa.

In terms of scope, the law must apply to "both the public and private sectors, including public bodies" (EU Directive Art. 3(1)). The law should further include, but not necessarily limit itself to, the following areas in which discriminatory practices are forbidden:

- Conditions for access to employment (EU Directive Art. 3(1)(a));
- Vocational guidance, training and retraining (EU Directive Art. 3(1)(b));
- Employment and working conditions, including dismissals and pay (EU Directive Art. 3(1)(c));
- Social security (EU Directive Art. 3(1)(e);
- Health care (EU Directive Art. 3(1)(e);
- Social advantages (EU Directive Art. 3(1)(f));
- Education (EU Directive Art. 3(1)(g));
- Access to and supply of goods and services available to the public (EU Directive Art. 3(1)(h));
- Housing (EU Directive Art. 3(1)(h));
- Administration of justice, including protection of security of the person (ICERD Arts. 5(a) and (b)/ECHR Arts. 6, 13, 14);
- Political participation, including the right to vote and to hold public office (ICERD Art. 5(c)/ECHR Art. 14 and Protocol No. 1 Art. 3).

International law allows and in some cases requires signatory states to adopt affirmative action measures for weak groups, including minorities burdened by historic discrimination.¹⁴ Domestic legislation should authorise and recognise the state's duty to engage in positive action through the adoption of "specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin" (EU Directive Art. 5). This provision, included in the EU Directive "[w]ith a view to ensuring full and effective equality in practice", permits governments to employ a range of devices to achieve more adequate representation of minority groups, including Roma, in various fields of social and public life.¹⁵

In order for any anti-discrimination legislation to work effectively, victims of discrimination and their representatives should have the genuine opportunity to access remedies through judicial procedures that are both easily accessible and effective. Thus, in addition to the range of traditional protections and powers afforded any court in overseeing litigation, anti-discrimination legislation should also specifically provide for the following:

- Judicial and/or administrative procedures for the enforcement of anti-discrimination obligations "available to all" (EU Directive Art. 7(1));
- The right of "associations, organisations or other legal entities" concerned with human rights to engage in legal actions and/or administrative procedures to enforce the rights granting protection against discrimination (EU Directive Art. 7(2)).

In the area of burden of proof/standards of evidence, domestic legislation should ensure that it is practically feasible for victims to prove the discrimination they have suffered: firstly, by shifting the burden of proof in civil cases in which complainants "establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect

¹⁴ See ICERD, Article 1(4); ECHR Protocol No. 12, Preamble; UNESCO Convention against Discrimination in Education, Article 2; Framework Convention for the Protection of National Minorities, Article 4(2).

¹⁵ Such measures could include employment recruitment efforts targeted at historically underrepresented minority groups, as well as actively recruiting members of such groups into the ranks of public employment, including the police, the prosecutorial corps, and the judiciary. Some countries similarly provide for promotional measures for disadvantaged groups in the education system.

discrimination";¹⁶ and secondly, by permitting complainants to establish or defend their case of discrimination "by any means, including on the basis of statistical evidence" (EU Directive preamble para. 15 and Art. 8(2)).¹⁷

Domestic law must further impose effective, proportionate and dissuasive sanctions for violation of anti-discrimination norms; these should include "the payment of compensation to the victim" (EU Directive Art. 15). The EU Directive additionally mandates States to "take all measures necessary to ensure that they are applied". Articles 9 and 11 of the United Nations Model National Legislation for the Guidance of Governments in the Enactment of Further Legislation Against Racial Discrimination also require restitution, compensation, or other forms of satisfaction for victims of discrimination.¹⁸

The EU Directive stipulates the creation of enforcement bodies. Among the EU Directive's main contributions to European anti-discrimination norms is the requirement that States "designate a body or bodies for the promotion of equal treatment". This enforcement body must be capable of "providing independent assistance to victims of discrimination in pursuing their complaints", "conducting independent surveys concerning discrimination", and "publishing independent reports and making recommendations" on matters of relevance to the enforcement of anti-discrimination law (EU Directive Art. 13).¹⁹

Current Domestic Legal Provisions

Current Serbian and Montenegrin legal frameworks include few specific and no comprehensive and coherent anti-discrimination provisions. Those provisions which do exist are for the most part vague, and are scattered at random throughout the legal order of Serbia and Montenegro. This situation creates serious problems for courts, attorneys, non-governmental organisations concerned with human rights enforcement, and indeed most importantly for the victims themselves. Judges, prosecutors and advocates wishing to secure redress for discriminatory acts must be very resourceful and creative in applying the existing law -- qualities unfortunately often lacking.

For example, though certain provisions of the former federal Law on Obligations²⁰ can be construed in such a way as to afford some redress to victims of discrimination, the word

¹⁶ In such cases, as the EU Directive specifies, "it shall be for the respondent to prove that there has been no breach of the principle of equal treatment" (EU Directive Art. 8). The principle of the shift of burden of proof in *prima facie* cases of discrimination is particularly important since evidence of discrimination is often in the hands of the discriminator.

¹⁷ As a practical matter, this provision is of particular importance insofar as statistical evidence may be the best or in some cases the only way of proving indirect discrimination (that is, of showing that an apparently neutral provision puts members of a minority group at a particular disadvantage compared with others).

¹⁸ Article 11 reads as follows: "Reparation shall be made to victims of racial discrimination by means of restitution and/or compensation which may take the form of a payment for the harm or loss suffered, reimbursement of expenses incurred, provision of services or restoration of rights, as well as other measures taken within a specified period for the purpose of correcting or mitigating the adverse effects on the victims [of discrimination] ... Victims shall also be entitled to recourse to all other means of satisfaction, such as publication of the judicial decision in an organ having wide circulation at the offender's expense or guarantee of the victim's right of reply by a similar means."

¹⁹ The Directive thus opens the way to establishing effective enforcement bodies, empowered by law and through the provision of adequate resources to secure equal treatment and to prevent and/or remedy discrimination if/when it occurs. However, such a body offers supplementary assistance, and in no way replaces or precludes complainants' right to pursue remedies for violations before the courts.

²⁰ Article 64 of the Constitutional Charter of the State Union of Serbia and Montenegro states: "The laws of the Federal Republic of Yugoslavia regarding the affairs of Serbia and Montenegro shall be applied as the laws of Serbia and Montenegro. The laws of the Federal Republic of Yugoslavia, except for the laws

"discrimination" does not appear anywhere in the law and must be derived by interpreting provisions on "personality rights" and non-pecuniary damages. In order to secure justice, a victim must prove i) that "personality rights", as provided for by the law, include the right to non-discrimination, ii) that she has indeed been the victim of discriminatory treatment, and iii) that she has in addition suffered non-pecuniary harm as a result of the fear, physical and/or psychological pain to which she has been subjected.²¹ Neither the Law on Obligations nor the former Federal Civil Procedure Code include specific provisions on standards of proving discrimination, shifting the burden of proof to alleged perpetrator -- nor, indeed, do they provide any other specific procedural guarantees with regard to cases involving discrimination.²²

In relation to criminal redress, the situation, at least on paper, seems more promising. Both the former Federal and the Serbian Criminal Codes respectively include provisions banning direct discrimination. Article 154 of the former Federal Criminal Code prohibits discrimination, *inter alia*, on the basis of race, national and/or ethnic origin with regard to "rights recognized by the international community" and republic-level criminal codes include similar although somewhat narrower provisions.²³ Unfortunately, these provisions have to date never been applied in practice. In addition, they require demonstrating intent on the part of the perpetrators, rendering them difficult to use for the purposes of combating discrimination.

The Law on the Protection of the Rights and Freedoms of National Minorities, adopted in February 2002, includes a provision stating: "All forms of discrimination towards persons belonging to national minorities based on national, ethnic, linguistic or racial grounds are prohibited."²⁴ The Law on the Protection of the Rights and Freedoms of National Minorities is an important development in the struggle to secure the rights of Roma, in that it states explicitly at Article 4(2) that the authorities shall adopt laws and other measures with the aim of improving the position of Roma. However, the Law on the Protection of the Rights and Freedoms of National Minorities cannot substitute for comprehensive anti-discrimination law.

The federal government has made the declaration offered in Article 14 of the ICERD, expressly recognising the competence of the United Nations Committee on the Elimination of Racial Discrimination to consider communications from individuals and groups of individuals claiming discrimination. However, the government's declaration provides that ultimate domestic

that the Assembly of a member state decides not to be applicable, shall be applied as the laws of the member states pending the adoption of new regulations by the member states." Article 20 of the Law on the Implementation of the Constitutional Charter of the State Union of Serbia and Montenegro states: "The federal laws and other federal regulations in the fields that all within the jurisdiction of institutions of Serbia and Montenegro under the Constitutional Charter shall be applied as legal acts of the State Union of Serbia and Montenegro, except in the parts that are contrary to the provisions of the Constitutional Charter." As such, throughout this document reference is made to "former federal" laws. These laws were, as of the date of publication (and very likely for the foreseeable future), still in effect in both republics.

²¹ See Articles 154 - 209 and in particular Articles 155, 157, 199 and 200 of the Law on Obligations (*Zakon o obligacionim odnosima*).

²² The Civil Procedure Code (*Zakon o parničnom postupku*) includes only general rules on the burden of proof, standards of proof, and the role of the courts in establishing facts *ex officio*, as well as vague and open-ended provisions on what constitutes admissible evidence and how such evidence should be evaluated (see Articles 7, 8, 219 - 226).

²³ Article 60 of the Serbian Criminal Code and Article 43(1) of the Montenegrin Criminal Code ban discrimination on the basis of nationality, race, religion, political or other conviction, ethnic origin, language, education or other status in relation to rights and freedoms guaranteed by the Constitution as well as other domestic legislation and ratified international treaties.

²⁴ Article 3(1).

protection against discrimination rests with the former Federal Constitutional Court. As of February 5, 2003, no official action had been taken to amend the former Federal Constitutional Court Act in order explicitly to provide the Court with competence to rule in such matters, and the Court has in fact never did so. Lawmakers in Serbia and Montenegro are now charged with adopting a new Law on The Court of Serbia and Montenegro²⁵, and therefore have an important opportunity to remedy the current lacuna. In addition, the question of judicial competence to oversee and enforce the "Human Rights Charter" will need to be clarified.

Recommendations for an Anti-Discrimination Law

Serbia and Montenegro needs a comprehensive anti-discrimination law, in line with the parameters delineated above. The adoption of anti-discrimination legislation is a necessary component of any comprehensive policy aimed at improving the human rights situation of Roma in Serbia and Montenegro. Such an action would send a clear message about the government's commitment to remedy abuse and ensure equal access to basic rights and services for all persons on its territory. In particular, it must be ensured that at minimum:

- Discrimination is adequately defined, with the harm of discrimination on an ethnic or racial basis appropriately recognised as particularly egregious;
- The scope of the law is suitably broad to ensure that public and private actors alike are banned from arbitrary action on racial grounds and may face sanction if they breach clearly defined legal boundaries, as well as to ensure that all areas of social life listed above are sheltered under a comprehensive discrimination ban;
- In *prima facie* cases of racial discrimination, it falls to the alleged perpetrator to prove that no illegal discriminatory acts have taken place;
- Sanctions provided are effective, proportionate and dissuasive;
- Procedures for seeking redress are accessible, effective and not overly complicated;
- An effective and independent enforcement body is established by law and empowered with sufficient resources to assure its assistance in bringing justice to victims of discrimination;
- Positive action to remedy historic discrimination is defined as permissible, encouraged, and in harmony with the spirit of the law.

IV. ROMA RIGHTS IN PRACTICE IN SERBIA AND MONTENEGRO

A. Right to Security of Person and Protection by the State:

- i. Physical Abuse of Roma by Police Officers and Other Members of the Public Authority

International Norms

The International Covenant on Civil and Political Rights (ICCPR Article 9) as well as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD Article (5)(b)) state that everyone has right to security of person and especially to protection by the state against violence or bodily harm, whether inflicted by government officials or by any individual group or institution. The Committee on the Elimination of Racial Discrimination has further issued in 2000 a General Recommendation on discrimination against Roma. The Committee recommended to the States parties to the Convention to adopt measures for protection against racially motivated acts of violence against them.²⁶ In particular, State parties

²⁵ Article 50 of the Constitutional Charter of the State Union of Serbia and Montenegro states: "The organization, functioning and method of ruling of the Court of Serbia and Montenegro shall be regulated by law."

²⁶ General Recommendation XXVII, Fifty-seventh session, 2000.

are invited to prevent such acts, and to ensure that perpetrators, be they public official or other persons, do not enjoy any degree of impunity. Articles 1 and 11 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) also provides specific protection against abuse of persons subjected to any form of arrest or detention, by defining torture as an act by which "severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him [...] information or a confession, punishing him for an act he [...] has committed or is suspected of having committed [...] when such pain or suffering is inflicted by or [...] with the consent or acquiescence of a public official or other person acting in an official capacity[...]", and by requesting the States to keep under systematic review interrogation rules and practices for the treatment of these persons.

National Legal Framework

As for the domestic legal standards related to physical abuse, articles 190/191 of the former Federal Criminal Code (*Krivični zakon Savezne Republike Jugoslavije*), in Articles 190/191, defines extortion of confessions and abuse of office as crimes prosecuted *ex officio*. In its Concluding Observations of 16 November 1998, however, the United Nations Committee against Torture expressed concern "over the absence in the criminal law of Yugoslavia of a provision defining torture as a specific crime in accordance with article 1 of the Convention." The Committee concluded that "a verbatim incorporation of this definition into the Yugoslav Criminal Code would permit the current Yugoslav criminal code formula defining the 'extortion of confession' to be made more precise, clear and effective" (*Concluding Observations of the Committee against Torture: Yugoslavia*, 16/11/98. A/54/44, paras. 44-46). To date, the authorities of Serbia and Montenegro have taken no action in line with this recommendation.

In March 2002 a new Federal Criminal Procedure Code (*Zakonik o krivičnom postupku*) entered into force. This code significantly enhances compliance with relevant international legal standards. As regards police brutality, Articles 12 and 18(2) taken together expressly prohibit the use of force in obtaining evidence; they also bar courts from considering such evidence in trials.

The criminal justice system in Serbia and Montenegro does not provide adequate judicial remedy to Romani victims when abuse by public officials has taken place. The current Serbian Internal Affairs Act (*Zakon o unutrašnjim poslovima*) is outdated, incomplete, and for the most part at odds with relevant international legal standards. In 2000 the Federal Constitutional Court declared many of its provisions unconstitutional, in particular those relating to preventive detention and surveillance, as well as those placing restrictions on the freedom of movement. The remaining provisions, including those concerning the use of force and firearms, are either vague or in direct breach of the applicable international guarantees included in documents such as the Council of Europe Declaration on the Police, the UN Convention against Torture, the UN Code of Conduct for Law Enforcement Officials, and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Throughout the past two years, numerous draft police acts have been circulated, but to date no official government draft has been sent to the Serbian Parliament.

Finally in terms of the availability of civil damages to victims of police abuse, the former Federal Law on Obligations (*Zakon o obligacionim odnosima*), mainly under Articles 193-203, provides for pecuniary and non-pecuniary compensation to both victims themselves and (in cases of wrongful death) their surviving family members. This compensation can be obtained even in the absence of a criminal conviction. However, the courts in Serbia and Montenegro have shown a clear and alarming tendency towards awarding compensation in amounts that can only be described as trivial and degrading.

Cases of Abuse

Numerous instances of physical abuse of Roma by police officers and other members of the public authority have been reported in Serbia and Montenegro. Reports of physical abuse of

Roma in police detention are alarmingly frequent. During incidents of ill-treatment, many police officers have reportedly insulted the ethnic origins of Roma. The *ERRC* and partner organisations have also documented cases of police violence against chronically ill Romani persons, as well as against Romani children and minors, sometimes resulting in severe bodily injuries such as broken arms. In some instances in which Romani individuals have sought legal remedy against such abuse by filing criminal complaints against police officers, the officers in question later allegedly used threats of force to pressure such persons into withdrawing complaints.

In one case,²⁷ according to testimony provided to the *ERRC* by the victims and family members of the victims, police officers in Nikšić, northern Montenegro, were alleged to have severely abused two Romani minors in order to extort a confession from them. In the morning of November 8, 2002, around 10 AM, two police officers came to the house of the family Špatolaj, internally displaced Roma from Kosovo, after they were allegedly informed that brothers Medin and Samir Špatolaj, respectively 13 and 9 years old, had committed a theft.²⁸ As the officers drove the boys to the police station, one of them threatened the young men that if they would not confess to the theft, he would bring their family to the police station, physically abuse them and "send them all back to Kosovo". In the main police station in Nikšić, in order to extort a confession, one of the police officers beat Medin on his palms and slapped him repeatedly. In the course of the interrogation, one of the officers reportedly took out a knife, ordered Medin to take off his trousers, and threatened to cut off the boy's genitals. After that, the officers continued beating Medin with a truncheon on the soles of his feet, and kicked him. Then one of the officers locked Medin in a solitary confinement cell. Meanwhile, the same officers reportedly beat Samir Špatolaj on his feet with truncheons and kicked him. After one of the officers threatened to cut his throat, the boy confessed that his brother had committed the theft, although this was, according to their testimony to the *ERRC*, not the case. After 4:30 PM, the boys were taken to another building, where one of the officers who had physically abused them and two other colleagues beat them with cables. The officers threatened to beat them "for the rest of the night" and then throw them in the solitary cell "to freeze and die there". The police released the boys around 6 PM. On November 25, 2002, the Podgorica office of the non-governmental organisation *Humanitarian Law Center* filed complaints against the officers concerned with the Nikšić prosecutor's office.

Similarly, in Serbia, according to the *Humanitarian Law Center (HLC)*, a non-governmental organisation based in Belgrade, on November 11, 2002, Mr Jovan Nikolić, a Romani man, went to the Petrovaradin Police Station in Novi Sad, northern Serbia, after being summoned for interrogation in a theft case. The *HLC* reported that, at the police station, an inspector, who was addressed as "Pedja", allegedly ordered Mr Nikolić to admit to the theft. When Mr Nikolić refused, the inspector reportedly hit him and pushed him against a wall, pressing hard with his fists against Mr Nikolić's temples. At this point, an officer in uniform arrived and repeatedly hit Mr Nikolić on his shoulders with a truncheon, the *HLC* stated, until Mr Nikolić begged them to stop, telling them that he was sick and had trouble breathing. Soon thereafter, Mr Nikolić was reportedly taken to Bački Petrovac Police Station and interrogated until around 7:00 PM, at which time he was released. Then, the *HLC* stated, on November 14, 2002, officers came to Mr Nikolić's home in Dobrinči and took him to the Ruma Police Station where officers from the Petrovaradin Police Station picked him up and brought him back to their station. Mr Nikolić was then made to lean against a wall and an officer hit him on his thighs and buttocks with a spade, at which time he reportedly threatened to file a complaint against the officers. According

²⁷ The cases listed herein are illustrative and do not purport to constitute a comprehensive study. Additional documentation can be found on the website of the *European Roma Rights Center* at <http://errc.org>.

²⁸ *ERRC* interviews with Medin Špatolaj, Samir Špatolaj and their mother Ms Satmira Špatolaj, Nikšić, November 14, 2002. This field mission was conducted with technical support of the UNHCHR Field Office, Podgorica.

to the HLC, Inspector Pedja then ordered that Mr Nikolić be detained for two days, at the end of which, he was questioned by a judge and released. Following Mr Nikolić's release, doctors at the Ruma Medical Centre ascertained that Mr Nikolić suffered slight bodily injuries. On December 12, 2002, the HLC filed a complaint against unidentified officers from the Petrovaradin Police Station.

In November 2002, Mr Demir Kurteši, president of the *Democratic Romany Association* in Smederevo, east of Belgrade, reported on a police brutality case from October 2002, in which he allegedly witnessed four or five police officers physically assault his neighbour, a Romani man named Kasum, in the Mali Krivak Romani settlement in Smederevo.²⁹ Mr Kurteši testified that police were called to Kasum's house after he had a quarrel with his brother and sister-in-law. The officers reportedly showed up and, when told that Kasum had started the quarrel, pushed him to the ground in front of his house and began violently to beat him. The abuse stopped when a Romani man from the neighbourhood who knew the officers in question appealed for them to stop. According to Mr Kurteši, Kasum refused to sue the officers because he was afraid of consequences, particularly as this case took place while he was on a short leave from his regular army service.

In another case, police officers allegedly abused a Romani man from the Vojvodina region, northern Serbia. On an unspecified date in July 2002, two police officers came to the house of Mr Živan Petrović, a 23-year-old Romani man from Kikinda.³⁰ Justifying detention with a verbal explanation that Mr Petrović was accused of stealing 100 kg of copper, the officers took Mr Petrović to the local police station. There, according to his testimony to the ERRC, one of the officers repeatedly beat Mr Petrović with a stick for approximately half an hour, demanding he confess the theft. Mr Petrović did not do so. After a break of about two hours, the officers returned to continue physical abuse and interrogation. Around an hour later, Mr Petrović was sent home with an order to return the next day; when Mr Petrović reported at the police station on the following day, one of the officers who abused him told him that the perpetrator of the theft had been found, and told him to go home. Mr Petrović was unaware of any criminal or internal disciplinary actions have reportedly been undertaken against the officers concerned. He himself had not filed a complaint against the officers concerned because, he stated, he was unaware that the actions of the officers were punishable, or in fact a breach of any law.

There are many reliable reports that Police officers in Serbia and Montenegro tend to treat Romani persons in a degrading manner, even when not subjecting them to physical abuse. As Mr Fatmir Dinaj -- a displaced 66-year-old Romani man from Kosovo residing in Podgorica -- sat in a bar on an unspecified date in July 2002, a policeman reportedly approached him, slapped him on the back, and asked why he was "showing off".³¹ After ordering Mr Dinaj to wait, the policeman left, and soon returned with two more colleagues. The officers all sat at Mr Dinaj's table and demanded that he buy them drinks. While drinking, the officers made fun of Mr Dinaj, inquiring how he had money to buy them drinks, and told him to confess that he was a thief and a drug dealer. After approximately half an hour, the officers left, leaving the bill to Mr Dinaj. Mr Dinaj did not file a complaint in connection with the incident and the ERRC believes no officers have ever been disciplined in connection with the incident.

In another instance of degrading treatment, Ms Danijela Ilić from Niš, southern Serbia, testified that, on an unspecified date in November 2002, two police officers stopped her on her way to

²⁹ ERRC/*Minority Rights Center* interview with Mr Demir Kurteši, Smederevo, November 11, 2002. *Minority Rights Center* is a Belgrade-based local partner organisation of the *European Roma Rights Center*.

³⁰ ERRC interview with Mr Živan Petrović, Kikinda, October 14, 2002. This field mission was conducted with technical support of the UNHCHR Field Office, Belgrade.

³¹ ERRC interview with Mr Fatmir Dinaj, Podgorica, November 13, 2002. This field mission was conducted with technical support of the UNHCHR Field Office, Podgorica.

the main bus station in Niš, as she intended to travel for a family visit.³² The officers requested to see Ms Ilić's personal documents, and allegedly laughed at her, saying that "she must have stolen the bag she had with her". According to Ms Ilić's testimony, one of the officers stated that she was "suspicious because she was a Gypsy", and that "Gypsies steal a lot".

In another case, Mr Besim Ćurkoli from the Romani settlement Makiš in the Ćukarica neighbourhood of Belgrade alleged that he was, on numerous occasions, verbally abused by police officers.³³ In one such instance, for example, on an unspecified date in mid-summer 2001, a police officer asked Mr Ćurkoli for his identification in the Žarkovo area of Belgrade, as the latter was collecting scrap paper. The officer asked Mr Ćurkoli what his ethnicity was, and whether he was a "Šiptar".³⁴ He continued to add that Mr Ćurkoli should be ashamed for making the city dirty, and how Roma made Belgrade dirty. The officer further made verbal threats of physical abuse in case that he would encounter Mr Ćurkoli again.

During the period September 1998 to the end of 2002, the *ERRC* has documented through first-hand field research 33 cases of physical abuse by police officers or other public officials in Serbia and Montenegro and is aware of allegations of severe physical abuse by public officials in a number of further cases.³⁵ Instances of police abuse of Roma have also been extensively documented by domestic non-governmental organisations such as the *Humanitarian Law Center* and the *Minority Rights Center*.³⁶

IV.A. Right to Security of Person and Protection by the State:

ii. Violence by Racist "Skinheads" and Other Non-State Actors

International Standards

General Policy Recommendation No. 1 on combating racism, xenophobia, anti-Semitism and intolerance, issued by the Council of Europe's European Commission against Racism and Intolerance (ECRI), recommends ensuring that national criminal law expressly and specifically counters racism, xenophobia, anti-Semitism and intolerance, *inter alia* by providing that racist and xenophobic acts are stringently punished through methods such as defining common offences committed for reasons influenced by racism or xenophobia as specific offences; enabling the racist or xenophobic motives of the offender to be specifically taken into account; making sure that criminal offences of a racist or xenophobic nature are prosecuted *ex officio*.

In a similar vein, ECRI General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies recommends that governments, "bearing in mind the manifestations of racism and intolerance of which Roma/Gypsies are victims [...] give a high priority to the effective implementation of the provisions contained in ECRI's general policy recommendation No. 1, which requests that the necessary measures should be taken to ensure that national criminal [...] law expressly and specifically counters racism, xenophobia, anti-Semitism and intolerance."

³² *ERRC/Minority Rights Center* interview with Ms Danijela Ilić, Niš, December 16, 2002.

³³ *ERRC/Minority Rights Center* interview with Mr Besim Ćurkoli, Belgrade, December 21, 2002.

³⁴ "Šiptar" is a derogatory term used in Serbia and Montenegro for Kosovo Albanians, sometimes applied to those Roma from Kosovo who speak the Albanian language.

³⁵ See <http://errc.org/publications/indices/yugoslavia.shtml>.

³⁶ See for example documentation in Antić, Petar, *Abuses of Roma Rights in Serbia*, Belgrade: Minority Rights Center, 2001, or the internet site of the *Humanitarian Law Center* at: <http://www.hlc.org.yu/srpski/manjine.htm> and <http://www.hlc.org.yu/english/minorities.htm>.

Ruling recently in a case in which Romani homes were destroyed by a mob in the presence of and with the acquiescence of state officials in Montenegro in 1995, the United Nations Committee Against Torture held that "...destruction of houses constitute, in the circumstances, acts of cruel, inhuman or degrading treatment or punishment." The Committee found that the Federal Republic of Yugoslavia violated Article 16(1) of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) which stipulates that, "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment [...] as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.[...]"³⁷ Information available to this date reveal that the Prosecutor's Office and the Ministry of Interior of Montenegro have reopened the investigation of this case, and that the government is looking for an out-of-court settlement on compensation.

National Standards

A review of domestic legislation in the Serbia and Montenegro on racially-motivated crime establishes that -- setting aside criminal offences relating solely to acts of discrimination -- former federal and existing republican criminal codes include only one provision dealing explicitly with violence based on race and/or ethnicity: Article 134, paragraphs (2) and (3), of the former

³⁷ See United Nations Committee against Torture, Communication No 161/2000: Yugoslavia. 02/12/2002. CAT/C/29/D/161/2000. (Jurisprudence). Views of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, para.9.2, at: <http://193.194.138.190/tbs/doc.nsf/MasterFrameView/b5238fc275369719c1256c95002fca4f?OpenDocument>. On April 14 and 15, 1995, following an alleged rape of a local non-Romani girl by two Romani youngsters, several hundred non-Roma gathered and, with the acquiescence of the municipal authorities and the police, proceeded to destroy the Romani settlement in Bozova Glavica, Danilovgrad. Police simply stood by and did nothing as the pogrom proceeded. The Roma were able to flee but their homes and other belongings were ultimately burned or otherwise destroyed. According to newspaper reports, the day after the pogrom the then President of the Danilovgrad Municipal Assembly went out of his way to praise those who took part in the anti-Roma violence, declaring publicly that the citizens of Danilovgrad "know how to punish when their honor and dignity are at stake". Several days following the incident, the debris of the Roma settlement was cleared away by heavy construction machines of the Public Utility Company, thus obliterating all traces of the existence of Roma in Danilovgrad. In fear for their lives, the Danilovgrad Roma fled the town and moved to the outskirts of Podgorica where most still live under terrible conditions and in abject poverty. Moreover, in the aftermath of the incident, several Roma were fired from the jobs they held in Danilovgrad, under the excuse that they had stopped coming to work. The fact that the Roma had to leave the town in mortal fear was clearly not taken into account by their employers. With regard to the pogrom itself, and despite a preliminary investigation, as of the date of the December 2002 ruling, no one had been indicted. Similarly, the labor dispute for wrongful termination of employment and the civil case for damages, both filed by Danilovgrad Roma, were still pending. Hence, more than seven years following the incident, the Romani victims of the Danilovgrad tragedy had yet to receive any redress whatsoever. In addition, the Committee found that the police, although they were aware of the danger and were present at the scene of the events, did not take any steps to protect the complainants, thus implying their acquiescence with the pogrom that ensued. The Committee reiterated its concerns about "inaction by police and law-enforcement officials who fail to provide adequate protection against racially motivated attacks when such groups have been threatened". The Committee stressed that, despite the participation of several hundred non-Roma in the events and the presence of a number of police officers, no participant or police officer was ever brought to trial. It requested that authorities conduct a proper investigation into the incident, prosecute and punish those responsible, and provide redress to the victims. The authorities were charged by the Committee with informing the Committee within 90 days of the steps taken to comply with its decision. Following the Committee's ruling, the claim in labour dispute was again rejected on appeal. In the civil case for damages, a new hearing had been scheduled to take place in early 2003. The chief of the Montenegrin police has also stated publicly on several occasions that his office has been ordered by the government to reopen criminal investigation into the case. No charges had been filed against perpetrators as of February 20, 2003.

Federal Criminal Code penalises acts of violence such as coercion, ill-treatment and personal endangerment, if motivated by ethnicity, race and/or religion and committed against Yugoslav citizens, whether members of the majority population or of one of the country's numerous national minorities.³⁸ The provision has two major shortcomings: i) it does not apply where victims are non-citizens and ii) it does not cover very serious forms of racially motivated violence such as bodily injury or murder.³⁹

Two additional provisions are worth mentioning in this context: Article 41 of the former Federal Criminal Code and Article 47 of the Serbian Criminal Code. The former, in setting forth general rules with regard to sentencing, states that one consideration to be taken into account is "the perpetrator's motivation underlying the commission of the crime at issue." The latter, in defining aggravated murder, expressly describes this as a murder committed out of heedless vengeance "or other base motives". Though there is no explicit reference to racial and/or ethnic motivation, both provisions can be applied to situations involving acts of racially and/or ethnically motivated violence.⁴⁰

Cases

Roma in Serbia and Montenegro have on numerous occasions been victims of violence by racist vigilantes (so-called "skinheads") and other non-state actors. Some such attacks have resulted in severe bodily harm. At least one such attack resulted in the death of the victim. When Roma are attacked by skinheads, perpetrators are rarely adequately punished, and Romani victims rarely receive adequate compensation.

In one attack, according to testimony provided to the *Minority Rights Center*, an *ERRC* local partner in monitoring Roma rights in Serbia and Montenegro, a non-Romani man severely injured Mr Ardijan Jašari, a 20-year-old Romani man from Novi Sad, in the Vojvodina region.⁴¹ Mr Jašari reportedly makes his living on tips he receives for directing drivers to free parking spots. On February 26, 2002, Mr Jašari found a parking space for a non-Romani man driving an expensive-looking car. On the evening of February 27, 2002, the same man approached him and began to beat him while cursing his "Gypsy" origins. He accused Mr Jašari of having scratched his car the previous day. According to Mr Jašari, the man beat him with his fists on his face. When he tried to run away, the man caught him and Mr Jašari fell to the ground. The man allegedly then threatened to take Mr Jašari out of town to beat him. He then kicked him very hard in his jaw, causing Mr Jašari to lose consciousness. Several of his friends in the area found Mr Jašari lying on the ground unconscious, and took him to a local hospital in a taxi. On February 28, 2002, Mr Jašari underwent surgery on his broken jaw. He was released from the hospital on March 1, 2002. According to Mr Jašari, immediately after leaving the hospital, he went to the police to file a complaint and submitted photocopies of his medical record and the license plate number of the vehicle owned by the attacker. As of October 6, 2002, Mr Jašari reported that the police had not contacted him in connection with the complaint.

In the Maslina neighbourhood of Podgorica, Montenegro, a group of seven non-Romani men allegedly beat Mr Aljo Asanović as he worked his night shift as a street cleaner on an unspecified date in late August 2002. After the attackers punched him in the eyes and kicked him on his

³⁸ The legislation of Serbia and Montenegro further includes bans on hate speech, as well as provisions for banning political parties and other organisations which advocate racial hatred or intolerance. The *ERRC* does not endorse the use of criminal sanctions to combat hate speech. The *ERRC* is of the position that other methods for combating racist public discourse, such as the explicit condemnation by leading public figures of racism, should be rigorously and proactively undertaken.

³⁹ In practice, courts in Serbia and Montenegro seldom apply this provision.

⁴⁰ Indeed, courts in Serbia and Montenegro have on occasion ruled to this effect.

⁴¹ *ERRC/Minority Rights Center* interview with Mr Ardijan Jašari, Novi Sad, March 3, 2002.

chest and back, Mr Asanović was found lying on the ground by his supervisor.⁴² Mr Asanović did not file a complaint with the police "because he did not know the identity of his attackers." The ERRC believes no actions have ever been taken by authorities to bring the perpetrators to justice. In the same month, in the centre of Podgorica, four non-Romani men reportedly attacked Mr Sani Isaku, a 22-year-old displaced Kosovo Romani man, as he was collecting food from garbage containers with his younger brother. As one of the attackers hit him on the mouth, he fell down, and then all the attackers kicked him. Finally, the attackers threw Mr Isaku into a ditch filled with water, and left. He remained incapacitated for two days recovering from the attack. Mr Isaku told the ERRC that he did not report the incident to the police because he was afraid of the police due to an incident in summer 2001 during which he had been beaten by police officers.

There are many accounts that Police in Serbia and Montenegro have taken insufficient action to protect Romani victims of violence. In the vast majority of cases, when racist attacks on Roma have taken place, the relevant authorities have not undertaken adequate investigations. In some cases, no investigation has taken place at all. For example, according to reports in the media of Serbia and Montenegro, displaced Kosovo Roma accommodated in the Lovanja settlement near the town of Tivat, on the northern Montenegrin coast, are often victims of attacks. At a meeting with the local mayor on November 6, 2001, a delegation of Roma from the settlement complained of increasing attacks by unknown persons who had disturbed Roma and thrown stones at their houses in the week before the meeting. One member of the delegation, Ms Vezira Bajra, reportedly stated that her house had been stoned the night before the meeting, disturbing her family and particularly her young children.⁴³ When the Roma sought assistance from the Tivat police, they were allegedly instructed to report the case in Kotor.

In some cases social workers in Serbia and Montenegro have also apparently been reticent in acting adequately in response to allegations of racially motivated crime. In a recent case of alleged sexual abuse of a ten-year-old Romani boy A.J. in the Serbian town of Veliko Gradište, there are claims that the local social workers were informed on the case, but advised the boy's mother not to take any action.⁴⁴ The abuse, accompanied by verbal insults on the account of the boy's racial origin, was apparently committed by four non-Romani adults on the night of November 14, 2002. According to the testimony of Ms Ruža Jovanović, the victim's mother, after she had found out about the abuse, together with her son she went to the local social work centre on an unspecified date at the end of November 2002. According to her testimony, the social worker on duty advised the mother that the perpetrators were "tough guys", and that it would be best if the family did nothing about this case. Consequently, Ms Jovanović was afraid to take any action herself. As she inquired in the centre about the possibility that her son might be sheltered in a children's home, the social worker responded that this was not possible. After the local police launched an investigation after media reports on this case, the boy went into hiding, and his family fear for their safety.⁴⁵

In the period September 1998 to the end of 2002, the ERRC has independently documented 37 instances of violent crime by non-state actors in Serbia and Montenegro in which there are compelling reasons to believe that racial animus played a key role. Legal action has rarely been taken against perpetrators in such cases, and where legal proceedings have been undertaken, racial motivation is frequently not recognised. On a number of occasions, Romani victims of

⁴² ERRC interviews, November 11, 2002. This field mission was conducted with technical support of the UNHCHR Field Office, Podgorica.

⁴³ Podgorica-based daily newspaper *Vijesti*, November 7, 2001.

⁴⁴ ERRC/Minority Rights Center interview with Ms Ruža Jovanović, Veliko Gradište, January 14, 2003.

⁴⁵ One of the alleged perpetrators was reportedly arrested in Vienna on January 21, 2003. (Radio B92, January 22, 2003.)

racial violence who sought medical assistance after civilian violence have, according to reports, subsequently been insulted on racial grounds by staff of medical institutions.

IV. B Right to Education: Discrimination and Racial Segregation in the School System

International Principles

The international community has often reaffirmed the right to education and adopted legal instruments aiming to secure it. These include *inter alia* the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Rights of the Child (CRC),⁴⁶ and the UNESCO Convention against Discrimination in Education.⁴⁷ In addition, European instruments guarantee the right to education generally, or address issues relating to the education of minorities. Article 13 of the ICESCR states: "States Parties to the present Covenant recognise the right of everyone to education. [...]". The CRC provides, at Articles 28 and 29, extensive guarantees with respect to the right to education. Article 2 of Protocol 1 to the European Convention on Human Rights states: "No person shall be denied the right to education. [...]". Finally, Articles 12, 13 and 14 of the Framework Convention for the Protection of National Minorities list obligations of states in the field of education. These include providing of possibilities for training of lecturers and access to text books; the right to found and manage private educational and training institutions; the recognition of national minorities' rights to learn their native languages; and equal possibilities of access to each educational levels.

International law provisions included in the ICCPR, the ICESCR and the European Convention on Human Rights (ECHR) ban racial discrimination in education. The ICERD further explicitly commits States Parties, at Article 5(e)(v), to eliminating racial discrimination in the enjoyment of the right to education and training. Racial segregation -- a particularly serious harm -- is banned unequivocally in the provision of education. Article 3 of the ICERD states: "States Parties particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."

Domestic Laws

Both the Constitution of the Republic of Serbia and the Constitution of the Republic of Montenegro set out that education be accessible to all persons under the same circumstances, and that basic education be mandatory and free of charge: Article 32, paragraphs (1), (2) and (3) of Constitution of the Republic of Serbia, and Article 62 of Constitution of the Republic of Montenegro. The constitutions further guarantee the right of national minorities to be educated in their native languages: Article 32 paragraph (4) of Constitution of the Republic of Serbia, and Article 68 of Constitution of Montenegro. Similar guarantees to this right are provided in the former federal Law on the Protection of the Rights and Freedoms of National Minorities, as well as other laws. The Law on the Protection of the Rights and Freedoms of National Minorities regulates in detail the right of national minorities to education in their native languages from kindergarten to higher education. Under the Law, the republics must create conditions for organising educational opportunities in the respective languages of the national minorities. They must also provide bilingual lectures or studies in the languages of national minorities, with elements of their national history and culture (Article 13(2)); authorities must also establish schools and faculties to educate teachers and lecturers in national minorities' languages, and support their professional training (Article 14). Article 15 sets forth the right of national minorities to establish and manage private educational institutions, with studies in the languages of national minorities or bilingual studies. The Law on Primary Schools of the Republic of Serbia prescribes in Article 5 that educational courses shall be offered to national minorities in their

⁴⁶ The Federal Republic of Yugoslavia ratified the CRC on January 3, 1991.

⁴⁷ The Federal Republic of Yugoslavia joined the Convention by succession on December 12, 2000.

native languages or bilingually if at least 15 students apply for enrolment in such courses. Courses can be offered to fewer than 15 students with the approval of the Minister of Education. When a separate education plan for national minorities cannot be organised, the Law provides for an additional subject – native language with elements of national culture. The Law also provides for the harmonisation with the former federal Law on Protection of Rights and Freedoms of National Minorities, in particular its Article 13, paragraph 6, which mandates councils of national minorities to take part in elaborating educational plans for national minorities.

The legislation of Serbia and Montenegro is extremely weak in providing substance to the absolute ban on racial segregation, set out in Article 3 of the ICERD: no domestic legislation exists explicitly banning racial segregation in schooling. The Serbian law does, however, include some provisions which could be used in addressing racial segregation. The Law on Primary Schools of the Republic of Serbia forbids activities that jeopardise or insult certain groups or persons on account of their race or nation -- as well as corporal punishment and personal insults to students (Articles 7). The Law on Secondary Schools of the Republic of Serbia includes similar provisions at Article 8.

Access to Education in Practice

In Serbia and Montenegro, Roma frequently suffer discrimination and racial segregation in the field of education. Romani children face a wide range of obstacles in their access to education. In some cases, schools have refused to enrol Romani children on grounds that they lack competence in the Serbian language, and have instead placed them in separate classes, and sometimes in schools for mentally disabled children. Romani children are reportedly particularly over-represented in classes for mildly mentally disabled children in Serbia. Additionally, Romani children have in a number of cases suffered harassment by non-Romani peers, including violence and racial slurs. Teachers and other schooling authorities reportedly do not react adequately against racist abuse. In addition, a number of Romani children of families who have fled ethnic cleansing and other violence in Kosovo are reportedly not in school at all -- often precluded from enrolling in schools because access to personal documents, required by schooling authorities, is blocked.

In many cases, Romani children are placed in schools and classes for mentally disabled children without the full and informed consent of their parents. In some instances, educational authorities have subjected Romani parents to duress in efforts to secure their consent to transfer. For example, Mr Đorđe Stojkov, a 34-year-old Romani man, testified to the ERRC that after an educational medical commission tested his 12-year-old son Danijel, the doctor told Mr Stojkov that Danijel should attend a special school. Mr Stojkov stated that he did not believe that Danijel belonged in a special school and did not want to sign the necessary papers, "but the doctor who examined my son told me that I had to sign or else he would call the police and I would have to go to prison. He also cursed me. I had to sign."⁴⁸ Ms Radinka Sokolović, a 49-year-old internally displaced Romani woman from Kosovo, stated that her son Darko had attended a regular primary school, but because she could not afford to purchase all the necessary books and supplies, he was unable to pass his exams. Because of this, Ms Sokolović told the ERRC, in September 2002, Darko's teacher placed him in a "special school" -- a school for the mentally disabled.⁴⁹ Ms Drita Salihi, a 44-year-old internally displaced Romani woman from Kosovo, was unaware that her 10-year-old daughter Selveta attended a school for the mentally disabled until the time of her meeting with the ERRC in October 2002.⁵⁰ Selveta told the ERRC that all of the children in her class were Romani.⁵¹

⁴⁸ ERRC interview with Mr Đorđe Stojkov, Kikinda, October 14, 2002. This field mission was conducted with technical support of the UNHCHR Field Office, Belgrade.

⁴⁹ ERRC interview with Ms Radinka Sokolović, Novi Sad, October 6, 2002.

⁵⁰ ERRC interview with Ms Drita Salihi, Novi Sad, October 6, 2002.

President of the former Federal Republic of Yugoslavia Vojislav Koštunica has spoken out against the placement of Romani children in separate classes in schools. Speaking publicly in Belgrade on August 31, 2000, President Koštunica reportedly stated: "It is shameful that Romani children are transferred to additional classes in primary schools, just because they do not speak well the language that is not their mother tongue. It is shameful, not for Roma, but for the society in which this takes place [...]"⁵²

Physical abuse of Romani children in schools by both school officials and non-Romani pupils in Serbia and Montenegro has also been reported. According to *ERRC* research in Novi Sad, northern Serbia, in March 2002, two Romani children from Kosovo temporarily withdrew from school after their mathematics teacher hurled a notebook at them, striking one of them.⁵³ Twelve-year-old Lela Demić told the *ERRC*, in partnership with the Belgrade-based non-governmental organisation *Minority Rights Center*, that in the winter of 2002, two boys from her class at the primary school "Stevan Divnin-Baba" in Žabalj threw snowballs at her and her best friend Ankica, and tripped her. Lela stated that, when she fell, the boys started kicking her and calling her a "dirty Gypsy".⁵⁴ The Belgrade-based non-governmental organization *Humanitarian Law Center (HLC)*, in cooperation with the *ERRC*, has documented numerous cases of Romani children being systematically harassed and verbally and physically abused by their non-Romani classmates.⁵⁵ In many instances, the harm inflicted is emotional: Ms Maja Dalipović, a 26-year-old Romani woman, told the *ERRC* that the children in her seven-year-old son Stefan's class at the primary school "Dobrosav Jovanović Stanko" in Niš, southern Serbia, did not play with him and repeatedly called him a "dirty Gypsy". Ms Dalipović told the *ERRC* that she went to talk to Stefan's teacher because he came home in tears every day, but was told that the teacher could not help.⁵⁶ According to *HLC*, teachers are frequently reluctant to take action to guarantee the safety of Romani pupils in schools throughout Serbia and Montenegro.

⁵¹ *ERRC* interview with Ms Selveta Salihi, Novi Sad, October 6, 2002.

⁵² Quoted in Acković, Dragoljub, *Nacija smo a ne Cigani*, Belgrade: Rrominterpress, 2001.

⁵³ *ERRC* interviews, Novi Sad, March 14, 2002.

⁵⁴ *ERRC/Minority Rights Center* interview with Ms Lela Demić, Žabalj, October 25, 2002.

⁵⁵ For example:

- Zaim Beriša, a thirteen-year-old fourth-grade student in Zaga Malivuk primary school in Belgrade, reported that his non-Romani classmates frequently call him names and sometimes hit and kick him. In September 1999, five non-Romani boys reportedly attacked Zaim in the schoolyard, hitting him in the stomach and face. The school janitor reportedly put an end to the attack and informed the school principal of the incident. Zaim's mother, Ms Ljubica Stanković, confirmed that he came home that day with bruises on his face and a swollen nose, and that she had to take him to the doctor. She complained to the school principal, who promised to speak to the boys and to prevent any further attacks. Nevertheless, a few days later, the same group of boys attacked Zaim and his fifteen-year-old brother, Safet, at the train station as they were returning home from school. This time, one of the boys had a knife. Zaim managed to run away but the attackers beat his brother until a neighbour intervened.
- Zoran Miladinović, a nine-year-old second-grade Romani student at Ćirilo i Metodije school in Belgrade, stated that the non-Romani children slap him and call him names almost every day. Zoran complained to his teacher, who reportedly told him it was best to ignore the other children when they called him names. In September, two boys attacked Zoran in the schoolyard, one of them holding him, while the other punched him in the head. Both of them shouted racist insults. Ms Radmila Miladinović, Zoran's mother, stated that on that day her son came home from school with a bleeding mouth, complaining that he had been beaten by the other children.
- Kristina Stanojević, an eleven-year-old fifth grade student at Banović Strahinja school in Belgrade, stated that when she was in the fourth grade her classmates frequently taunted her and her two Romani classmates, calling them names such as "filthy Gypsy", and pushed, slapped and kicked her.

In many instances, Romani children are not in school at all. Non-governmental sources estimate that around 80 percent of Roma in Montenegro do not complete primary education.⁵⁷ There are reports that the Montenegrin government does not enforce the requirement of compulsory primary education in regard to the Romani community. For example, Mr Šemsi Haziri, a 31-year-old Romani man living in Novi Sad, told the ERRC that none of the ten school-age children in his family attend school.⁵⁸ In another case, in November 2001, the enrolment of approximately 140 Romani children at the "Božidar Vuković -- Podgoričanin" primary school in the Montenegrin capital of Podgorica was hindered by numerous obstacles.⁵⁹ The group included children of local Roma, as well as children of Romani refugees from Kosovo. A local Romani association claimed that their plan for the education of these children was submitted for review and approval to the Ministry of Education and Science of the Republic of Montenegro on September 12, 2001, but the association received no response. They also expressed concern that the process of testing children for placement had been going on for two months, which they believed a deliberate delay.⁶⁰

Often obstacles to the effective realisation of the right to education stem from the deep impoverishment of segments of the Romani community. In the words of Ms Abida Gola, a 59-year-old displaced Kosovo Romani woman living in Podgorica, her 9-year-old granddaughter does not go to school because "she cannot go to school when she has nothing to wear and no shoes, and she is dirty because there is no water in the settlement we have no water. There is no electricity in the settlement either."⁶¹

IV. C. Right to Adequate Housing: Forced Eviction, Threats of Forced Eviction, and Other Violations of the Right, Including Extremely Substandard Housing and Failure to Provide Services

Roma in Serbia and Montenegro frequently experience forced eviction and/or the threat of forced eviction.⁶² Some Romani families have been victims of several forced evictions in

⁵⁶ ERRC/Minority Rights Center interview with Ms Maja Dalipović, Niš, October 24, 2002.

⁵⁷ From the oral presentation of Mr Živorad Tasić of the Tivat-based *Grupa MARGO* on the results of their research on personal documents of Roma in Montenegro, at the ERRC workshop "Personal Documents and Threats to the Exercise of Fundamental Rights among Roma in the Former Yugoslavia", held on September 6-8, 2002, in Igalo, Montenegro.

⁵⁸ ERRC interview with Mr Šemsi Haziri, Novi Sad, October 6, 2002.

⁵⁹ Podgorica weekly political magazine *Monitor*, November 9, 2001.

⁶⁰ Podgorica-based *Roma Information Agency (RIA)*, October 9, 2001. Sometimes parents of non-Romani children insist that their children attend separate classes from their Romani peers. For example, the announced enrolment of 16 Romani children (who had completed one-year pre-school training offered by a local non-governmental organisation, in a school in Novi Sad in October 2001) drew numerous protests from non-Romani parents, who requested that separate classes be formed for the Roma (see Belgrade-based daily *Danas*, October 31, 2002).

⁶¹ ERRC interview with Ms Abida Gola, Podgorica, November 15, 2002. This field mission was conducted with technical support of the UNHCHR Field Office, Podgorica.

⁶² Most recently, the case of the Tošin bunar settlement near Belgrade has gained wide media attention. After several eviction deadlines in the course of 2002, Roma living in the Tošin bunar settlement of the Stari Aerodrom neighbourhood in Zemun, near Belgrade, were faced with more eviction threats, which resulted in a public protest staged by Roma from the settlement on September 2, 2002.

succession. It is widely believed that such evictions will increase in the near future, particularly in Belgrade, and particularly among the numerous informal settlements established by Roma displaced from Kosovo. In addition, conditions in a number of Romani settlements around Serbia and Montenegro are extremely inadequate, lacking the provision of even rudimentary infrastructure. Frequently housing conditions are so substandard as to cause a public health risk, highlighting the intersection between the right to adequate housing and the right to the highest attainable standard of health.

- **International Legal Standards**

The term "forced evictions" refers to the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without provision of, or access to, appropriate forms of legal or other protection. In most cases, forced evictions can directly or indirectly be attributed to specific decisions, legislation and/or policies of States, or to their failure to intervene to prevent evictions by third parties.

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) states, at Article 11(1): "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."⁶³ European human rights instruments also

The community, consisting of some 205 Romani families, 138 of whom were internally displaced from Kosovo, had been living illegally on land sold by a state-owned company to a private company earlier in the year. Since then, the state-owned company in question had been trying to evict the Romani inhabitants, and in April and May 2002, deadlines were set for them to leave. At that time, no alternative accommodation was offered by either the state-owned company or any of the city authorities who had been alerted to the issue.

Several months later, new deadlines had been set: an official from the state-owned company visited the Romani settlement on August 2, 2002, and warned that, in two weeks, the buyer would commence construction on a part of the land which housed 36 families. The official reportedly informed the Romani inhabitants that the area would be fenced and patrolled by security guards with dogs, and that electricity and water supplies would be cut off. The official also reportedly said that unless the families living on that section moved away in time, they would not be allowed to leave it once it had been fenced off (*ERRC/Minority Rights Center* interviews, Belgrade, August 7, 2002).

As the municipal authorities slated September 2, 2002, for the eviction of the first group of Roma from the land, more than 200 Romani families from the settlement protested in front of the building of the Presidency of Serbia in the centre of Belgrade. The forced eviction of Roma living in the settlement was postponed until October 1, 2002, after the Minorities Minister reached an agreement with the state-owned company. In the meantime, city and republican authorities were reportedly ordered to find a durable solution for the housing of the Romani community. As of October 3, 2002, 60 families of internally displaced Roma from Kosovo and 64 families of local Roma remained in the settlement. Thirty-seven families had reportedly moved out of the settlement and the remaining families were afraid that they would be moved out. Accommodation in collective centres was reportedly offered to 39 families of Roma internally displaced from Kosovo. On October 8, 2002, the UNHCR reported that sixty Romani families from Belgrade living in the settlement were told by the municipality that land would be allocated for them to buy -- but that this would only be ready in Spring 2003. Nonetheless, demolition of the homes of Roma living in the settlement began on October 21, 2002.

⁶³ The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) bans racial discrimination in the exercise of the right to housing. ICERD Article 5(e)(iii) states: "[...] States Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] the right to housing."

provide guarantees in the field of housing.⁶⁴ The UN Committee on Economic, Social and Cultural Rights has made clear that in order for shelter to be considered "adequate housing", a number of considerations must be taken into account, including: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.⁶⁵

Forced evictions are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law. A number of declarations and resolutions aiming to provide further substance to clarifying procedural and other standards with respect to forced evictions have been adopted at an international level, including:

- General Comment No. 4 on the right to adequate housing under Article 11 (1) of the ICESCR;⁶⁶
- General Comment No. 7 on forced evictions under Article 11 (1) of the ICESCR;⁶⁷

⁶⁴ Article 31 of the Revised Social Charter guarantees the right to housing. Article 8(1) of the European Convention on Human Rights (ECHR) states: "Everyone has the right to respect for his private and family life, his home and his correspondence." Article 1 of Protocol 1 to the ECHR states: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. [...]"

⁶⁵ See "General Comment No. 4 (1991), The Right to Adequate Housing (Art 11(1) of the Covenant)", adopted by the UN Committee on Economic, Social and Cultural Rights on 12 December 1991, U.N. doc. E/CN.4/1991/(4)1991.

⁶⁶ General Comment No. 4 states *inter alia*: "The right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments." With respect to the justiciability of housing rights, the Committee views "many component elements of the right to adequate housing" as engaging domestic legal remedies. General Comment No. 4 states: "[d]epending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness."

⁶⁷ General Comment No. 7 states, *inter alia*:

- "Owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights". Any limitations on the right to housing, and hence any forced evictions imposed, must be "determined by law only insofar as this may be compatible with the nature of these [i.e. economic, social and cultural] rights and solely for the purpose of promoting the general welfare in a democratic society".
- "Legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it."
- "The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved."
- "Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights [...] the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be

- The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22-26, 1997;⁶⁸
- The Practice of Forced Evictions: Comprehensive Human Rights Guidelines On Development-Based Displacement, adopted by the Expert Seminar on the Practice of Forced Evictions Geneva, 11-13 June 1997;⁶⁹
- UN Commission on Human Rights Resolution 1993/77 on forced evictions.⁷⁰

National Legal Provisions

Procedural and substantive legislation in Serbia and Montenegro is comprised of numerous general provisions of some relevance in such situations. Yet neither affirms the obligation of the

made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts."

- "Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available." (See "General Comment No. 7 (1997), The Right to Adequate Housing (Art 11(1) of the Covenant): Forced Evictions", adopted by the UN Committee on Economic, Social and Cultural Rights on 20 May 1997, contained in U.N. document E/1998/22, annex IV).

⁶⁸ These state, *inter alia*: "All victims of violations of economic, social and cultural rights are entitled to adequate reparation, which may take the form of restitution, compensation, rehabilitation and satisfaction or guarantees of non-repetition". The full text of the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights ("Maastricht Guidelines") elaborate the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights ("Limburg Principles"). The Maastricht Guidelines are available at: <http://www.law.uu.nl/english/sim/specials/no-20/20-01.pdf>. The Limburg Principles are available at: <http://www.law.uu.nl/english/sim/specials/no-20/20-00.pdf>.

⁶⁹ Text available at: <http://www1.umn.edu/humanrts/instree/forcedevictions.htm>. These state, *inter alia*:

- "States should apply appropriate civil or criminal penalties against any person or entity, within its jurisdiction, whether public or private, who carries out any forced evictions, not in full conformity with applicable law and the present Guidelines";
- "All persons threatened with forced eviction, notwithstanding the rationale or legal basis thereof, have the right to: (a) a fair hearing before a competent, impartial and independent court or tribunal (b) legal counsel, and where necessary, sufficient legal aid (c) effective remedies";
- "States should adopt legislative measures prohibiting any forced evictions without a court order. The court shall consider all relevant circumstances of affected persons, groups and communities and any decision be in full accordance with principles of equality and justice and internationally recognized human rights";
- "All persons have a right to appeal any judicial or other decisions affecting their rights as established pursuant to the present Guidelines, to the highest national judicial authority";
- "All persons subjected to any forced eviction not in full accordance with the present Guidelines, should have a right to compensation for any losses of land, personal, real or other property or goods, including rights or interests in property not recognized in national legislation, incurred in connection with a forced eviction. Compensation should include land and access to common property resources and should not be restricted to cash payments".

⁷⁰ UN Resolution 1993/77 states in particular: "All Governments [should] provide immediate, restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups." See Annex I at the end of this document

State to provide alternative accommodation to persons being evicted. Domestic law further distinguishes between evictions carried out on the basis of a court order and evictions enforced on the basis of a municipal decision.

Provisions relevant to court-ordered evictions are found in the following (former) Federal laws: i) the Law on Ownership and Proprietary Relations,⁷¹ ii) the Law on Obligations,⁷² iii) the Civil Procedure Code⁷³ and iv) the Enforcement Proceedings Act.⁷⁴ In particular, taken together, these statutes provide for protection of ownership, possession, and the rights of the lessors and lessees. They also set out court procedures. In practical terms, and in view of the Serbian Housing Act (see below), they apply to situations involving land evictions and evictions of housing occupants in breach of their otherwise valid contracts (leases).

Article 5 of the Housing Act,⁷⁵ applicable in Serbia only, provides for exceptions in which evictions may be carried out in the absence of a court order. These relate only to apartments, apartment buildings, and similar living accommodations, and in particular to i) occupants with no legal basis whatsoever (squatters), ii) occupants without a formally valid contract (lease), and iii) occupants who initially had a valid legal basis for their occupancy but whose legal title has in the meantime been declared null and void. Both apartment owners and other persons "with a legal interest" can initiate administrative eviction proceedings before the municipal housing authorities. These proceedings are by law explicitly defined as "urgent". Pursuant to the former federal General Administrative Procedure Act,⁷⁶ decisions issued by the municipal housing authorities can be appealed with a second instance government body. Ultimately, if unsuccessful on appeal and in view of the federal Administrative Disputes Act,⁷⁷ the evictee can file a special administrative complaint with the competent court. It is, however, important to note that with respect to squatters neither the appeal nor the administrative complaint can suspend the eviction. In other words, squatters can be evicted solely on the basis of decisions issued by the first-instance municipal housing authorities, with no hearing before a court. Meanwhile, all other illegal occupants referred to in Article 5 may be evicted on the basis of the second instance administrative decision, and in most cases also in the absence of judicial review.

Victims of forced evictions, pursuant to the relevant provisions of the Law on Obligations, can in principle sue for both pecuniary and non-pecuniary damages, and can indeed request other forms of non-financial satisfaction.⁷⁸ To date, however, there is no existing case law to this effect. In practice, domestic courts refuse to order injunctions aimed at preventing planned evictions and providing alternative temporary accommodation, notwithstanding the frequently dire situation faced by the plaintiffs -- and in violation of the relevant international legal standards.

Finally, in terms of criminal redress, the Serbian Criminal Code itself -- though it includes no express language about evictions -- does provide for several criminal offences pertinent to forced

⁷¹ *Zakon o osnovama svojinsko-pravnih odnosa.*

⁷² *Zakon o obligacionim odnosima.*

⁷³ *Zakon o parničnom postupku.*

⁷⁴ *Zakon o izvršnom postupku.*

⁷⁵ *Zakon o stanovanju.*

⁷⁶ *Zakon o opštem upravnom postupku.*

⁷⁷ *Zakon o upravnim sporovima.*

⁷⁸ Potential legal grounds contained in the Law on Obligations are identical to those already discussed in the anti-discrimination portion of this brief.

evictions carried out without official authorisation and/or appropriate safeguards. Thus, Articles 68, 76a and 225, dealing with the breach of the right to respect for one's home, the violation of the freedom of movement and choice of residence, and self-help, respectively, appear to be of particular relevance. Also, depending on the specific circumstances of each case, other more general criminal offences involving threats, coercion, bodily injuries and abuse of office under Articles 53, 54, 62, 66, and 67 may also afford appropriate redress. Unfortunately, again, to date there is no existing case law indicating that any of these provisions has been used to defend the rights of persons faced with eviction.

The ERRC is currently involved in a lawsuit on behalf of Romani inhabitants of the settlement on Zvečanska Street in Belgrade -- under eviction orders since December 1999 -- against both the central government and the local authorities, requesting adequate alternative accommodation and basing their claim on the above-cited international standards as well as on Article 16 paragraph 2 of the former Federal Constitution, which explicitly states that all ratified international treaties are binding and as such are an integral part of the domestic legal framework.⁷⁹ The case was pending before the Belgrade Municipal Court as of February 10, 2003.

Other Violations of the Right to Adequate Housing

In addition to forced evictions, Roma in Serbia and Montenegro experience other systemic violations of the right to adequate housing. The housing conditions of many Roma in Serbia and Montenegro are extremely substandard. Many Romani dwellings lack legal authorisation and have neither running water nor electricity. For example, in the Romani settlement Mali Krivak in Smederevo, central Serbia, there are only three water taps for 700 families; the water supply is additionally reportedly reduced in summer months. Poor housing conditions and a lack of clean water have caused diseases in some Romani settlements in Serbia, highlighting the intersection between the right to adequate housing and the right to the highest attainable standard of health (see below).

The number of non-legalised Romani settlements in Serbia and Montenegro is alarming, and the consequent lack of security of legal tenure makes these settlements especially vulnerable to forced eviction. In the Veliki Rit settlement in Novi Sad, housing some 2500 persons, only 100 structures -- out of a total of approximately 530 -- are built with legal permits. In some cases, when foreign humanitarian organisations have offered financial assistance for providing infrastructure to Romani settlements, local authorities have refused to co-operate, explaining that the settlements at issue have been built illegally. At least half of the structures in the settlement are small shacks made of tin, cardboard, scrap and/or mud. Many of the houses do not have electricity. There is no sewage system in the settlement, and solid waste removal takes place rarely.

In the Romani settlement Slavko Zlatanović in the southern Serbian town of Leskovac, many Roma have reportedly contracted skin diseases as a consequence of poor housing conditions and lack of clean water.⁸⁰ Although the settlement is reportedly within the range of the Leskovac municipal water supply system, and although several foreign foundations have reportedly offered financial support for building infrastructure, local authorities have stated that nothing can be

⁷⁹ For further details in the case, please see: http://www.errc.org/rr_nrl_2002/legal_defence.shtml. Similar provisions are included in the Constitutional Charter of the State Union of Serbia and Montenegro. Article 10 of the Constitutional Charter states: "Provisions of international treaties on human and minority rights and civil liberties applicable on the territory of Serbia and Montenegro shall apply directly." Article 16 of the Constitutional Charter states: "Ratified international agreements and generally accepted rules of international law shall have precedence over the law of Serbia and Montenegro, and over the law of the member states."

⁸⁰ October 2001 edition of *Prava čoveka*, the newsletter of the Leskovac-based *Committee for Human Rights (Odbor za ljudska prava)*.

done, since the streets were built without legal permission. Authorities also claim that building a new water supply system would be too complicated and costly.

State-run municipal garbage removal services rarely collect waste from Romani settlements. In the Vrela Ribnička settlement of Podgorica, for example, garbage is reportedly taken away every 10 days.⁸¹ As garbage removal services visit them only occasionally, the inhabitants of a tent settlement for displaced persons in Podgorica have had to dispose of their waste on a common pile within the settlement. The waste attracts rats, which sometimes attack settlement inhabitants. For example, in the Veliki Rit settlement in Novi Sad, Serbia, a rat bit a young Romani girl who had to seek medical assistance afterwards.⁸² Other families in the settlement complained of the prevalence of rats as well.⁸³

In Montenegro, collective camps for housing displaced Kosovo Roma are overcrowded and unsafe: a number of fires have led to fatal consequences. In a most recent incident, a 5-year-old Romani girl, Teuta Šalja, and her baby brother Elfadet lost their lives in a fire that broke out in their shack in the IDP camp within the Vrela Ribnička settlement in Podgorica on November 16, 2002.⁸⁴ This area is located near a local garbage dump, giving rise to a constant threat of disease.

Similarly, in Serbia, a fire took place in the camp for Romani internally displaced persons Salvatore, in Bujanovac, in the south of the republic, on October 29, 2002. The approximately 150 Roma in the settlement lived in 25 tents. There was one water source and no sewage removal system or electricity in the settlement. Solid waste was removed only occasionally. The Romani inhabitants burned wood for heat and used candles for lighting. The twenty-five tents were reportedly destroyed in the fire.

In addition, some Romani settlements are located in hazardous areas such as, for example, areas near river banks. This makes some Romani settlements vulnerable to catastrophic events such as floods. Recently, severe floods struck Romani settlements in the Bujanovac municipality, in southern Serbia, and also the Tulum neighbourhood of the town of Berane, Montenegro, from which ten Romani families had to be evacuated.⁸⁵

Many displaced Roma from Kosovo live in unofficial camps, to which no agency – state or non-governmental – provides material assistance. Others are sheltered by relatives already resident in Serbia and Montenegro, and there are therefore widespread reports of so-called "hidden homelessness". To date, there has been insufficient effort to resolve effectively the housing problems of Roma in Serbia and Montenegro.

⁸¹ ERRC interview with Ms Sanija Beganaj, Podgorica, November 11, 2002. This field mission was conducted with technical support of the UNHCHR Field Office, Podgorica.

⁸² ERRC interview with Ms Drita Salihi, Novi Sad, October 6, 2002. This field mission was conducted with technical support of the UNHCHR Field Office, Belgrade.

⁸³ ERRC interview with Ms Šemsija Salimi, Novi Sad, October 6, 2002. This field mission was conducted with technical support of the UNHCHR Field Office, Belgrade.

⁸⁴ Belgrade-based radio station B92, November 17, 2002.

⁸⁵ Radio B92, Belgrade, January 11, 2003.

V. Conclusion

At the "standard-setting" or "normative" level, the new state union of Serbia and Montenegro has initiated a number of important steps to address the deeply unsatisfactory human rights situation of Roma. The country is now party to the European Framework Convention for the Protection of National Minorities, and Roma are officially recognised as a "minority" under the federal Law on the Protection of Rights and Freedoms of National Minorities. National Councils are presently being established in Serbia but have yet to prove their efficacy. No similar steps have yet been taken in Montenegro. In 2003, the newly-constituted union Ministry of Human and Minority Rights is slated to start a broad consultation process based on the National Strategy for the Integration and Empowerment of Roma, a first draft of which was concluded in December 2002. However, despite the inclusion in the new state union Constitution of a Charter on Human and Minority Rights and Fundamental Freedoms, the authorities in Serbia and Montenegro and the state union have yet to demonstrate their ability or willingness to adopt common strategies or to engage in any meaningful cooperation with each other at a practical level.

The governments of Serbia and Montenegro are in the process of developing separate national poverty reduction strategies (PRSPs) but thus far, the poverty of Roma has not been given sufficient attention. Rather than focusing on the root causes of poverty among vulnerable and marginalised groups such as Roma, the PRSP processes have tended towards a neo-liberal and macro-economic approach to poverty that looks at income and consumption rather than broader human capabilities, human dignity and human rights. As PRSPs are an important planning budgetary tool, it is essential that the "real poor" – such as a number of Roma in Serbia and Montenegro today – be given a higher priority in the strategies than is presently the case.

In any event, the fundamental challenge will be to translate initiatives at the republic-level into practical activities that have a positive and durable impact on the very poor human rights situation of Roma throughout the country. The obstacles are enormous. Profound discrimination against Roma exists in almost every facet of daily life, from their enjoyment of economic, social and cultural rights, to their participation in public life. Lack of personal documents such as birth certificates, citizenship and ID cards undermine their access to health care, social assistance, education and employment. Education for children and their integration into the regular school system will be essential to the future improvement of the Romani community.

Roma are represented negatively in almost every survey of social and economic conditions – such as housing, poverty and education surveys – and the situation of Roma IDPs is deplorable. As this Survey bears out, Roma are often the victims of police ill-treatment, and frequently the targets of harassment, violence and other humiliating treatment by other parts of the population. The situation is unlikely to improve in any significant way until Republic authorities, Municipal and community leaders, and private corporate interests make a genuine commitment to resolving the problems faced by the Roma in Serbia and Montenegro. There is unlikely to any real improvement in the overall standard of living for the very large impoverished segment of the Romani community – notably in access to adequate housing and access to potable water and sanitation in exposed Romani settlements -- without genuine support from municipalities (and their urban planning departments) as well as from the Republic Ministries of Urban Planning. For this reason, this Survey proposes the adoption of a "Code of Conduct" and/or "Eviction Impact Assessment" as a minimum guarantee against unlawful or arbitrary eviction of Roma.

VI. APPENDICES:

1. **Discrimination in access to health care services**
2. **Discrimination in access to employment**
3. **Discrimination in the allocation of state social assistance**
4. **Discrimination in access to public places**
5. **Threats to the exercise of fundamental rights caused by a lack of personal documents/statelessness among Roma in Serbia and Montenegro**
6. **Issues particular to the large-scale forced return of Roma from Germany and other Western European Countries**

Appendix 1: Discrimination in Access to Health Care Services

International Legal Standards

The International Covenant on Economic, Social and Cultural Rights guarantees "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (Article 12(1)), while Article 12(2) enumerates a number of "steps to be taken by the States parties ... to achieve the full realization of this right". Additionally, the right to health is recognised, *inter alia*, in Article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, in Articles 11(1)(f) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women, and in Article 24 of the Convention on the Rights of the Child. The right to health is also recognised under the Revised European Social Charter, at Article 11.

The United Nations Committee on Economic, Social and Cultural Rights has noted that States have immediate obligations in relation to the right to health, such as the guarantee that the right will be exercised without discrimination of any kind (Article 2(2)) and that States have an obligation to take steps (Article 2(1)) towards the full realization of the right to the highest attainable standard of health.⁸⁶

Additionally, the U.N. Committee on the Elimination of Racial Discrimination has in its General Comment No. 27 recommended States Parties to "ensure Roma equal access to health care and social security services and to eliminate any discriminatory practices against them in this field" Footnote: (see *Discrimination Against Roma*, 16/08/2000, CERD General recommendation 27. (General Comment).

Access to Health Care in Practice

There are widespread reports that Roma suffer discrimination in access to health care services, and that some doctors refuse to provide services to Romani patients. Additionally, many Roma cannot exercise their right to state-provided health care because they lack personal documents demanded by medical authorities. This problem is particularly widespread among displaced Roma from Kosovo.

Some Romani persons report that doctors refuse to receive them. In one instance of the refusal of care, a local doctor allegedly declined many times to see the children of Ms Dragica Jovanović, a 28-year-old Romani woman from Novi Sad, the most recent incident taking place in early October 2002.⁸⁷ According to the testimony of the victim to the ERRC, the doctor repeatedly instructed Ms Jovanović to go to another health facility further away instead; the doctors at the

⁸⁶ See "General Comment No. 14 (1991), The Right to the Highest Attainable Standard of Health (Art 12 of the Covenant)", adopted by the UN Committee on Economic, Social and Cultural Rights on 11 August 2000, U.N. doc. E/C.12/2000/4.

⁸⁷ ERRC interview with Ms Dragica Jovanović, Novi Sad, October 6, 2002.

other institution reportedly sent her back. The claims of Ms Jovanović were corroborated by many other Romani mothers living in the same settlement, who testified that they had been subjected on various occasions to similar treatment by the same doctor. In Smederevo, Ms Lizabeta Ibinci claimed that in the local health centre, as a Romani woman, she is always made to wait longer, and assigned to meet doctors whom she deems inadequate, despite her explicit wishes to see another professional.⁸⁸

According to a December 2001 study conducted in 30 Romani settlements in Belgrade, undertaken by the Belgrade office of the British charity OXFAM, those interviewees who reported "problems [encountered] when visiting a doctor", said that they believed the problem had been caused by the fact that they were "Gypsy/Roma" (269 persons or 13.4%), "the colour of their skin" (170 persons or 8.5%), or "their nationality/confession" (26 persons or 1.3%, out of a total of 2004 persons).⁸⁹

There are also numerous allegations that emergency aid teams refuse to come to Romani settlements. In Vranje, it is alleged by many Roma that as a general rule, after hearing the address of the caller (easily identified as an address of Roma), health authorities refuse to send an ambulance. Frequently, health officials tell Roma calling for emergency health services to call the police instead.⁹⁰ In Srbobran, northern Serbia, Mr Slavko Dimić described a case in which an ambulance team initially refused to come, and acquiesced only after they had actually heard the sick woman's moaning in the background of the phone call.⁹¹ In another case, a Romani man from the northern Serbian town of Kikinda alleged that on October 13, 2002, his family called the ambulance at least five times, as his mother was sick, after which the medical staff member on the other end of the phone line told them to take a taxi.⁹² According to the same source, it is an unwritten rule that the ambulance never comes to the Romani settlement Bedem, because of the mud from its unpaved streets.

Deplorable living conditions have very detrimental effects on the health of many Roma. In the family of Mr Meta Flamur, a 43-year-old Romani man from Kosovo living in Berane, Montenegro, most children are reportedly sick with chest diseases due to humidity in the houses. When the Berane camp for Romani displaced persons from Kosovo was first opened, there was a doctor. This was no longer the case as of the date of an ERRC visit on November 12, 2002.⁹³ Preventive health care is also mostly out of reach. Out of five children of Mr Djuka Imeraj, living in the Berane settlement named "Riverside", none were vaccinated at the time of the ERRC visit in November 2002.⁹⁴ Poverty and a lack of social support is also an obstacle for many. For example, Mr Šefčet Beriša from Zrenjanin, northern Serbia, was told that his son, suffering from haemophilia, needs to be taken to a hospital in Belgrade for check-ups.⁹⁵ As Mr

⁸⁸ ERRC/Minority Rights Center interview with Ms Lizabeta Ibinci, Smederevo, November 11, 2002.

⁸⁹ OXFAM, "The Roma Livelihood in Belgrade Settlements", Belgrade, December 2001.

⁹⁰ ERRC/Minority Rights Center interview with Ms Neda Mehmeti, Vranje, August 22, 2002.

⁹¹ ERRC/Minority Rights Center interview with Mr Slavko Dimić, Srbobran, November 30, 2002.

⁹² ERRC interview with a Romani man who did not want to identify himself, Kikinda, October 14, 2002. This field mission was conducted with technical support of the UNHCHR Field Office, Belgrade.

⁹³ ERRC interview with Mr Meta Flamur, Berane, November 12, 2002. This field mission was conducted with technical support of the UNHCHR Field Office, Podgorica.

⁹⁴ ERRC interview with Mr Djuka Imeraj, Berane, November 12, 2002. This field mission was conducted with technical support of the UNHCHR Field Office, Podgorica.

⁹⁵ ERRC interview with Mr Šefčet Beriša, Zrenjanin, October 11, 2002. This field mission was conducted with technical support of the UNHCHR Field Office, Belgrade.

Beriša could not afford this, he applied with the local social work centre for assistance, but was only told that he would have to cover the transportation costs himself, and later he could ask for reimbursement of these costs. This was, however, no solution for Mr Beriša, who did not have enough money to pay for the trip.

In Serbia, *OXFAM* research in Belgrade revealed that, out of 2004 interviewees, 549 persons (27.4%) did not have a health card, a document necessary in order to receive free medical care in state institutions.⁹⁶ A majority of the latter group -- 443 persons -- stated that they did not have a health card because as displaced persons from Kosovo and due to the circumstances in which they were ethnically cleansed from Kosovo, "their documents were burned".⁹⁷

⁹⁶ OXFAM, "The Roma Livelihood in Belgrade Settlements", Belgrade, December 2001.

⁹⁷ More than a third of the interviewees, 872 persons, were displaced persons from Kosovo.

Appendix 2: Discrimination in Access to Employment

International Legal Standards

The right to work is recognised in a number of international human rights instruments, with the point of departure taken as Article 23 of the Universal Declaration of Human Rights. Article 6 of the International Covenant on Economic, Social and Cultural Rights binds States Parties to the implementation of the right to work. Article 1 of the Revised European Social Charter similarly guarantees the right to work.

Article 11 of the Convention on the Elimination of Discrimination against Women and Article 5(e)(i) Convention on Elimination of All Forms of Racial Discrimination ban gender and racial discrimination in the implementation of the right to work. The International Labour Organization (ILO) Convention (No. 111) on Discrimination (Employment and Occupation) elaborates the right to freedom from discrimination in access to employment. In Article 1(a) of the Convention, discrimination is defined as any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin (or any other motive determined by the State concerned) which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The scope of the Convention covers, according to Article 1(3), access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. Article (1)(1) of ILO Convention No. 111 calls for a national policy to eliminate discrimination in access to employment, training and working conditions, on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and to promote equality of opportunity and treatment. Article 2 of the Convention assigns to each State which ratifies it the fundamental aim of promoting equality of opportunity and treatment by declaring and pursuing a national policy aimed at eliminating all forms of discrimination in respect of employment and occupation. The Federal Republic of Yugoslavia ratified the ILO Convention 111 on November 24, 2000.

The U.N. Committee on the Elimination of Racial Discrimination has, in its General Comment No. 27,⁹⁸ recommended that States Parties to the ICERD:

- Adopt or make more effective legislation prohibiting discrimination in employment and all discriminatory practices in the labour market affecting members of Roma communities, and to protect them against such practices;
- Take special measures to promote the employment of Roma in the public administration and institutions, as well as in private companies;
- Take special measures to promote the employment of Roma in the public administration and institutions, as well as in private companies;
- Adopt and implement, whenever possible, at the central or local level, special measures in favour of Roma in public employment such as public contracting and other activities undertaken or funded by the Government, or training Roma in various skills and professions.

Access to Employment in Practice

To date, any measures undertaken by the authorities of Serbia and Montenegro to promote the employment of Roma have been localised and for the most part ineffective, and anti-discrimination measures in the field of employment are completely unheard of. Unemployment among Roma in Serbia and Montenegro is at present extremely high. In Bujanovac, southern Serbia, for example, representatives of a local Romani organisation told the ERRC that in

⁹⁸ *Discrimination Against Roma*, 16/08/2000, CERD General recommendation 27. (General Comment). Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/11f3d6d130ab8e09c125694a0054932b?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/11f3d6d130ab8e09c125694a0054932b?OpenDocument)

November 2002 each Romani person earning an income supported 8 more persons.⁹⁹ Research conducted in Montenegro in 2002 found that 82.4% of Romani men and 96.8% of Romani women were unemployed.¹⁰⁰ UNHCHR research on displaced Kosovo Roma and Egyptians in Rožaje, Montenegro, where 124 of a total of 235 individuals were potentially economically active, revealed that only four persons were employed with a valid contract, 15 had a regular job, 6 had seasonal work, and 31 said that they worked upon request. Approximately 55% of potentially economically active persons in this community had no work at all.¹⁰¹ Similarly, the December 2001 OXFAM survey in Belgrade concluded that, out of 2004 interviewed Romani persons, where 1845 deemed themselves capable of work, only 254 persons (12.7%) had formal employment.¹⁰²

There are widespread allegations of discrimination against Roma in access to employment. For example, Mr Gani Šaćiri from the Dudara settlement in Zrenjanin, Vojvodina, told the ERRC that, in 16 years of registration with the local unemployment bureau, he had never received a job offer.¹⁰³ At the time of an ERRC visit in October 2002, Mr Rasim Osman from the Veliki Rit settlement in Novi Sad had been registered with the local unemployment bureau since 1983. In this period, he reportedly received only three job offers. The first two were for short-term jobs; in the third case, even though he was sent by the bureau, the employers refused to employ him when they saw him, allegedly due to racial bias.¹⁰⁴ In Bačko Gradište, northern Serbia, Mr Miloš Necić described how the only employment he was ever able to secure was occasional agricultural field work.¹⁰⁵ According to Mr Necić, as little as 1% of Roma living in Mr Necić's neighbourhood -- the "Cigan mala" Romani quarter -- are employed. Unemployment among Roma in Serbia and Montenegro is frequently explained with reference to often low levels of education among Roma. However, not all Roma lack higher educational degrees, and according to Ms Jovanka Jovanović from Žabalj, northern Serbia: "Both the educated and uneducated Roma have to go to the fields to work in order to earn money for their basic needs."¹⁰⁶ There are no known instances in which authorities have penalised an employer in Serbia and Montenegro for pursuing a policy of racial discrimination or for failing to hire a Romani individual on arbitrary grounds.

Some Roma in Serbia and Montenegro who are employed report problems related to racial discrimination at the work place. For example, Mr Enver Idić from Bujanovac finished the high school for nurses.¹⁰⁷ When interviewed in January 2003, he worked for the Bujanovac health centre, and had a contract valid until the end of 2003. In June 2002, the regional Health Protection Institute in Vranje issued an opinion according to which Mr Idić, as a Romani

⁹⁹ Results obtained from the local Romani organisation *Bibijaće čave*, Bujanovac, November 2002.

¹⁰⁰ From the oral presentation of Mr Živorad Tasić of the Tivat-based *Grupa MARGO* on the results of their research on personal documents of Roma in Montenegro, at the ERRC workshop "Personal Documents and Threats to the Exercise of Fundamental Rights among Roma in the Former Yugoslavia", held on September 6-8, 2002, in Igalo, Montenegro.

¹⁰¹ UNHCHR Field Office Podgorica, "Human Rights-Based Household Survey of Roma and Egyptian IDPs in Rožaje", Podgorica, November 2002.

¹⁰² OXFAM, "The Roma Livelihood in Belgrade Settlements", Belgrade, December 2001.

¹⁰³ ERRC interview with Mr Gani Šaćiri, Zrenjanin, October 11, 2002. This field mission was conducted with technical support of the UNHCHR Field Office, Belgrade.

¹⁰⁴ ERRC interview with Mr Rasim Osman, Novi Sad, October 6, 2002.

¹⁰⁵ ERRC/Minority Rights Center interview with Mr Miloš Necić, Bačko Gradište, January 18, 2003.

¹⁰⁶ ERRC/Minority Rights Center interview with Ms Jovanka Jovanović, Žabalj, November 26, 2002.

¹⁰⁷ ERRC/Minority Rights Center interview with Mr Enver Idić, Bujanovac, January 6, 2003.

professional, should receive permanent employment in Bujanovac, under the policy of respect for multiethnic principles currently in force in this southern-most part of Serbia, bordering Kosovo. However, the manager of the Bujanovac health centre has allegedly refused to take this matter into consideration. Similarly, Ms Vesna Vujičić, a Romani nurse employed in a hospital in Čačak, central Serbia, reported that she was falsely accused by other colleagues of stealing a patient's belongings, allegedly because of her ethnicity. Ms Vujičić also stated that her superiors request her to do work that does not fit her job description, such as cleaning chores.¹⁰⁸ Another Romani nurse from Čačak, Ms Danka Vujkić, also made allegations that, because of her ethnicity, she is sometimes requested to do manual work and carry heavy loads, which she additionally should not do because of her weak health and partial disability.¹⁰⁹ There are also allegations that Roma are the first among those who lose jobs when austerity programmes are implemented.¹¹⁰

¹⁰⁸ *ERRC/Minority Rights Center* interview with Ms Vesna Vujičić, Čačak, November 7, 2002.

¹⁰⁹ *ERRC/Minority Rights Center* interview with Ms Danka Vujkić, Čačak, November 7, 2002.

¹¹⁰ *ERRC* interview with Mr Mile Stojkov, Kikinda, October 14, 2002. This field mission was conducted with technical support of the UNHCHR Field Office, Belgrade.

Appendix 3: Discrimination in the Allocation of State Social Assistance

International Legal Norms

The Universal Declaration of Human Rights establishes at Article 22 that "[e]veryone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality." Article 9 of the International Covenant on Economic, Social and Cultural Rights guarantees the right of everyone to social security, including social insurance. Article 5(e)(iv) of International Convention on Elimination of Racial Discrimination binds States Parties to "prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (iv) The right of public health, medical care, social security and social services." Additionally, Article 26 of the International Covenant on Civil and Political Rights regarding non-discrimination is recognised by the U.N. Human Rights Committee to be an autonomous right, and the Committee has established through its case-law in *Broeks*¹¹¹ and *Zwaan de Vries*¹¹² -- both cases relating to discrimination in connection with the right to draw social security benefits -- that the Article 26 ban on discrimination covers issues beyond the rights secured under the ICCPR.

Allocation of State Social Assistance in Practice

Discrimination against Roma in the allocation of state social assistance is frequently reported in Serbia and Montenegro. For example, during an *ERRC/Minority Rights Center* visit in April 2002, Roma in the western Serbian town of Požega stated that the local social work centre refused Romani applications for social assistance for a number of arbitrary reasons. 67-year-old Ms Mila Vujičić had recently been refused on the grounds that her son had reportedly "promised to provide her monthly with 2000-2600 dinars" (approximately 32-42 euros) and also because she owned a stereo system.¹¹³ Similarly, local non-governmental organisations accused the Center for Social Work in Leskovac of having denied assistance to hundreds of Roma in the Leskovac area, for similar reasons.¹¹⁴ When 49-year-old Ms Bahtije Dalipi -- a displaced Kosovo Romani woman living in Niš and suffering from a serious heart condition -- went to the municipality to seek social support, she was told to go to "the office of Miloš". As she inquired on the corridors who "Miloš" was, she was told that this office was in Belgrade.¹¹⁵

A number of Romani persons visited by the *ERRC* report that they do not receive any social assistance, although they appear to be living in poverty or extreme poverty. The eight-member family Jovanović of Veliko Gradište, with six children, lived in an approximately 10m² shack without running water or electricity at the time of an *ERRC/Minority Rights Center* visit in January 2003; the local social work centre has reportedly refused to assist the family financially as the parents have been deemed "capable of work".¹¹⁶ In another case, on October 8, 2002, Ms Dragica Vasić, a 20-year-old Romani woman from Niš, told the *ERRC/Minority Rights Center*, that she and her husband were both unemployed and that they did not receive any kind of social aid.

¹¹¹ *Broeks v. the Netherlands*, communication No. 172/1984, Views adopted on 9 April 1987.

¹¹² *Zwaan de Vries v. the Netherlands*, communication No. 182/1984, Views adopted on 9 April 1987.

¹¹³ *ERRC/Minority Rights Center* interview with Mr Aca Vujičić, Požega, April 24, 2002.

¹¹⁴ *ERRC/Minority Rights Center* interviews with the staff of the *Committee for Human Rights Leskovac*, April 24, 2002.

¹¹⁵ *ERRC/Minority Rights Center* interview with Ms Bahtije Dalipi, Niš, October 8, 2002.

¹¹⁶ *ERRC/Minority Rights Center* interview with Ms Ruža Jovanović, Veliko Gradište, January 14, 2003.

In September 2002, an employee of a social office in Niš reportedly told Ms Vasić and her husband that they did not qualify for social aid because "only the sick have this right".¹¹⁷ She also claimed that she was not paid the allowance automatically paid to all childbearing women. On the same day, Ms Đulizara Malićević, a 45-year-old Romani woman from Niš, testified to the ERRC/MRC that she had medical papers that certify she is a heart patient with high blood pressure. Despite this, the social office reportedly denied Ms Malićević access to social aid in 2001 and August 2002, on the grounds that she was able to work. According to her statement, Ms Malićević is forced to sell goods at fairs to survive, even though this could endanger her health. Mr Tomislav Stojanović, a statistician working at the same social centre in Niš which refused Ms Malićević's application stated that Roma in general receive only a portion of the actual amount of social aid to which they are entitled.¹¹⁸

Many Romani persons in Serbia testified to the ERRC that the staff of social work centres are often rude to Romani applicants for assistance. Mr Džemal Memiši, and unemployed Romani man from Bačko Gradište in northern Serbia testified that he was on several occasions rudely sent out of the office of the local social work centre, without being interviewed about his needs.¹¹⁹ Ms Sanela Lakatoš from the Romani settlement called "Bangladeš", near Novi Sad, stated that the staff of the Novi Sad Social Work Center have in some instances been impolite to Roma. For example, in late December 2002, a social worker reportedly told Ms Lakatoš, who came to the centre as some diapers were distributed, "Get away, do not bother me, don't be boring, there is no aid for you."¹²⁰ In another case, Ms Gordana Golub from Bačko Gradište and her family found themselves homeless after their house was destroyed in a fire in October 2002. She stated that when she went to seek shelter from the local social work centre, a social worker refused to investigate the case and did not approve any assistance to the family; they were given shelter only after an intervention from a Romani activist with the municipality.¹²¹

Recent field research conducted in Niš, southern Serbia, revealed similar problems related to the accessibility of social assistance there. On October 18, 2002, Ms Ljubica Durmišević, an unemployed 24-year-old Romani woman from Niš testified to the ERRC/Minority Rights Center that since she had given birth to a child three months earlier, she has been collecting the documents necessary to receive child allowance from the "Sveti Sava" Centre for Social Work in Niš, but still had to acquire two documents. Ms Durmišević reported that, on the various occasions when she was at the Centre, she was told to come back at a later date. Employees at the Centre allegedly treated Ms Durmišević badly and gave her the impression that she had no right to be there. As of December 18, 2002, Ms Durmišević had still not received any child allowance.

¹¹⁷ The Law states otherwise. According to the Law on Social Security and Securing the Social Security of Citizens (*Zakon o socijalnoj zaštiti i obezbeđenju socijalne sigurnosti građana*) of the Republic of Serbia, those eligible for support are either incapable of work or cannot earn enough. Article 3 states: "Social security is secured for citizens who are not capable of work and have no other means of subsistence, and also to the citizens and families who, in spite of the obligation to support family and relatives through their work and on the basis of their work, on the basis of their property and property rights, or in any other way, are not capable of providing sufficient means for satisfying their basic needs in life." (unofficial translation by the ERRC)

¹¹⁸ ERRC/Minority Rights Center interview with Mr Tomislav Stojanović, Niš, October 10, 2002.

¹¹⁹ ERRC/Minority Rights Center interview with Mr Džemal Memiši, Bačko Gradište, January 18, 2003.

¹²⁰ ERRC/Minority Rights Center interview with Ms Sanela Lakatoš, Novi Sad, January 12, 2003.

¹²¹ ERRC/Minority Rights Center interview with Ms Gordana Golub, Bačko Gradište, January 18, 2003.

Humanitarian assistance provisions for displaced Roma from Kosovo are generally inadequate.¹²² However, there are additional reports of discrimination against Kosovo Roma in allocating humanitarian assistance on the grounds of their ethnicity and religion – most Kosovo Roma are Muslims, in predominantly Christian Orthodox Serbia and Montenegro.

¹²² Local resources to support displaced persons are extremely limited because Serbia, with among the largest refugee and displaced persons communities in Europe, also has one of the weakest economies, and its citizens presently experience a continuous deterioration of living standards. Available humanitarian aid is highly inadequate. Humanitarian assistance provided by international organisations is delivered in the form of packages of food and hygienic items. The levels of aid were significantly reduced in January 2001; as of September 15, 2001, new reductions took place. According to the International Committee of the Red Cross criteria for displaced persons from Kosovo, as of February 11, 2003, food and hygiene parcels were delivered to:

- Elderly persons over 60 years of age, living alone or as a couple, without any immediate or extended family support, with a pension or benefit less than 50 % of the average monthly Republic salary per person per month, without any real property and/or assets or other possibilities that could provide additional income;
- Physically and/or mentally handicapped persons with a proven certificate of incapacity as being more than 80 % handicapped and therefore incapable of working; living in a household having a compound income (including invalid benefits) of less than 50 % of the average monthly Republic salary per person per month, and without another member of the household capable of work and serving as a primary caretaker;
- Single-parent households (one adult) with children below the age of 10 without immediate or extended family support and with a compound income of less than 50 % of the average monthly Republic salary per person per month (including child benefits), without any real property and/or assets or other possibilities that could provide additional income;
- Children (including foster children, unaccompanied minors or orphans) below the age of 10 in households without any member capable of work and with a compound income (including child benefits) of less than 50 % of the average monthly Republic salary per person per month, without any real property and/or assets or other possibilities that could provide additional income.

The humanitarian situation of Kosovo Roma in Montenegro is worsening, due to the fact that very high numbers of international non-governmental organisations providing humanitarian assistance in Montenegro have closed down their programmes, or are in the final stages of their operation. Local financial resources are reportedly inadequate, due to poor economic conditions in Montenegro (for further details, please see: http://errc.org/rr_nr4_2001/snap7.shtml).

Appendix 4: Discrimination in Access to Public Places

International Standards

Discrimination in access to public accommodation is prohibited, *inter alia*, under Article 5(f) International Convention on Elimination of Racial Discrimination, which calls for "States Parties to[...] prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction[...] notably in the enjoyment of[...] (f) the right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks." The U.N. Committee on the Elimination of Racial Discrimination, in its General Comment No. 27 on Discrimination against Roma, recommends that States Parties "prevent, eliminate and adequately punish any discriminatory practices concerning the access of members of the Roma communities to all places and services intended for the use of the general public, including restaurants, hotels, theatres and music halls, discotheques and others."¹²³

Access to Public Accommodation in Practice

Instances of discrimination against Roma in access to public accommodation, such as discotheques, cafes, and swimming pools, occur in Serbia and Montenegro with disturbing frequency. Authorities have rarely taken adequate action to punish such discrimination. For instance, on January 30, 2002, the *Humanitarian Law Center (HLC)*, a Belgrade-based non-governmental organisation, filed a petition with the Federal Constitutional Court in a case in which a Belgrade disco club refused entry to a group of Roma -- and in which Serbian authorities had failed to punish the discrimination. After receiving complaints from Romani persons that they had been refused entry to the *Trežor* discotheque in Belgrade, on February 18, 2000, the *HLC* carried out checks on the spot that confirmed these claims. Reportedly, the disco's doorman told two young Romani persons that they needed to have an invitation to enter, as a private party was under way. Soon thereafter, non-Romani persons were allowed to enter the club without invitations (both groups were reportedly well-behaved and appropriately dressed). In July 2000, in connection with the case, the *HLC* filed a criminal complaint at the Third Municipal Public Prosecutor's Office against the disco club's management and staff, on grounds of violating the equality of citizens as guaranteed in the constitution and the former Federal Criminal Code. The prosecutor's office, however, brought no indictment in the subsequent 18 months, so *HLC* filed a complaint with the Federal Constitutional Court. As of February 11, 2002, there had been no ruling by any authority in the case.

In addition to this example, the *ERRC* also received reports of banned access for Roma to many other cafes and discotheques in Belgrade and also in Novi Sad. In some instances, *ERRC* researchers and consultants were victims of such discrimination. In one case, Mr Dejan Biban alleged that a group of his Romani friends was not allowed to enter a disco club in Subotica, northern Vojvodina, in the fall 2002; Mr Biban claimed that the young men were all decently dressed and owning money sufficient to buy tickets, so the only reason they could find for their discrimination was thought to be racism.¹²⁴ Ms Janica Dimić, a Romani teacher from Srbobran, also claimed that a local club discriminates Roma: apparently, on an unspecified date, the owner of this club refused to allow a Romani person to enter, because of the person's alleged intoxication, and despite the fact that there were other, non-Romani persons in the club who were also intoxicated.¹²⁵ In the summer of 2002, Ms Dimić and her father entered the club in question for a drink, but were not served for half an hour, after which they decided to leave. In Požega, western Serbia, local Romani activists stated that most restaurant and café owners

¹²³ *Discrimination Against Roma*, 16/08/2000, CERD General recommendation 27. (General Comment).

Available at:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/11f3d6d130ab8e09c125694a0054932b?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/11f3d6d130ab8e09c125694a0054932b?Opendocument)

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¹²⁴ *ERRC/Minority Rights Center* interview with Mr Dejan Biban, Žabalj, November 26, 2002.

¹²⁵ *ERRC/Minority Rights Center* interview with Ms Janica Dimić, Srbobran, November 30, 2002.

refused entry to Roma, or in the best case treated Roma differently from other paying guests.¹²⁶ In some cases, young Roma would enter cafes in Požega, and immediately be told to leave; sometimes, the waiters would serve Romani guests but then ask them to pay and leave immediately.

Persons mistaken for Roma because of their dark skin may also suffer discrimination in Serbia, as a recent case in Belgrade has indicated. According to media reports, Ms Jenny Grac, a Cuban citizen residing in Belgrade, was perceived as Romani and consequently refused entry to a newly opened supermarket. Ms Grac was told by a security guard that "Gypsies cannot shop here [in the supermarket], but there", where the guard pointed at a nearby open market.¹²⁷

Some Roma have stated that they have suffered discrimination at the hands of employees of state transportation companies. In the Romani settlement "Bangladeš" near Novi Sad, far from the centre of the city, local Roma alleged that bus drivers refuse to make a stop at the bus stop closest to the settlement, and instead stop at another bus stop, which makes the travellers walk for 20 minutes more. According to Ms Ljubinka Novak, as she was coming back from a visit to the doctor with her child in mid-December 2002, the driver at first refused to stop at the desired location, and then suddenly pushed the brakes, and told Ms Novak, "Come on, Gypsy, get out".¹²⁸ Additionally, a non-Romani man on the bus then pushed Ms Novak and told her to get out. Ms Milena Žiga also told the *ERRC/Minority Rights Center* that a bus driver had refused to let her children out at the stop by the settlement. On one unspecified date during winter 2001-2002, a bus driver refused to stop near Bangladeš, and one of Ms Žiga's children ended up in the nearby village Rumenka, from which he had to be fetched by his parents. According to Ms Žiga's, the driver had also shouted at the child, and threatened to slap him.¹²⁹

¹²⁶ *ERRC/Minority Rights Center* interview with Mr Aca Vujičić, Požega, April 24, 2002.

¹²⁷ RadioB92, Belgrade, December 20, 2002.

¹²⁸ *ERRC/Minority Rights Center* interview with Ms Ljubinka Novak, Novi Sad, December 18, 2002.

¹²⁹ *ERRC/Minority Rights Center* interview with Ms Milena Žiga, Novi Sad, December 18, 2002.

Appendix 5: Right to a Nationality: Threats to the Exercise of Fundamental Rights Caused by a Lack of Personal Documents/Statelessness among Roma in Serbia and Montenegro

International Legal Standards

The principle that statelessness is anathema has been repeatedly affirmed by the international community. Article 24 of International Covenant on Civil and Political Rights (ICCPR), addressing the rights of children, stipulates that "[e]very child has the right to acquire a nationality." The Convention of the Rights of the Child (CRC) states at Article 7: "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents [...]"

A number of international legal instruments address the issue of statelessness exclusively. The Convention on the Reduction of Statelessness includes a number of provisions aiming to prevent statelessness as a result of loss of nationality due to any change in the personal status of an individual. Article 8 states that "[a] Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless." Article 9 stipulates that a State may not deprive any person or group of persons of their right to nationality on racial, ethnic, religious or political grounds. Further, the Convention Relating to the Status of Stateless Persons states, *inter alia*, "The Contracting States shall as far as possible facilitate the [...] naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings" (Article 32). The Federal Republic of Yugoslavia joined the Convention by succession on March 12, 2001.

The European Convention on Nationality recognizes the right to nationality and Article 3 acknowledges the principle that each State determines under its own law who are its nationals. However, domestic laws of States Parties must be in conformity with a set of principles enumerated in the Convention. These principles are:

- (a) everyone has the right to a nationality;
- (b) statelessness shall be avoided;
- (c) no one shall be arbitrarily deprived of his or her nationality;
- (d) neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse. (See European Convention on Nationality, Article 4)

Article 5 states that the rule of non-discrimination applies in matters of nationality:

1. The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.
2. Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently.

In addition, the European Convention on Nationality renders explicit that the context of state succession places particular burdens on states to act to avoid statelessness. States succession is regulated under an entirely separate chapter of the Convention (Chapter VI), which states, at Article 18:

- "1 In matters of nationality in cases of State succession, each State Party concerned shall respect the principles of the rule of law, the rules concerning human rights [...] in particular in order to avoid statelessness.

- "2 In deciding on the granting or the retention of nationality in cases of State succession, each State Party concerned shall take account in particular of:
- a the genuine and effective link of the person concerned with the State;
 - b the habitual residence of the person concerned at the time of State succession;
 - c the will of the person concerned;
 - d the territorial origin of the person concerned. [...]"

Statelessness among Roma in Serbia and Montenegro

A serious obstacle to the exercise of basic rights by Roma in the countries of the former Yugoslavia, including Serbia and Montenegro, is a lack of personal documents -- including but not limited to birth certificates, personal identity documents,¹³⁰ local residence permits, documents related to state-provided health insurance and social welfare, and passports. In extreme cases, Roma lack citizenship, and the anathema phenomenon of statelessness has arisen among Roma in Serbia and Montenegro. Exclusionary obstacles created by lack of documents can be daunting and in many instances, the lack of one document can lead to a "chain reaction", in which the individual is unable to secure further documents. The situation of Roma displaced from Kosovo and other parts of Serbia and Montenegro is particularly problematic. Many Roma lack basic identity documents (which have been destroyed or never obtained) and reside "unlawfully" in illegal settlements. Legally and practically, it is currently very difficult for such groups to regularise their legal status, including establishing nationality/citizenship. This problem has not been addressed in any systematic way by authorities in Serbia and Montenegro, and there are no domestic legal provisions requiring authorities to resolve issues of statelessness on the territory of Serbia and Montenegro.

ERRC field investigation, as well as documentation by other non-governmental organisations, indicates a high number of Romani persons without one or more documents in the territory of Serbia -- primarily internally displaced Roma from Kosovo. According to an *OXFAM* survey of Romani settlements in Belgrade, out of a total of 2004 persons interviewed, 1070 persons (53.4%) did not have a birth certificate, and 1102 persons (55%) did not have a citizenship.¹³¹ Roma in other parts of Serbia, particularly among groups of displaced Roma, reportedly face similar difficulties. For example, 3-year-old Marijana Kovači was born in a refugee convoy as her family was fleeing Kosovo in 1999. At the time of a field visit in October 2002, she was living in

¹³⁰ UNHCR has described difficulties Roma may encounter while trying to obtain an ID card, which is a basic personal document in Serbia and Montenegro, as follows: "Initial registration of an individual usually occurs at birth. When a child is born in a hospital, the hospital issues a certificate of birth. The child's parents' names are record [sic] from the Health Booklets of the parents onto the certificate for the child. Parents take the certificate from the hospital to the police who issue the unique identification number. With the certificate of birth and a unique number, a person can go to the Registry Office in the municipality and get a certificate for an ID card. With the certificate from the registry office, the individual then go to the police who issue the Licna Karta [ID card]. This process assumes many facts that may not apply to all families. One assumption is birth in a hospital. If a child is born at home, there is a limited time period to go to the hospital to gain the proper documentation of birth. Another assumption is that everyone has his or her own Health Booklet. Roma parents without their own Health Booklets may use the Health Booklets of a friend or relative. The law requires that the names of the parents be recorded directly from the Health Booklet. When the Health Booklet does not match the birth parents' names, the child is registered as a child of different parents. In the future, when trying to change the Licna Karta or obtain other documentation, this may present additional problems, as some registration needs to follow or match the parents' names as recorded in the registry books. A third assumption is that people know and are able to follow the processes to obtain the proper documentation. Persons without the knowledge of the registration process and the persistence to work through the bureaucratic system become entangled in an endless cycle. Parents, who are never fully integrated into the system, can not fully register their children, who in turn can not register their offspring." (UNHCR, "A Survey of the Issues Affecting Roma Documentation and a Call to Action", Belgrade, July 2002)

¹³¹ OXFAM, "The Roma Livelihood in Belgrade Settlements", Belgrade, December 2001.

Kragujevac, was not registered and had no documents. Similarly, the children of Ms Dragica Petrović, a 32-year-old Romani woman living in the Stara klanica settlement in Kikinda, were born in Germany and have neither Yugoslav nor German personal documents. After twelve years of life in Germany, Ms Petrović had to leave Germany in early October; in Yugoslavia, though unemployed, she cannot claim any benefits on behalf of her children, due to their lack of relevant personal documents.¹³² In Niš, Ms Ramiza Haziri, a displaced Romani woman from Kosovo, was, for example, told by a local official that she needs to travel to Belgrade in order to receive her IDP card, without an explanation as to why. Ms Haziri cannot afford the bus fare for this trip, and therefore remains without a valid identification and no access to her basic rights.¹³³ In another case, Mr Rasim Nošaj, originally from Djakovica in Kosovo, now lives in Subotica, in the north of the country. His ID card has expired, and now he would need to go to the town of Jagodina, in the south of Serbia, to get a new ID.¹³⁴ Like Ms Haziri, Mr Nošaj also cannot afford the trip and remains without health care, to which he would have otherwise been entitled, if he had an ID. His wife has only a birth certificate, and two of his four children, born after the family had left Kosovo, do not have birth certificates. When asked for the reasons why he did not register his children, Mr Nošaj stated: "I live in a house that has one room. We don't have electricity or running water. None of us adults are employed. Honestly, I did not try to get the documents for my children – I have other, bigger problems."

In Montenegro, research has demonstrated that, in early 2002, 43.6% of Roma lacked at least one personal document, and 2.8% had none. In addition, 31.6% of Roma were stateless, with the percentage among Romani women reaching 41.8%.¹³⁵ Roma attempting to obtain personal documents encounter numerous difficulties. For example, 53 Roma attempting to apply for citizenship, with proper documentation, were expelled from the Nikšić Municipal Registration Office on September 23, 2002.¹³⁶ As reported by the local media, a conflict ensued between the employees of the Registration Office and the Roma, during which the employees reportedly cursed at the Roma. Mr Ramo Hajrusi, a Romani man, stated that he was kicked out of the

¹³² E RRC interview with Ms Dragica Petrović, Kikinda, October 14, 2002. This field mission was conducted with technical support of the UNHCHR Field Office, Belgrade.

¹³³ ERRC/*Minority Rights Center* interview with Ms Ramiza Haziri, Niš, December 10, 2002.

¹³⁴ ERRC interview with Mr Rasim Nošaj, Subotica, October 23, 2002. With regard to the subsequent ID registration, as in the case of Mr Nošaj, UNHCR noted: "After fleeing conflict, an IDP may need to change or obtain a new Licna Karta [ID card]. To do so, a person must be able to provide some proof of who he is and a current address. The authorities attempt to track where a person comes from and where they have moved. Some municipalities require proof of de-registration in one location before allowing registration in a second location. The de-registration process can be insurmountable for a person who fled their home due to conflict and may be required to return for an administrative procedure. IDPs residing in collective centers or private accommodations may use the address of that particular accommodation. However, IDPs in unofficial collective centers do not have a recognized address. Without a municipally recognized address, one can not register for an ID card. A high percentage of Roma live in unofficial collective centers and are disproportional effected. [...] Additionally, Roma face logistical problems. During the conflicts, the registry books were moved to offices in exile. These offices are stationed in cities throughout Serbia. Many Roma have to bear the financial burden of travelling to the cities where the books are located. Because the documentation is not issued the same day, Roma have to pay for accommodation while they wait for the documents to be processed. Finally, the Roma must pay administrative fees. In total, the process becomes cost prohibitive for many people who live below poverty conditions." (UNHCR, "A Survey of the Issues Affecting Roma Documentation and a Call to Action", Belgrade, July 2002)

¹³⁵ From the oral presentation of Mr Živorad Tasić of the Tivat-based *Grupa MARGO* on the results of their research on personal documents of Roma in Montenegro, at the ERRC workshop "Personal Documents and Threats to the Exercise of Fundamental Rights among Roma in the Former Yugoslavia", held on September 6-8, 2002, in Igalo, Montenegro.

¹³⁶ Podgorica-based daily newspaper *Vijesti*, September 24, 2002.

office and the door was locked behind him. Another Romani man, Mr Vinetu Kurti, reportedly had his papers thrown in the trash by one of the employees at the Registration Office. The Roma involved in the incident believed they were ignored, insulted and threatened to deter them from applying for citizenship.

According to a UNHCHR survey among Romani and Egyptian displaced persons in Rožaje, of 24 children younger than 5 and born in Montenegrin hospitals, 11 had birth certificates, and 5 did not. Some of the parents were not aware that they had to register their children, and some did not know a way how to do this. Out of the children under 5 from the same community yet born while the families were still in Kosovo, 11 children were registered at birth, and 3 children were not.

Insofar as Serbia and Montenegro has been, since 1992, in a situation of state succession and remains in that state today, it is necessary to eradicate statelessness on the territory of Serbia and Montenegro, in accordance with the principles and rules set down under international law. Lack of citizenship constitutes the institutionalised extreme of a general exclusion of Roma from participation in the society of Serbia and Montenegro. Roma are represented to an only fragmentary degree in positions of elected office, as well as in the public administration, the police and the judiciary.¹³⁷ In Serbia and Montenegro, Roma effectively take little or no part in the decisions of government and administration that most affect their lives. The extent of this exclusion is reflected in the views of many Roma that they are fundamentally powerless to influence any aspect of the society of Serbia and Montenegro. The systemic exclusion of one ethnic group from public life in Yugoslavia is an issue requiring urgent redress in the near future, if Serbia and Montenegro is to sustain the claim that it is a society founded on the principles of democracy, human rights, and respect for the rule of law.

¹³⁷ As of October 2002, in Serbia there were only 4 Romani persons members of municipal councils, one person was a member of a municipal executive committee, and one person was the vice-president of a municipal executive committee. One Romani person was employed as a municipal judge; there were no Romani directors of educational institutions, no Romani managers of state companies, nor any Roma in the higher ranks of the police force. (Helsinki Committee for Human Rights in Serbia, *Nacionalne manjine i pravo*, Belgrade, October 2002.) Additionally, in January 2003, Mr Slobodan Stojković, the Romani member of the executive committee of the Titel municipality, northern Serbia, accused the president and the vice-president of his committee for racial discrimination. (Radio B92, Belgrade, January 23, 2003; daily newspaper *Dnevnik*, Novi Sad, January 24, 2003.)

Appendix 6: Issues Particular to the Large-Scale Forced Return of Roma from Germany and Other Western European Countries

According to Government sources¹³⁸, Serbia and Montenegro has signed eleven (11) readmission agreements with other States in Europe which provide, bilaterally, for the return of "FRY" citizens (including those from Kosovo) who are not permitted to remain in those countries. A further six (6) readmission agreements are pending.

There is no disaggregated data on the number and profile of returnees. The government is subject to pressure to comply but lacks the basic resources and facilities through which returnees can be safely and humanely received. Without adequate reception arrangements there is a real risk that returnees are coming back to situations where their basic rights cannot be fulfilled. Women and children appear the most at risk. There are also reliable reports that several European States have tried either to return Roma to Kosovo direct or to return ex-Kosovo Roma to other parts of Serbia and Montenegro where they find themselves in a situation of "internal displacement". UNHCR, the UN agency primarily responsible for the protection of refugees (and IDP's from Kosovo under UN Security Council Resolution 1244), have advised that because of the present lack of adequate safety and security in Kosovo, ex-Kosovo Roma should not be returned there, neither should they return to any other part of Serbia and Montenegro where they would be in a situation of internal displacement:

"3. [...] UNHCR's view is that... the security situation of minorities continues to be a major concern... Significantly, Kosovo Serbs, the Roma, the Egyptians and, in many cases, the Ashkaelia continue to face serious security threats.

15. [...] The circumstances faced by internally displaced persons from Kosovo, in Serbia and Montenegro, lead UNHCR to maintain its general conclusion that internal displacement in such conditions does not offer an adequate or reasonable alternative to international protection..."¹³⁹

In recent months there have been a number of reports that some countries of Western Europe have been expelling large numbers of Roma to Serbia and Montenegro, possibly in violation of international law, including but not limited to Article 4 of Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which bans the collective expulsion of aliens. Some of the persons being expelled may be refugees in the sense of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol ("1951 Geneva Convention"). The term "refugee" applies to any person who is outside the country of his nationality and, owing to well-founded fear of persecution on grounds of race, religion, nationality, political opinion or membership of a particular social group, is unable, or owing to such fear, is unwilling to avail himself of the protection of that country. The principle of non-refoulement established in Article 33 of the Convention applies to refugees irrespective of their formal recognition as refugees, and covers so-called "asylum seekers". The implementation of these international standards requires a review of each individual case: in order for protection to come to an end, it must be established that the person can return in "safety and dignity". The Executive Committee of the High Commissioner for Refugees, made up of 61 countries that set international standards with respect to the treatment of refugees and advise on protection matters, recognises the need for procedural guarantees in the determination of refugee status and recommends that:

"(i) as in the case of all requests for the determination of refugee status or the grant of asylum, the applicant should be given a complete personal interview by a fully qualified

¹³⁸ Interview with H.E. Rasim Ljaljic, Federal Minister of Human and Minority Rights, March 10, 2003

¹³⁹ UNHCR, "UNHCR Position on the continued Protection Needs of Individuals from Kosovo", January 2003. Additional information in: UNHCR, "Update on the Situation of Roma, Ashkaelia, Egyptian, Bosniak and Gorani in Kosovo", Kosovo, January 2003.

official and, whenever possible, by an official of the authority competent to determine refugee status;

(iii) an unsuccessful applicant should be enabled to have a negative decision reviewed before rejection at the frontier or forcible removal from the territory."¹⁴⁰

The United Nations High Commissioner for Refugees has further noted that "[...] in certain circumstances [...] discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practice his religion, or his access to normally available educational facilities."¹⁴¹

The protection of the Convention relating to the Status of Refugees applies to asylum seekers to the point that their status is finally determined in a fair procedure. Ultimately, their removal and return should be undertaken in a humane manner and in accordance with international human rights standards, particularly the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In addition, in Europe, the expulsion of an individual who is not a refugee may violate a number of European legal provisions, notably Article 3 of the European Convention on Human Rights, as well as Article 8 of the European Convention, which guarantees the right to respect for private and family life, home and correspondence.¹⁴² These provisions are of particular relevance for many Roma from the former Yugoslavia in Western Europe currently threatened with expulsion, as many have been there for a number of years or even decades, and many have children born and raised in Western European countries, attending school there, etc. In many instances, ties to the country of exile may have become enduring, while ties to Serbia and Montenegro may be attenuated at best.

As to the current ongoing expulsions of Roma from Western European countries, in addition to the concerns raised above, there are also indications that individual expulsion decisions and/or the policy of expulsions as a whole in some countries may be racially discriminatory, in violation of the absolute ban on racial discrimination under international law. In addition, some expulsions may be collective, in violation of Article 4 of Protocol 4 to the European Convention on the Protection of Human rights and Fundamental Freedoms.¹⁴³

¹⁴⁰Executive Committee, Conclusion No. 30 (XXXIV), 1983, paragraph (e) (i)

¹⁴¹ See Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, reedited, Geneva, 1992.

¹⁴² Other relevant instruments include the European Convention on Nationality, which provides, at Article 6(3): "Each State Party shall provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory. In establishing the conditions for naturalisation, it shall not provide for a period of residence exceeding ten years before the lodging of an application." See also international instruments: Art.7 of the ICCPR; Art. 1 and 3 of the CAT

¹⁴³ The European Court of Human Rights (ECtHR) has not yet ruled on a case of expulsions of Roma from a Western European country to Serbia and Montenegro. In early 2002, ruling in a case related to the expulsion of a group of Slovak Roma by Belgium, the ECtHR found Belgium in contravention of a number of provisions of the European Convention, including Article 4 of Protocol 4 (see *Conka v. Belgium*, decision of February 5, 2002). It was the first time in its history that the European Court had found a violation of the provision (and indeed, to date the only case in which it has found such a violation). Later in 2002, the Italian government reached an out-of-court settlement with a group of Roma from Bosnia collectively expelled from Italy in 2002, after the Court found the case admissible. In the settlement, Italy agreed to pay approximately 150,000 Euro to the victims and arranged for their return to Italy. None of the current ongoing expulsions have been brought to the Court.

ERRC monitoring in Serbia and Montenegro indicates that Romani returnees are a particularly exposed group with no effective measures being undertaken to address issues such as schooling and housing provisions and other reception issues for returnees. A non-exhaustive list of cases documented by the ERRC and partner organisations since January 1, 2003 includes the following:

- Ms A.B., a Romani woman from Novi Sad, Vojvodina, arrived in Germany in February 2001.¹⁴⁴ She soon applied for asylum and lived in a collective centre for asylum seekers in the town of Schleiden. On January 29, 2003, around 7 PM, two police officers in plain clothes arrived to the room of Ms A.B., and told her that her stay in Germany had expired. She was given two hours to pack her belongings, after which the officers took her to the airport to be expelled from Germany by aeroplane. Ms A.B. stated that there were 50 other Roma on the same flight to Belgrade. Back in Novi Sad, Ms A.B. lives with her relatives, as she sold her house before the trip to Germany. She does not have health care and does not receive social benefits. Both elderly and ailing, she is unable to find employment. Ms A.B. also said that some of her personal documents were left behind in Germany, and that now she cannot obtain new documents as she cannot afford covering the financial costs of such procedures.
- Mr S.R., a 17-year-old Romani youth from the town of Smederevo, near Belgrade, arrived to Germany in 1993, when he was 7 years old, together with his family.¹⁴⁵ All of the family's children attended school in Germany. Early in the morning on an unspecified date in January 2003, a social worker accompanied by police officers in plain clothes arrived to the flat where Mr S.R.'s family lived. The officers told the family that they would be sent back to Serbia and that they have to pack their belongings in 30 minutes. After the family packed, they were taken to an airport and put on a plane for Belgrade. According to Mr S.R., there were only Romani persons on that flight. The family now lives in Smederevo, in a very old house, together with their grandparents. The family arrived without money, and none of the family members is employed. Two youngest sisters of Mr S.R. were born in Germany and do not have any personal documents. None of the young people of the family have to date continued their education in Serbia, as they do not speak Serbian. Mr S.R. told the ERRC that he is aware of two other Romani families deported from Germany who arrived to Smederevo after him.
- Mr B.H. from Novi Pazar, in the Sandžak region of southwestern Serbia, arrived in Germany in 1991.¹⁴⁶ On an unspecified date in December 2002, police officers accompanied by a social worker arrived at his flat and expelled him and his wife, after giving them 15 minutes to pack. Mr B.H. told the ERRC that in the village of Blaževo near Novi Pazar, where he lives now, there are 200 Romani persons who have been deported from Western Europe since September 2002, and that there are new arrivals every week. Some 40% of this community are children younger than 15. Most of them do not speak Serbian, as they were born and raised in Western Europe. Mr B.H. also noted that most Roma were deported in the winter months, when even lowly paid manual jobs in agriculture jobs are unavailable. Some of the Roma in the community are without one or more personal documents and therefore would likely be refused state-provided social assistance.
- Before the ethnic cleansing of Roma from Kosovo in 1999, Ms R.S., a 33-year-old Romani woman, lived in the town of Kosovska Kamenica, in north-eastern Kosovo.¹⁴⁷ In 1999, together with her husband and their young son, she fled to Cologne, Germany, where she

¹⁴⁴ ERRC interview with Ms A.B., Novi Sad, February 7, 2003.

¹⁴⁵ ERRC interview with Mr S.R., Belgrade, February 12, 2003.

¹⁴⁶ ERRC interview with Mr B.H., Novi Pazar, February 11, 2003.

¹⁴⁷ ERRC/Minority Rights Center interview with Ms R.S., Bujanovac, January 6, 2003.

applied for asylum and received the so-called "tolerated" status.¹⁴⁸ According to Ms R.S., on September 12, 2002, her tolerated status was prolonged until January 15, 2003. However, around 4 AM on November 21, 2002, as the family was asleep, they woke up to loud banging on their door. They opened the door to meet six police officers in plain clothes, who told the family that they would be sent back to Kosovo and that they need to pack their belongings in 10 minutes. The officers told the family that they can pack around 20 kg of luggage for each adult, and some clothes for the child. They also told the family that they should not speak in the Romani language. According to Ms R.S., this unexpected late night visit deeply frightened her family, especially the little boy who reportedly could not stop crying. Ms R.S. also stated that the officers took away her mobile phone card and 4000 EUR in cash, while they let the family keep 600 EUR. The officers then took the family by a police van to Düsseldorf, where the family boarded a Montenegro Airlines plane for Priština at 2PM. According to Ms R.S., the rest of the passengers on the plane were all ethnic Albanians; the family did not dare speak in Romani as they feared for their safety lest they be recognised as Roma. The only documents they had were one-way travel documents that they were given by the police officers, dated November 8, 2002, which Ms R.S. understood as that their expulsion had been prepared well prior to the actual act, while the family never received any information to the effect that they had to leave Germany. Upon the arrival of the plane at the Slatina airport in Priština, a man and a woman who did not identify themselves took the family by van to a local bus station, where the family boarded a bus to Gnjilane, and continued by taxi to their previous place of residence in Kosovska Kamenica. In Kosovska Kamenica, the family found their former home looted and damaged. Having no shelter and fearing for their safety, the family decided to leave Kosovo and cross the border to the south Serbian town of Bujanovac, where the ERRC/MRC interviewed her. Ms R.S. stated that her young son is traumatised by the expulsion experience, as he has nightmares and now fears unknown adult men. At the time of the interview, both Ms R.S. and her husband had no employment and received no state-provided or other assistance.

- Mr G.J., a 28-year-old Romani man from Belgrade, arrived to Germany in December 1993, and applied for asylum there.¹⁴⁹ He lived in the town of Bielefeld on the social support given by German authorities. His checks ceased coming after Mr G.J. refused to accept an inadequately paid job offered by the social aid office. He received instructions to leave Germany in June 2002, which Mr G.J. declined to do. In the meanwhile, he met a woman whom he decided to marry. On an unspecified date in late summer 2002, Mr G.J. went to the relevant office in the town of Brakel, where he lived then, to inquire on the procedure for the wedding, however the officials called the police who detained Mr G.J. for approximately three hours. After that, he was transferred to an institution which Mr G.J. described as a detention centre for asylum seekers in the town of Buren. After six weeks in this centre, Mr G.J. was issued documents stating that he had to leave Germany by October 6, 2002, and he was promptly taken to the airport in Düsseldorf. Mr G.J. and a number of other Romani persons were made to wait in a hall for 30 minutes and then they boarded a plane under police guard. According to Mr G.J., the plane was full of Romani passengers. Since his arrival to Belgrade, Mr G.J. lives together with his parents and other family members in an extremely overcrowded house. Mr G.J. has not been able to secure gainful employment, and no other member of his family has a job.

¹⁴⁸ Many Roma from the countries of former Yugoslavia who sought asylum in Germany are still regulated under a status called "tolerated" (*geduldet*), which in practice only protects these persons from deportation. The permit of toleration (*duldung*) has often been issued for periods as short as three months.

¹⁴⁹ ERRC/Minority Rights Center interview with Mr G.J., Belgrade, January 27, 2003.

Annex 1

Commission on Human Rights resolution 1993/77 on: Forced evictions

(E/CN.4/RES/1993/77)

The Commission on Human Rights,

Recalling Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/12 of 26 August 1991,

Also recalling its own resolution 1992/10 of 21 February 1992, in which it took note with particular interest of General Comment No. 4 (1991) on the right to adequate housing (E/1992/23, annex III), adopted on 12 December 1991 by the Committee on Economic, Social and Cultural Rights at its sixth session, and the reaffirmed importance attached in this framework to respect for human dignity and the principle of non-discrimination,

Reaffirming that every woman, man and child has the right to a secure place to live in peace and dignity,

Concerned that, according to United Nations statistics, in excess of one billion persons throughout the world are homeless or inadequately housed, and that this number is growing,

Recognizing that the practice of forced eviction involves the involuntary removal of persons, families and groups from their homes and communities, resulting in increased levels of homelessness and in inadequate housing and living conditions,

Disturbed that forced evictions and homelessness intensify social conflict and inequality and invariably affect the poorest, most socially, economically, environmentally and politically disadvantaged and vulnerable sectors of society,

Aware that forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a range of actors,

Emphasizing that the ultimate legal responsibility for preventing forced evictions rests with Governments,

Recalling that General Comment No. 2 (1990) on international technical assistance measures, adopted by the Committee on Economic, Social and Cultural Rights at its fourth session, states, inter alia, that international agencies should scrupulously avoid involvement in projects which involve, among other things, large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation (E/1990/23, annex III, para. 6),

Mindful of the questions concerning forced evictions included in the guidelines for States' reports submitted in conformity with articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (E/1991/23, annex IV),

Noting with appreciation that the Committee on Economic, Social and Cultural Rights, in its General Comment No. 4, considered that instances of forced eviction were, *prima facie*, incompatible with the requirements of the International Covenant on Economic, Social and Cultural Rights and could only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law (E/1992/23, annex III, para. 18),

Taking note of the observations of the Committee on Economic, Social and Cultural Rights at its fifth and sixth sessions concerning forced evictions,

Taking note also of the inclusion of forced evictions as one of the primary causes of the international housing crisis in the working paper on the right to adequate housing, prepared by the expert, Mr. Rajindar Sachar (E/CN.4/Sub.2/1992/15),

Taking note further of Sub-Commission resolution 1992/14 of 27 August 1992,

1. Affirms that the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing;
2. Urges Governments to undertake immediate measures, at all levels, aimed at eliminating the practice of forced eviction;
3. Also urges Governments to confer legal security of tenure on all persons currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups;
4. Recommends that all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups;
5. Requests the Secretary-General to transmit the present resolution to Governments, relevant United Nations bodies, including the United Nations Centre on Human Settlements, the specialized agencies, regional, intergovernmental and non-governmental organizations and community-based organizations, soliciting their views and comments;
6. Also requests the Secretary-General to compile an analytical report on the practice of forced evictions, based on an analysis of international law and jurisprudence and information submitted in accordance with paragraph 5 of the present resolution, and to submit his report to the Commission at its fiftieth session;
7. Decides to consider the analytical report at its fiftieth session, under the agenda item entitled "Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights".

67th meeting

10 March 1993

[Adopted without a vote.]

Annex 2

Suggested Codes of Conduct on Forced Evictions

Source: Leckie, Scott, "*When Push Comes to Shove: Forced Evictions and Human Rights*", Habitat International Coalition, Utrecht, 1995, pp.91-92

"... any such Code must not play a role in legitimising evictions, but rather aim to provide guidance to governments by outlining the parameters of acceptable behavior. Possible contents of such Codes could be based on the following points:

1. Evictions should, as a general principle, be avoided to the maximum extent possible. The housing rights of all citizens should be satisfactorily fulfilled and respected and included in any eviction scenario;
2. Any plan for eviction must be made public and subject to public debate and consideration, prior to it being carried out;
3. Negotiations must take place based on mutual respect between those wishing to carry out the eviction and those to be removed. Every possible attempt should be made to come to a mutually acceptable agreement, deemed reasonable by all parties involved in the process;
4. If no agreement can be reached, an independent arbitrator should be engaged, with a view to finding an amicable settlement;
5. If no settlement can be reached which allows the residents to remain where they are (thus preventing an eviction), those to be moved shall have rights to compensation of their own choice;
6. A warning period of at least six (6) months will be provided to those facing eviction;
7. Those responsible for the eviction shall be required to provide the requested compensation;
8. Forms of compensation shall include one or any combination of the following options:
 - a) re-housing at an equal or better location at an equal or lesser cost;
 - b) re-location at an equal or better location, the quality of which will be determined by the evictees; or
 - c) financial compensation sufficient to cover costs associated with the eviction itself, and any loss of property linked to the removal.

Arguably, if each of these conditions were prerequisites for carrying out evictions, far fewer forced evictions would take place, and those that could not be prevented would be far less severe and involve less violence; violence so commonly associated with the majority of the world's evictions today."

Annex 3

Eviction Impact Statements

Source: Leckie, Scott, "*When Push Comes to Shove: Forced Evictions and Human Rights*", Habitat International Coalition, Utrecht, 1995, pp.89-90

"An eviction impact statement... should never be viewed as a substitute for legislative activity designed to protect citizens from forced eviction. [...] The ultimate goal of such procedures would be to protect the rights of potential evictees, reduce social tension and mitigate occupants hardship...

The following components could form the core of Eviction Impact Statements wherever they may arise:

1. Eviction Impact Statements constitute a permanent element of all economic and physical planning and development processes and decisions which could threaten persons or groups with eviction. Permission to remove occupants from any given site will not be granted if such Statements are not provided to the competent authorities, or if the completed Statement reveals insufficient protection for affected persons or groups;
2. All actors, whether the government or its organs, private persons, international funding agencies or any other relevant person or group planning to carry out or sponsor any act, project or programme, which in any way could foreseeably result in the forced eviction of one or more persons, shall be obligated to present to the competent authorities a complete Eviction Impact Statement, carried out by persons independent of the proponents of the act, project or programme in question;
3. The required investigation and assessment element of Eviction Impact Statements shall be carried out by persons or organs fully independent from the actor desiring the removal of persons or groups from the site in question. This requirement shall apply to all actors involved;
4. Sufficient protection of occupants will be satisfied only if all of the following conditions are satisfactorily met, and viewed as acceptable to the evictees;
 - a) All possible alternatives and methods of avoiding the eviction in question were fully pursued in consultation with affected persons and groups;
 - b) Where no agreement can be reached wherein the full avoidance of the eviction in question can be guaranteed, full and equal consultation and negotiation shall take place between the evictees, the evictor and an impartial arbitrator;
 - c) Evictees shall have judicially enforceable rights to:
 - i. a minimum 180 day warning, in writing, prior to the set date of eviction;
 - ii. the enforceable right to alternative accommodation or land at an equal or better location, at an equal or lesser cost, and of a physical quality consistent with the right to adequate housing;
 - iii. the right to receive financial or other compensation for hardship and lost income; and
 - iv. the right to appeal any eviction order to a judicial body, prior to the decision of which, no eviction will be carried out.
5. The conclusions, recommendation and order drawn from eviction impact statements will be binding".