NGOs information to the UN Committee on Economic, Social and Cultural Rights

For consideration when compiling the Concluding Observations on the Third Periodic Report of the Slovak Republic under the International Covenant on Economic, Social and Cultural Rights

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Submitted by:

Forum for Human Rights (FORUM)
Poradňa pre občianske a ľudské práva

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I. OVERVIEW

1. This written submission provides an outline of issues of concern with regard to the Slovak Republic's compliance with the provisions of the International Covenant on Economic, Social and Cultural Rights (*hereinafter* "the CESCR"), with particular focus **on the right to water and especially safe and quality water supply for Romani communities**. The purpose of the submission is to assist the UN Committee on Economic, Social and Cultural Rights (hereinafter the "Committee") with its consideration of Third Periodic Report of the Slovak Republic, and in adopting the Concluding Observation thereto.

2. The submission has been written by the Forum for Human Rights (FORUM),[1] and the Centre for Civil and Human Rights (Poradňa).[2]

II. SPECIFIC COMMENTS

(a) General remarks and data available

3. Under Slovak legislation, providing water supply and waste water management is the role of municipalities, acting as local self-administrative bodies under Article 4 para. 3 subpara. g) of the Act No. 369/1990 on municipal administration. Under subpara. h) therein, the municipality also creates and protects healthy conditions and way of life and working conditions of the inhabitants of the municipality, and protects the environment. Therefore, it is the main responsibility of self-administrative entities to fulfil right to water for their residents.

4. The Government noted in their report to the Committee that globally, in 2016, approximately 88,7% of Slovak population was supplied with drinking water from public systems. There are regional differences. In the eastern part, e.g. Prešov region the figure is only 80,6%.[3]Despite this numbers, it has to be noted that the Government failed to inform the Committee about the unavailability and lack of access to water for Romani communities in particular those Roma who live in segregated communities. In this regard, supplementary data summarized below are of particular relevance.

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[1] **FORUM** is an international human rights organisation active in the Central European region. It provides support to domestic and international human rights organisations in advocacy and litigation and also leads domestic and international litigation activities. FORUM has been supporting a number of cases pending before domestic judicial authorities and before the European Court of Human Rights. FORUM has authored and co-authored a number of reports and has provided information to UN and Council of Europe bodies on the situation in the Central European region, especially in Slovakia and the Czech Republic. For more information, please visit www.forumhr.eu.

[2] **Poradňa** is Slovak non-governmental organisation focused on the protection of human rights with an emphasis on the rights of minorities and protection from discrimination. From 2002 Poradňa has addressed the issue of discrimination against Roma minority in various areas of public life. It has also been active in the protection of reproductive rights of Roma women and protection from police ill-treatment. Poradňa pursues its mission by human rights monitoring, strategic litigation as well as domestic and international advocacy. For more information, please visit www.poradna-prava.sk

[3] Third periodic report submitted by Slovakia to the Committee on Economic, Social and Cultural Rights, 10 August 2017, E/C.12/SVK/3, para. 97.

5. In 2013, the UN Development Programme published a comprehensive document called *Atlas of Romani Communities in Slovakia*[4] (*hereinafter* "2013 Atlas"). The access to water was one of the mapped issues. The research included assessment of 801 Romani habitats and noted that while approximately 74,5% of habitats are fully equipped with public water supply, **as many as 23% lack any public water supply whatsoever**. Segregated Romani communities lack public water supply in particular and only 56,2% benefit therefrom.[5] **Over 30% of segregated communities lack public water supply**, although it is available in the municipalities they officially belong to.[6] Overall, 7,2% of all monitored Romani households do not have access to drinking water. When it comes to households in segregated communities, the rate is even higher – 11,1%.[7]

6. In 2017, the European Roma Rights Centre (ERRC) carried out further research which confirmed the alarming situation and noted **that approximately 90% of visited Slovak Romani households reported they do not have tap water**.[8]

(b) Availability of drinking water and quality of water in the absence of public water supply

7. In 2016, another research was carried out by the Slovak Ombudsperson who noted the difficulties and failures of authorities to provide Romani communities with safe drinking water. In the 2016 report ("the Report"),[9] the Ombudsperson visited and analysed the situation in numerous Romani communities and habitats. The report pointed out several striking factual findings:
    - several communities were without access to drinking water from public sources and were dependent only on private wells or especially natural water resources that were in no way sanitary or suitable for drinking;
    - the municipalities acknowledged, in some cases, that water was not drinkable, but did not take any measures to provide safe drinking water to the communities, and Roma were thus forced to drink water that was explicitly marked as unsafe for drinking;[10]

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[4] UNDP, *Atlas of Roma Communities in Slovakia 2013,* published 2014, ISBN 978-80-89263-18-9, available in Slovak at: https://www.employment.gov.sk/files/slovensky/rodina-socialna-pomoc/socialne-sluzby/atlas_rom-kom.pdf

[5] 2013 Atlas, p. 20.

[6] 2013 Atlas, p. 21.

[7] 2013 Atlas, p. 26.

[8] European Roma Rights Centre, *Thirsting for Justice, Europe's Roma Denied Access to Clean Water and Sanitation,* 2017, p. 30.

[9] Office of the Public Defender of Rights, *The Access to Drinking Water and Information about Fire Safety in Roma Settlements* (Prístup k pitnej vode a informácia o zabezpečení protipožiarnej ochrany v rómskychosadách), 2016, available in Slovak at: http://www.vop.gov.sk/files/Pristup_k_vode.pdf

[10] E. g. Hodejov, Huncovce and Hranovnica municipalities, pp. 11, 16 of the Report.

- in other cases, municipalities acknowledged that sources of drinking water were available but did not provide any chemical analyses to substantiate such views and quality of water remained questionable.[11]

8. The situation in Slovakia raises serious issue of concern. The right to water presupposes that people must be protected from water that would be unsafe or toxic to drink, as it interrelates with right to health, as established in Art. 12 of the Covenant.[12] Additionally, for right to water to have any adequate meaning, the water has to be of sufficient quality, and therefore free of contents that would threaten human health.[13] The right to water is vital to such extent, that even informal human settlements are guaranteed access to safe drinking water.[14] Indeed, the same protection applies to nomadic and traveller communities.[15]Considering the above mentioned findings, there are persisting serious concerns regarding safety and quality of the water in Romani communities in Slovakia.

Proposed recommendations for the State party

Ensure that State Party provides everyone, in particular Roma living in segregated communities without public water supply, with equal access to clean and safe drinking water.

Ensure that State Party takes all steps necessary to ensure that quality and safety of water sources in Romani communities is sufficiently monitored in a uniform and centralized manner on a state-wide basis, even when the habitats do not benefit from the public water supply.

Ensure that where water is unsafe for drinking, toxic, or otherwise harmful to human health, immediate action is taken to provide concerned people with safe drinking water and steps are taken to secure the unsafe water source.

(c) Physical and economic accessibility to water in Romani communities

9. Bases on the findings published by the Public Defender of Rights and her office, some communities do have drinking water sources with satisfactory chemical analysis available, but the water sources are not available for individual households, are out in the public, and Roma are forced to carry their water supply (up to several hundreds of meters in some cases) from public wells, taps, or natural quells to their homes.[16] Some of the municipalities provide drinking

[11] E. g. ChminianskeJakubovany municipality, p. 12 of the Report.
[12] UN CESCR, General Comment no. 15, E/C.12/2002/11, 20 January 2003, para. 8.
[13] UN CESCR, General Comment no. 15, E/C.12/2002/11, 20 January 2003, para. 12(b).
[14] UN CESCR, General Comment no. 15, E/C.12/2002/11, 20 January 2003, para. 16(c).
[15] UN CESCR, General Comment no. 15, E/C.12/2002/11, 20 January 2003, para. 16(e).
[16] E. g. HornáLehota municipality, p. 13 of the Report.

water by vending machines that dispensed drinking water for a fee payable through cards with RFID chips.[17]

10. While the Ombudsperson acknowledged several of the visited habitats had water from public pipeline available, the accessibility of such water differed greatly. Several had water available only through hand pumps open to the public, sometimes accessible only for few hours each day. In one such municipality, when the pump broke down, it was left unrepaired allegedly for several weeks, without any other substitute water source provided by the municipality.[18]

11. In the municipalities where drinking water can be supplied for every household through pipelines individually, rarely all the inhabitants have access to such water. The reason is either that access to the public pipeline is not extended to the particular household, or the water supply to that household has been suspended due to non-payment of fees.[19] In the largest Roma community in the country, as well in several other communities, sewers and water pipelines are connected only to buildings on the main street, while other households located farther are using water from those building, or their personal wells.[20] ERRC found that approximately 70% of Roma cannot afford to pay costs for public water supply and other charges levied.[21]

12. Water that is safe and acceptable for general population in sufficient amounts has to be accessible not only in public places, but within each individual household, or in its immediate vicinity.[22] Accordingly, situation in Slovakia violates rights of many people belonging to the Roma minority guaranteed by the Covenant, as drinking water available only through facilities in public spaces and in great distance from their household is insufficient in terms of physical accessibility of water.

13. Secondly, water and facilities or services associated therewith must be accessible for everyone, in such a way that does not compromise securing water or other rights.[23] Where, as reported above, 70% of Roma are unable to bear such costs, the situation violates their access to economically appropriate water and the State Party is required to take steps to remedy the situation, through appropriate pricing policies, income supplements for Roma, or by taking any

[17] Žiar nad Hronom city, segregated Roma community Pod Kortínou, p. 12 of the Report.
[18] E. g. Sečovce municipality, p. 13 of the Report.
[19] See, p. 15 of the Report. FORUM recently documented situation in Hnúšťa where local municipality provided Romani families with the family house however disconnected the access to water.
[20] E. g. Jarovnice, Huncovce municipalities, pp. 15-16 of the Report.
[21] European Roma Rights Centre, *Thirsting for Justice, Europe's Roma Denied Access to Clean Water and Sanitation,* 2017, p. 32. Recent example is the case of Dobšiná municipality where low-cost housing was built for 101 Romani families. The water is accessible in these apartments only on pre-buy credit. See in Slovak: https://roznava.dnes24.sk/nove-najomne-byty-v-dobsinej-domov-v-nich-zatial-naslo-101-rodin-voda-aj-elektrina-na-kredit-325215
[22] UN CESCR, General Comment no. 15, E/C.12/2002/11, 20 January 2003, para. 12(c)(i).
[23] UN CESCR, General Comment no. 15, E/C.12/2002/11, 20 January 2003, para. 12(c)(ii).

other reasonable steps.[24] Obligation to appropriate policy and budgetary steps to connect Roma habitats to public water supply has also been already in 2016 highlighted in recommendations of Committee on the Rights of the Child ("UN CRC") to Slovakia. [25] Similarly, Committee on the Elimination of Racial Discrimination ("UN CERD") highlighted the ongoing problem of Roma concerning drinking water in 2018.[26]

Proposed recommendations for the State Party

Ensure that appropriate steps are taken to allow access to drinking water through water supply in each individual household, or within minimal walking distance.

Ensure that economic policy of the State Party secures water that all individuals are capable to bear costs for, and therefore ensure that water is economically accessible for everyone.

(d) Discrimination of Roma in access to water and reasons given to explain the harmful situation regarding the right to water

14. The Slovak Government acknowledged that shortcomings in protection and quality of water are present, and indeed recognized that especially grave situation is in Romani communities in Eastern Slovakia. However, the State Party argued that such shortcomings were largely caused by inhabitants of these habitats.[27] Based on the information set below, we do not agree with such a statement. Other sources, contrary to such generalizing and stigmatizing reasoning, established a wide range of relevant factors, which can be attributed to the State Party itself. As it follows from the Ombudsperson's Report, municipal authorities gave different explanations, why the situation was so grave. They argued, for example, that some buildings could not be connected to pipelines because they were built on lands of third parties, or without applicable permits. They referred to the lack of financial resources and insufficient support on part of the state authorities, which left the solution on the shoulders of local municipalities, but also pointed out disinterest of Romani community to obtain water from official sources, due to the fees levied that often exceed financial capabilities of Roma. Many officials reiterated that to provide Roma with drinking water, ownership status of their lands had to be resolved first, as many of their houses were built on lands formally belonging to other people who did not give their consent with the construction. According to the report, the settlement of ownership procedure was extremely difficult, or virtually impossible. In some

[24] UN CESCR, General Comment no. 15, E/C.12/2002/11, 20 January 2003, para. 27.
[25] UN CRC, Concluding observations on the combined third to fifth periodic reports of Slovakia, CRC/C/SVK/CO/3-5, 20 July 2016, para. 43(c).
[26] UN CERD, Concluding observations on the combined eleventh and twelfth periodic reports of Slovakia, CERD/C/SVK/CO/11-12, 12 January 2018, para. 21(a).
[27] Third periodic report submitted by Slovakia to the Comittee on Economic, Social and Cultural Rights, 10 August 2017, E/C.12/SVK/3, para. 208.

municipalities, officials argued that inhabitants of the segregated habitats were satisfied with the situation, as it formed a part of their culture. Occasionally, it was argued that providing drinking water for Romani communities could not be allowed at the expense of other inhabitants of the municipality.[28]

15. It has to be reiterated that unresolved housing or land status cannot be invoked as a justification[29] for the State Party to refuse to adhere to its obligation to fulfil and assist the Roma in enjoyment of their right to water, where they are unable, for reasons beyond their control, to realize that right by themselves.[30]

16. These problems identified were indicated already in the research performed in 2012 in Eastern Slovakia. It noted then that among other environmentally harmful conditions discriminately impacting Roma living in segregated communities, higher risk exposure concerning drinking water and sanitation was of a particular concern. Specifically, out of 30 communities analysed then, only 11 had access to the water on equal basis with non-Roma districts. Similarly, it noted the complicated ownership structure as a decisive factor barring further extensions of water supply lines.[31] Equality of access to the safe drinking water for Romani communities has been criticized also by the ERRC in 2017, when it found not only that Roma had to collect water from unprotected and unsafe sources, while non-Roma part of the municipality benefited from public water supply. On top of that, municipal authorities reported that 100% of households within their territory were connected to such public water supply, ignoring the situation in Romani communities.[32] The state and municipalities therefore firstly failed to provide Roma with safe drinking water, but secondly also sought to exclude Romani habitats from the territory they bear responsibility for.

17. In certain municipalities, Roma were asked to form up an associations or other entities which would bear responsibility for water supply in the community. These associations were then in substance used as scapegoats, being blamed not only for failures of individual payments, but also for *force majeure* breakdowns in water supply, which they were requested to bear costs for. As an example, since the association had not been able to foot the bill, the Romani habitat in Krásnohorské Podhradie had been cut off public water supply entirely.[33]

18. The Slovak Ministry of Interior, using funds provided by the European Regional Development Fund (ERDF) of the European Union, released a call for applications for funding on 7 December 2016. All 1043 municipalities included in Atlas of Roma

[28] Pp. 19-20 of the report.
[29] UN CESCR, General Comment no. 15, E/C.12/2002/11, 20 January 2003, para. 16(c).
[30] UN CESCR, General Comment no. 15, E/C.12/2002/11, 20 January 2003, para. 25.
[31] Filčák, R. *Environmental Justice and the Roma Settlements of Eastern Slovakia: Entitlements, Land and the Environmental Risks,* Czech Sociological Review, 2012, Vol. 48, No. 3, p. 548.
[32] European Roma Rights Centre, *Thirsting for Justice, Europe's Roma Denied Access to Clean Water and Sanitation,* 2017, p. 25.
[33] European Roma Rights Centre, *Thirsting for Justice, Europe's Roma Denied Access to Clean Water and Sanitation,* 2017, p. 26.

Communities were allowed to apply for funding to secure access to drinking water.[34] Up to 16 million Euros were to be provided by ERDF totalling up to 85% of the costs, with further 10% to be contributed by Slovakia, and municipalities bearing only 5% of the costs. Over the course of almost two years following the call for applications, six rounds of evaluations had to be completed, the most recent on 16 November 2018. In those six rounds, according to the data available on the webpage of the Ministry, **only 53 applications for funding were filed – out of over 1043 eligible municipalities,** requesting approximately only 5,235 million EUR in total. Out of those applications, 7 were withdrawn by requesting municipalities and 11 were refused due to doubtfulness concerning their truthfulness or completeness.[35] Applications for funding totalling approximately 2,116 million EUR were therefore refused. It has to be noted that in the course of these six rounds, only 35 applications were granted with approximately 3,119 million EUR, meaning that **only 19,49% of the funds formerly allocated by the ERDF to facilitate right to water for Roma communities were in fact distributed** to the municipalities.

19. The right to water entails certain core obligations which are of immediate effect and not subject to progressive realisation. Namely, it is the obligation of the State Party to ensure the right of access to water and water facilities and services on a non-discriminatory basis, for disadvantaged or marginalized groups, and obligation to provide sufficient number of water outlets that are at a reasonable distance from the household.[36] Accordingly, we submit that Slovakia has not complied with its obligations under the Covenant in a timely manner when providing drinking water for Roma communities, especially those in segregated communities. Segregation, as a result of improperly addressed ownership settlement procedures, resulted in a situation where segregated Roma communities are not only physically separated from non-Roma habitats. Such segregation additionally forms a dangerous and harmful environment where, due to various legal obstacles, physical barriers, lack of state action, and overt or covert discriminatory behaviour, Roma communities are often subject to severe and harmful violation of their right to accessible, available, and safe drinking water.

Proposed recommendation for the State Party

Ensure that housing or land permit status of Roma habitats is not an impediment to enjoyment of available, accessible and high quality drinking water of inhabitants living therein.

[34] Details in Slovak available at: http://www.minv.sk/swift_data/source/mvsr_a_eu/oplz/vyzvy/Vyzva%20-%20Voda%202016/Vyzva%20s%20kodom%20OPLZ-PO6-SC611-2016-3%20zamerana%20na%20pristup%20k%20pitnej%20vode.pdf (accessed 15.7.2019) and also at: http://www.minv.sk/?archiv-vyziev-3&sprava=vyzva-zamerana-na-podporu-pristupu-k-pitnej-vode-oplz-po6-sc611-2016-3-uzavreta-dna-16-novembra-2018 (accessed 15.7.2019).

[35] Ground for refusal was Art. 20 para. 1 of Act No. 292/2014 Coll. on grants provided by European structural and investment funds.

[36] UN CESCR, General Comment no. 15, E/C.12/2002/11, 20 January 2003, para. 37.

Ensure that Roma are not segregated in violation of prohibition of discrimination under art. 2(2) of the Covenant, as it infringes on their access to drinking water on equal basis with others.

Ensure that available funding is efficiently used to its full potential to uphold the obligation of State party to fulfil normative content of the right to water for Roma communities.

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