

**Mandates of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material**

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Excellency,

We have the honour to address you in our capacities as the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; and, pursuant to Human Rights Council resolutions 32/4, 34/6, 34/35 and 34/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the practice of removing Roma children from their families on poverty-related grounds and their placement in state care institutions where they experience violence, including sexual violence.**

According to the information received:

Article 35 of the Constitution of the former Yugoslav Republic of Macedonia states that "The Republic provides for the social protection and social security of citizens in accordance with the principle of social justice".

Article 11 of the Law on Family adopted by the former Yugoslav Republic of Macedonia on 22 December 1992 provides that: "(1) Sustenance is the right and duty of the parents, children and other relatives regulated by this law, as well as of the persons who live in or out of wedlock. Should sustenance not be possible to be obtained from the persons of paragraph 1 of this Article, the Republic shall provide sustenance means, under conditions regulated by law" (article 11).

Article 47 of the Law on Family stipulates that: "(1) the minor children shall be entitled to live with their parents. (2) The minor children may live apart from their parents, only when this is of immediate interest of the children, or when this is of a common interest for the children and parents (...)"

Despite these legal provisions, it has been reported that children of the Roma minority are disproportionately subjected to separation from their families and placement under state custody on the basis of their families extreme poverty and

resulting low standard of living. Poverty amongst the Roma communities has been well documented.

For example, in its 2016 review of the former Yugoslav Republic of Macedonia, the European Commission against Racism and Intolerance (ECRI) documented that the poverty rate among Roma was approximately 2.5 times higher than at the national level.

According to the Ministry of labor and social policy's "Strategy on the Roma in Republic of Macedonia 2014 – 2020," the employment situation of Roma remains one of the most worrying factors that impede their full participation in society. The unemployment rate of the Roma minority is almost twice as high as the national average, and even higher among Roma women.

Moreover, according to the 'National strategy on alleviation of poverty and social exclusion in the Republic of Macedonia 2010-2020', social exclusion and poverty contain a clear gender component in the country, making women much more exposed to the poverty risk. Women face fierce gender-based discrimination related to employment, are subject to lower pay rate and higher rates of (long-term) unemployment. The horizontal and vertical segregation and gender gap in getting employment, is translated through a larger presence of women in lower paid jobs and professions. The limited participation of women in the decision making process is additionally leading to the feminization of poverty and the economic dependence of women which all generates a risk of social exclusion.

Taken together the intersectionality between the well documented discrimination faced by the Roma minority and the inequalities faced by women in general put Roma women in situations of increased vulnerability to extreme poverty and social exclusion.

These structural issues have led to Roma children being sometimes overrepresented in state care institutions where they are placed primarily for family poverty related reasons. For instance, as of 15 February 2018 in the Skopje "Home for children with educational – social problems" state care institution, also known as "25 May", more than 68 % (22 out of 32) of children were of Roma ethnicity while according to official figures the Roma population accounts for only 2.7% of the total population of the country.

Some of the girls removed from their families have reportedly been subjected to sexual violence. It is reported that between 2017 and 2018, at least three cases of sexual violence and abuse against Roma girls took place at the above-mentioned "25 May" center.

On 26 January 2017, the Basic Court Skopje 2 issued a ruling requiring that two of these three girls be returned to their families. However, on 5 November 2017, in its Decision No. UP 3001-249, the Inter-Municipal Center for Social Work

refused to comply with this court order, on the basis that “the mother still does not have the proper living conditions to take care of her daughters.

Other children may be at risk of sexual violence and abuse because of the failure by the “25 May” state care institution, the Inter-Municipal Center for Social Work and the Ministry of Social Affairs and Labour to take adequate measures to prevent or respond to sexual violence against girls under state care. Reportedly, in two of the three cases above mentioned, information concerning the possible abuse was not reported to the family or to the respective authorities. Psychological support was not offered to the victims, and there were attempts to hide information from both the family and from concerned authorities, including the police.

The practice of the inaccurate and biased assessment of the situation of Roma children by state institutions has also been documented by ECRI who found that the problem of wrongfully placing Roma children in special needs schools, which was already denounced in 2010, still persisted in 2016. According to ECRI, researchers found that in 2011, nearly 50% of Roma children placed in such special needs schools should have stayed in regular schools

We wish to express our serious concern regarding the continued discrimination against the Roma minority in the former Yugoslav Republic of Macedonia that may have led to grave violations of the rights of Roma children. We are extremely worried by the reported practice of removing children from their families on poverty-related grounds which is tantamount to punishing Roma children and their families for being poor. The focus should be put on addressing poverty which affects disproportionately vulnerable segments of the population, in particular members of minorities, including by ensuring universal social protection for children to ensure that children from precarious social background, including Roma children, receive state assistance while remaining in their families.

We are equally gravely concerned about the reported sexual violence suffered by girls placed in state care and by the failure of the relevant authorities and institutions to take adequate measures to prevent or respond to those acts. We urge the State to ensure accountability for crimes of sexual violence and sexual abuse against children, including children under its care and to provide redress for victims and their families.

We are also concerned about the serious life-long impacts of the removal of girls from their families and their experience of sexual violence in institutions on their enjoyment of other human rights including the right to education, health and economic security.

We are finally concerned about the fact that these acts are happening in a context characterized by systemic ethnic based discrimination and marginalisation of Roma children, especially girls.

While we do not wish to prejudge the accuracy of the facts contained in this communication, the described situation is in contravention of international norms and standards relating to the right of the child and the principle of the ‘best interest of the child’, as well as non-discrimination including discrimination based on ethnicity and gender based discrimination and violence.

In connection with the above issues and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information or comment you may have on the above-mentioned situation;
2. Please provide detailed information on any ongoing investigation and legal proceedings as well as any criminal charges brought against the perpetrators of the abovementioned sexual violence at the “25 May” state care institution.
3. Please provide any information on measures taken to prevent, investigate and punish violence against girls removed from their families and/or placed under institutional care, in light of the former Yugoslav Republic of Macedonia’s international legal obligations;
4. Please provide any information on measures taken to end the practice of removing children from their families on poverty-related grounds and any statistical data on the gender and ethnicity of children who have been removed from their families on these grounds;
5. Please provide detailed information, particularly statistical data disaggregated by sex, age, ethnicity and social status on the number and percentage of children, who have been placed under institutional care after being removed from their families on poverty-related grounds; Please provide further information on measures taken to permit the return of those children with their families.
6. Please provide information on the process leading to the determination of removing Roma children from the custody of their parents for placement under state care.
7. Please provide information on the availability and accessibility of universal child social protection scheme and other social protection

policies and disaggregated data on the population group that benefits from such schemes.

8. Please provide any up to date information on measures taken to address socio-economic challenges faced by the Roma minority, particularly women and girls, and the results of such measures.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations as well as to tackle the structural discriminatory issues.

Please accept, Excellency, the assurances of our highest consideration.

Alda Facio

Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice

Fernand de Varennes

Special Rapporteur on minority issues

E. Tendayi Achiume

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Maud de Boer-Buquicchio

Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would also like to bring to the attention of your Excellency's Government to the Convention on the Rights of the Child (CRC) succeeded to by the Former Yugoslav Republic of Macedonia on 2 December 1993, which requires States Parties to ensure that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration" [article 3(1)]. The CRC also provides a framework for demanding legal accountability for all forms of violence and abuse, including rape and sexual abuse of children. Article 19 of the Convention on the Rights of the Child exhorts States to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. In addition, article 34 requires States to protect children from all forms of sexual exploitation and sexual abuse. This is complemented and extended by article 37, which requires States to ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment, encompasses as well the prohibition of all forms of corporal punishment of children. Article 39 also requires States to take all appropriate measures to promote the physical and psychological recovery and social reintegration of child victims of exploitation, abuse and torture, among others.

Furthermore, the Optional Protocol to the Convention on the Rights of the Children on the sale of children, child prostitution and child pornography, ratified by the former Yugoslav Republic of Macedonia on 17 October 2003, outlines the obligation of States to provide support services to child victims throughout the legal process (art. 8.1 (d)); to ensure appropriate training for the persons who work with child victims of sexual exploitation (art. 8.4); and to ensure that child victims have access to adequate procedures to seek compensation (art. 9.4).

What is more, the Committee on the Rights of the Child provides through its General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration that "Preventing family separation and preserving family unity are important components of the child protection system, and are based on the right provided for in article 9, paragraph 1, which requires "that a child shall not be separated from his or her parents against their will, except when [...] such separation is necessary for the best interests of the child" (see: CRC/C/GC/14, paragraph 60). Moreover, the Committee recalls that "Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child. Economic reasons cannot be a

justification for separating a child from his or her parents” (see: CRC/C/GC/14, paragraph 61). We would also like to recall the Committee on the Rights of the General comment No. 13 (2011) on “The right of the child to freedom from all forms of violence” interpreting article 19 [CRC/C/GC/13, paragraphs 3(i), 19, 25, 42, 45 – 58].

We would also like to bring to your attention the Guidelines for the Alternative Care of Children which explicitly emphasize that “Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family” (See: A/RES/64/142, paragraph 15)

Furthermore, we would like to recall to your Excellency’s Government its international obligations under the International Convention for the Elimination of all Forms of Racial Discrimination (ICERD), adopted by the former Yugoslav Republic of Macedonia on 18 January 1994. In particular, we would like to recall article 1 on the prohibition of racial discrimination; article 2 on the obligation of the States to eliminate any act or practice of racial discrimination against persons and/or groups of persons; article 5 on the right of everyone, without any distinction, to equality before the law; and article 6 on the right of everyone to effective protection and remedy against any acts of racial discrimination.

We also recall that the Committee on the Elimination of Racial Discrimination, in its General Recommendation XXVII on discrimination against Roma, urges States to provide effective remedies to members of Roma communities and to ensure that justice is fully and promptly done in cases concerning violations of their rights (para.7). In particular, the Committee calls upon States to prevent racially motivated acts of violence against Roma people, as well as to ensure prompt action by the police, the prosecutors and the judiciary for investigating and punishing such acts; and to ensure that perpetrators do not enjoy any degree of impunity (paragraph 12). In the same General Recommendation, the Committee recommends to “take into account, in all programmes and projects planned and implemented and in all measures adopted, the situation of Roma women, who are often victims of double discrimination (paragraph 6); and 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 ( paragraph 27).

We would also like to stress that sexual violence is a form of discrimination against women [article 1 of the Convention on the elimination of all forms of discrimination against women (CEDAW) to which the Republic of Macedonia is a State Party since 18 January 1994 read in conjunction with paragraph 6 of the CEDAW Committee’s General recommendation No. 19 on violence against women]. The Convention on the Elimination of All Forms of Discrimination against Women requires States Parties to, *inter alia*, “(...) ensure through competent national tribunals and other

public institutions the effective protection of women against any act of discrimination” [article 2(c)]; “refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation” [article 2(d)]; and “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise” (article 2(e)); and “take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights” (article 13). Besides, article 3 of the International Covenant on Economic, Social and Cultural Rights, to which the former Yugoslav Republic of Macedonia is a State Party since 18 January 1994 requires States Parties to “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights”

We also refer to the Declaration on the Elimination of violence against women which provides that “States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should”, inter alia, “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons” [article 4(c)]. The Declaration on the Elimination of violence against women adds that States should “develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms” [article 4(d)].

In this context, we also refer your Excellency’s Government to the Committee on the Elimination of All forms of Discrimination Against Women’s General Recommendation no 19 on Violence Against Women which recommends that “States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act” [paragraph 24(a)] and that “effective complaints procedures and remedies, including compensation, should be provided” [paragraph 24(i)].

We would also like to refer your Excellency’s Government to the Committee on the Elimination of All forms of Discrimination Against Women, General Recommendation No. 35, which defines gender-based violence against women as violence which targets women because they are women or violence that affects women disproportionately. Such violence takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty. Gender-based violence against women is affected and often exacerbated by economic factors. It also emphasizes the need for adequate legislation in this area and the international responsibility of the State to protect women from abuse by State and non-State actors (CEDAW/C/GC/35). In its General



Recommendation no 35 on Gender-based violence, the Committee also recommends a series of measures that States parties should take in the areas of prevention, protection, prosecution and punishment, redress, data collection and monitoring and international cooperation in order to accelerate elimination of gender-based violence against women [See: General Recommendations no 35, paragraphs 28, 30 (a), 31 (a), 32(a), and 33(a)].

On the same issue, in its Concluding Observations on the third periodic report of the former Yugoslav Republic of Macedonia issued in June 2015 the Committee against Torture stated that it remained concerned about the fact that information available indicated that the assistance and protection measures of the State to encourage women, especially Roma women, to report incidents of domestic and sexual violence were inadequate (CAT/C/MKD/CO/3, paragraph 17).

Similarly, in its Concluding observations on the combined eighth to tenth periodic reports of the Republic of Macedonia issued in September 2015, the Committee on the Elimination of All Forms of Racial Discrimination stated that it was “concerned about (...) the prevalence of early marriage within the Roma communities without adequate responses from the State party to combat this harmful practice in an efficient manner and the underreporting of incidences of domestic violence, which particularly affects women belonging to minority groups(...)” (CERD/C/MKD/CO/8-10, paragraph 18).

In light the multiple forms of discrimination faced by Roma women whose children are being taken away on poverty-related grounds in a context characterized by a feminisation of poverty, we would like to refer your Excellency’s Government to the Committee on economic, social and cultural rights’ its General Comment no. 20 on “Non-discrimination in economic, social and cultural rights” (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights) which stresses that “some individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority” and that “such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying (E/C.12/GC/20, paragraph 17). The Committee also underlined the importance of addressing systemic discrimination and recalled that it had “regularly found that discrimination against some groups is pervasive and persistent and deeply entrenched in social behaviour and organization, often involving unchallenged or indirect discrimination” (E/C.12/GC/20, paragraph 12). The Committee stressed that “States parties must adopt an active approach to eliminating systemic discrimination and segregation in practice” and that “tackling such discrimination will usually require a comprehensive approach with a range of laws, policies and programmes, including temporary special measures” (E/C.12/GC/20, paragraph 39).

We would like to refer your Excellency’s Government to relevant Concluding Observations adopted by treaty bodies following the examination of periodic reports submitted by the former Yugoslav Republic of Macedonia. In this respect, the Committee on the Elimination of All Forms of Discrimination against Women stated in its Concluding

observations on the combined fourth and fifth periodic report of the Republic of Macedonia issued in March 2013 that it was “concerned by the lack of adequate national resources allocated to the State party’s strategies and action plans aimed at eliminating all forms of discrimination against women, in particular against women belonging to ethnic minorities, including Albanian and Roma women” (CEDAW/C/MKD/CO/4-5, paragraph 16). The Committee also mentioned that it was “concerned by the exclusion of Roma women from the formal labour market” (CEDAW/C/MKD/CO/4-5, paragraph 31). And while “noting the adoption of the Decade of Roma Inclusion 2005–2015, the National Action Plan for the Promotion of the Status of Roma Women and the related strategies adopted by the State party (2008–2010, 2011–2013)”, the Committee “expressed concerns about the lack of adequate financial resources allocated for the implementation and evaluation of these measures as well as the continuing marginalization of Roma women and the intersecting forms of discrimination they face, especially with regard to access to education, employment, adequate housing and health care, identity documents, protection from violence and access to justice” (CEDAW/C/MKD/CO/4-5, paragraph 37).

Similarly, in its Concluding observations on the combined eighth to tenth periodic reports of the former Yugoslav Republic of Macedonia issued in September 2015, the Committee on the Elimination of All Forms of Racial Discrimination mentioned that it was “concerned about the vulnerability of women belonging to minority groups as regards the violation of their right to employment and their overrepresentation in low-paid jobs despite the measures taken by the State party to increase their access to the labour market through a number of measures and projects” (CERD/C/MKD/CO/8-10, paragraph 18). Echoing the concerns expressed above, the Committee on Economic, Social and Cultural Rights mentioned in its Concluding observations on the combined second to fourth periodic reports of the former Yugoslav Republic of Macedonia issued in July 2016 that it was “concerned at the disproportionately low labour participation and employment rates among women, particularly Roma women (...)” (E/C.12/MKD/CO/2-4, paragraph 27).

Recognizing that above-mentioned violations have been perpetrated against the Roma minority in the former Yugoslav Republic of Macedonia, we would like to bring to your Excellency’s Government’s attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular to article 27 of the ICCPR and the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).

We would like also to refer to the report by the Special Rapporteur on minority issues entitled “Comprehensive study of the human rights situation of Roma worldwide, with a particular focus on the phenomenon of anti-Gypsyism” and the recommendations contained therein (A/HRC/29/24), including with regard to the need to effectively address

racism, extreme marginalization and socioeconomic vulnerability experienced by the Roma minority, to tackle prejudice and discrimination, as well as to ensure effective and prompt investigation of any crimes perpetrated against Roma individuals and communities (A/HRC/29/24, paragraphs 88-109). Furthermore, the Special Rapporteur has highlighted the discriminatory stereotyping and hate speech against Roma women, including the depiction of them as particularly fertile or promiscuous, which expose them to heightened risks of exploitation and gender-based violence, including forced sterilization (A/HRC/29/24, paragraphs 27 and 34); the fact that members of the Roma minority are frequently the target of degrading and inflammatory language (A/HRC/28/64, paragraph 38); and that segregation and stigmatization is among the main factors of low school attendance and high dropout rates among Roma minority children, with particular reference to South-East Europe where only 18 per cent of Roma attend secondary education, compared with 75 per cent of the population, and less than 1 per cent of Roma attend university (A/HRC/25/56, paragraph 61).

Finally, we would also like to refer your Excellency's Government to the 2011 report of the UN Special Rapporteur on extreme poverty and human rights to the UN General Assembly which stressed that "Women are also exposed to State interference in their private and family lives in other respects. In particular, States' ever-increasing preference for child protection interventions overwhelmingly affects poor women specifically, and persons living in poverty more generally. Research shows a clear and consistent link between child protection intervention and the disadvantage and marginalization of the families involved. Poverty must not be mistaken for child neglect. Often States disproportionately target children in poor families for child protection proceedings instead of channeling their efforts towards addressing the root causes of child poverty" (A/66/265, paragraph 62).

We would also like to recall the Constitution of the former Yugoslav Republic of Macedonia of 17 November 1991 which provides that citizens of the former Yugoslav Republic of Macedonia are equal in their freedoms and rights, regardless of criteria such as sex, national and social origin or social status and that all citizens are equal before the Constitution and law (article 9); the Law on protection of children adopted on 23 November 2000 which stresses the principle of the best interests of the child (article 4); prohibits discrimination (articles 12(1), 13 and 14) and prohibits all forms of sexual exploitation and sexual abuse of children (article 12(2)); as well as the Law on Family adopted on 22 December 1992 (particularly its articles 4, 11, 46, 47 and 85). We would equally like to recall the former Yugoslav Republic of Macedonia's obligation to provide social protection as enshrined in the Constitution (article 35) and the Law on Social Protection adopted in 2009.

Finally, we would like to recall relevant recommendations adopted during the Universal Periodic Review and which enjoyed the support of the former Yugoslav Republic of Macedonia (See: A/HRC/26/10, paragraph 101.23;101.24;101.26;101.28;101.29; 101.30; 101.31; 101.32;101.33;101.34; 101.37; 101.88; 101.89; 101.90; 101.93; 101.94;101.95; 101.97).