



Asamblea General

Distr. general
4 de julio de 2011
Español
Original: inglés

Consejo de Derechos Humanos

18º período de sesiones

Tema 3 del programa

Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Informe de la Relatora Especial sobre el derecho humano al agua potable y el saneamiento, Catarina de Albuquerque*

Adición

Misión a Eslovenia**

Resumen

Del 24 al 28 de mayo de 2010, la Experta independiente sobre la cuestión de las obligaciones de derechos humanos relacionadas con el acceso al agua potable y el saneamiento llevó a cabo una misión en Eslovenia. El objetivo de la misión era evaluar de qué manera el Estado estaba haciendo efectivo el derecho al agua y al saneamiento. En el presente informe la titular del mandato observa que hay un acceso casi universal al agua y al saneamiento en Eslovenia. Asimismo expresa especial preocupación por el acceso de la población romaní al agua potable y al saneamiento.

Al final del informe se formulan algunas conclusiones y recomendaciones.

* En todo el presente informe se hace referencia a la Experta independiente sobre la cuestión de las obligaciones de derechos humanos relacionadas con el acceso al agua potable y el saneamiento, que era el título del mandato en el momento de llevarse a cabo la misión. De conformidad con la resolución 16/2 del Consejo de Derechos Humanos, dicho título se cambió por el de Relatora Especial sobre el derecho humano al agua potable y el saneamiento.

** El resumen del presente informe se distribuye en todos los idiomas oficiales. El propio informe, que figura anexo al resumen, se distribuye tan solo en el idioma en que fue presentado.

Anexo

Report of the Special Rapporteur on the human right to safe drinking water and sanitation on her mission to Slovenia (24-28 May 2010)

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I. Introduction

1. From 24-28 May 2010, the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, conducted a mission to Slovenia. The purpose of the mission was to assess the way in which the State implemented the rights to water and to sanitation.

2. The mandate holder thanks the Government of Slovenia for the invitation to visit the country and the excellent cooperation demonstrated in the preparation of and during the mission. She was honoured to be received by the President of the Republic, the Minister for Foreign Affairs, the Minister for the Environment and Spatial Planning, the Ombudsman and other senior officials. She also met with representatives of the Office for National Minorities, the Ministry of Health, the Ministry of the Environment and Spatial Planning, the Ministry of Labour, Family and Social Affairs, and the Ministry of Foreign Affairs. Meetings were also held with non-governmental organizations, academics and individuals who had faced challenges in their access to water and sanitation. The independent expert visited a water plant in Koper, and a drinking-water plant and wastewater treatment plant in Ljubljana. She travelled to Dolenjska, where she visited Roma settlements in Ribnica, Trebnje, Novo Mesto, and Škocjan. In Trebnje and Novo Mesto, she also met with the respective municipal officials. The mandate holder is grateful to everyone who agreed to meet with her and who contributed to her better understanding of the enjoyment of the right to water and sanitation in Slovenia. She was especially moved by the personal stories and courage of certain individuals who had suffered human rights violations, and thanks the individuals concerned for their willingness to share their experience with her.

II. Legislative and institutional framework

3. At the international level, the human rights to water and to sanitation are derived from the right to an adequate standard of living, protected under, inter alia, article 11 of the International Covenant on Economic, Social and Cultural Rights. The obligations under these rights require that water and sanitation are available, accessible, affordable, acceptable and of good quality for everyone. Ensuring the rights to water and to sanitation is closely related to the enjoyment of other human rights, including the rights to education, work, health, housing and food. Discrimination in access to water and sanitation based on race, ethnicity, citizenship, sex, disability, among other grounds, is prohibited. In this regard, water and sanitation are also protected under the Convention on the Rights of the Child (art. 24, pertaining to children's right to health) and the Convention on the Elimination of All Forms of Discrimination against Women (art. 14, pertaining to rural women).

4. Slovenia has consistently supported initiatives at the international level concerning the rights to water and to sanitation, including support for General Assembly resolution 64/292, in which the Assembly recognizes the right to water and sanitation, and Human Rights Council resolution 15/9, in which the Council specifies that this right is derived from the right to an adequate standard of living.

5. The rights to water and to sanitation are not specifically mentioned in the Constitution of Slovenia. However, the independent expert was assured that the right to water enjoys Constitutional protection. Significantly, the Constitution specifies that international treaties shall be applied domestically, thus the provisions of the International Covenant on Economic, Social and Cultural Rights are directly applicable in the Slovenian national context. Furthermore, the independent expert was informed that a Constitutional Court decision interpreted the right to water through the right to private property protected

under article 33 of the Constitution, which is understood broadly to cover also the basic needs for an adequate life.¹ The Constitution also refers to other entitlements closely related to water and sanitation, such as the right to a healthy living environment (art. 72), the right to health care (art. 51) and the obligation of the State to provide citizens with opportunities to obtain proper housing (art. 78).

6. With regard to the legal framework on discrimination, equality before the law is protected under the Constitution in article 14. The Constitution further provides for the establishment of a human rights ombudsman, in article 159. The mandate of the Ombudsman is to protect human rights and fundamental freedoms in relation to State authorities and local authorities; notably, the mandate does not include competence to address discrimination committed by private individuals or entities. The Ombudsman makes recommendations based on investigations of complaints submitted to him or her, and generally does not monitor the overall situation of human rights in Slovenia.²

7. In addition, the Advocate for the Principle of Equality was established through legislation adopted in 2004 in order for Slovenia to comply with anti-discrimination measures at the European Union level. This body is mandated to consider cases of alleged violations of the ban on discrimination.³ However, like the Ombudsman, the Advocate acts only on cases reported to him or her, and does not have the power to monitor the situation of discrimination more generally in the country. The independent expert was informed that Slovenia was currently reviewing its anti-discrimination legal framework, and she urges the authorities to particularly consider the gaps in monitoring, as further discussed below.

8. The responsibility for water and sanitation extends across several ministries, including the Ministry of the Environment and Spatial Planning, the Ministry of Health and the Government Office for Local Self-Government and Regional Policy. The legal framework governing water and sanitation is composed of numerous regulations, including the Water Act,⁴ the rules on criteria for determining a drinking-water protection area,⁵ the Environmental Protection Act,⁶ the Spatial Planning Act⁷ and the Housing Act.⁸ Responsibility for ensuring drinking-water supply and discharge and treatment of wastewater is decentralized, with each municipality bearing the primary responsibility for these services,⁹ for all people within its jurisdiction.

9. In addition to the domestic legal framework, as a member of the European Union, Slovenia is further obliged to conform to European Union standards regarding water and sanitation, in particular with regard to water quality and wastewater treatment. The Water Framework Directive¹⁰ establishes the overarching European Union legal framework for the protection of all waters, including surface water, groundwater, lakes, rivers and seawater. It sets standards with which all member States of the European Union must comply regarding the quality of water, including ecological protection and chemical protection. It requires

¹ Constitutional Court ruling No. 156/98, 11 February 1999, *Official Gazette of the Republic of Slovenia*, No. 17/99.

² Human Rights Ombudsman, *14th Regular Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for the Year 2008* (Ljubljana, 2009), pp. 135-136.

³ Act Implementing the Principle of Equal Treatment, art. 11.

⁴ *Official Gazette*, Nos. 67/02 and 57/08.

⁵ *Ibid.*, Nos. 64/04 and 5/06.

⁶ *Ibid.*, Nos. 41/04, 17/06, 20/06 and 28/06.

⁷ *Ibid.*, No. 33/2007.

⁸ *Ibid.*, No. 69/2003.

⁹ Environmental Protection Act, art. 149.

¹⁰ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

continual monitoring not only of water quality, but also of groundwater availability, to avoid over-extraction. The Water Framework Directive also specifies the importance of the price of water for ensuring water conservation and ensuring full cost recovery for investments in water infrastructure. Furthermore, it allows for special consideration of regions which are less wealthy and the need to provide basic services at an affordable price. Public participation is explicitly provided for, not only as a means of balancing different interests of communities, but also in order to ensure better enforcement of the regulation.

10. The Water Framework Directive is complemented by the Drinking Water Directive¹¹ and the Urban Wastewater Treatment Directive,¹² both of which are particularly relevant to the special procedures mandate concerning the human right to water and sanitation. The Drinking Water Directive sets quality standards which are based on the Guidelines for Drinking-water Quality developed by the World Health Organization (WHO). It requires regular monitoring of drinking water to ensure that it poses no risk to human health. It also requires member States of the European Union to provide consumers with regular and up-to-date information about the quality of drinking water. Under this Directive, member States are permitted to exclude water supplied to areas where 50 people or fewer reside. Member States must report every three years to the European Commission, and the Commission produces a public report which summarizes drinking-water quality throughout Europe.

11. The Urban Wastewater Treatment Directive aims to protect the environment from harm due to wastewater disposal by setting standards for treatment of all wastewater discharged from areas with a certain population density. In Slovenia, the Government is obliged to ensure that wastewater collection exists for all agglomerations of 2,000 population equivalents¹³ or more by the end of 2015. Secondary treatment, which generally involves “biological treatment with a secondary settlement,”¹⁴ is required before discharge of wastewater from agglomerations of 2,000 population equivalents or more by the end of 2015. In areas with less dense populations, where establishing a wastewater collection system is not justified “because it would produce no environmental benefit or because it would involve excessive cost,” the systems chosen must still achieve the same level of environmental protection.¹⁵ Member States are required to report to the Commission every two years; based on the information submitted, the Commission verifies compliance and produces a synthesis report which is publicly available.

12. Where member States fail to comply with the Directives, they can be taken to the European Court of Justice and, if found in violation, they can be ordered to pay the costs of such proceedings.

III. Socio-economic situation in Slovenia

13. A country with a small population, Slovenia has slightly more than 2 million people in its territory, with 83,233 foreigners recorded in the official Government statistics as at 1

¹¹ European Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption.

¹² European Council Directive of 21 May 1991 concerning urban waste water treatment (91/271/EEC) and European Commission Directive 98/15/EC of 27 February 1998 amending Council Directive 91/271/EEC with respect to certain requirements established in Annex I thereof.

¹³ One population equivalent refers to the organic biodegradable load having a five-day biochemical oxygen demand of 60 grams of oxygen per day. Urban Wastewater Treatment Directive, art. 2, para. 6.

¹⁴ Urban Wastewater Treatment Directive, art. 2, para. 8.

¹⁵ *Ibid.*, art. 3, para. 1.

July 2010.¹⁶ In 2009, it was reported that 223,000 people, or 11.3 per cent of the population, were at risk of poverty. The at-risk-of-poverty rate of Slovenia is thus lower than the European average, which is 15 per cent. Social transfers reportedly play a large role in keeping people above the poverty threshold, with statistics showing that the number of people considered to be at risk of poverty would almost double if social transfers were excluded from consideration.¹⁷ The Statistical Office of the Republic of Slovenia notes further that “the at-risk-of-poverty rate does not indicate absolute poverty but measures inequality within a population, but at the same time does not take into account price trends, housing conditions and other factors influencing people’s living standard”.¹⁸

14. Other determinants of hardship are equally relevant in assessing poverty. It was reported that in Slovenia 43 per cent of the population could not afford unexpected financial expenses in 2009. The same statistics indicated that 53 per cent of tenants and 25 per cent of homeowners had difficulties making ends meet.¹⁹ Homelessness is reportedly a growing problem in Slovenia, although accurate estimates of the number of homeless people are not available.

A. Water

15. Nearly 100 per cent of the population in Slovenia has access to safe water and 86 per cent of the population is connected to the public water supply system. Water for personal and domestic uses is prioritized over all other uses as provided for in the Water Act (art. 108, para. 2). A comprehensive system of water-quality testing is implemented at the national and municipal levels and the tap water in Slovenia meets European Union and WHO standards. Slovenia also has established strict water-protection zones to prevent the contamination of water sources by agriculture, industry and other activities, which restrict or prohibit certain activities in the protected areas. In addition, 300 monitoring stations conduct regular tests throughout the country to assess water quality. Overall, the special procedures mandate holder concludes that Slovenia has a good framework and system in place for ensuring the provision of safe water to the general population.

16. Pollution of groundwater is not a widespread problem in Slovenia. However, in certain areas, worrying levels of pollution were reported by both Government and non-governmental sources. The north-eastern part of the country is reportedly the poorest region in Slovenia, and also suffers from the worst water quality. According to a report issued in 2008, of three groundwater bodies that were determined to have poor chemical status, two are located in the north-eastern region.²⁰ In the north-east, groundwater and surface water pollution is reportedly attributable to the use of certain pesticides and nitrates in agricultural areas. Furthermore, some concerns persist that banned pesticides, such as atrazine, continue to be used. For instance, in 2006, illegal amounts of atrazine were detected in the river Krka.²¹ This points to the need for continued work with the Ministry of Agriculture, Forestry and Food on efforts to promote good farming practice, as well as to address

¹⁶ Statistical Office of the Republic of Slovenia, “Population, Slovenia, 1 July 2010 – final data”, table 1. Available from www.stat.si/eng/novica_prikazi.aspx?id=3523.

¹⁷ Statistical Office of the Republic of Slovenia, “Income and poverty indicators, Slovenia 2009 – provisional data”. Available from www.stat.si/eng/novica_prikazi.aspx?id=3528.

¹⁸ *Ibid.*, fourth paragraph.

¹⁹ Statistical Office of the Republic of Slovenia, “Survey on living conditions, Slovenia, 2009 – provisional data”. Available from www.stat.si/eng/novica_prikazi.aspx?id=3515.

²⁰ Slovenia, Environmental Agency of the Republic of Slovenia, *Water Quality in Slovenia* (Ljubljana, 2008), p. 58.

²¹ *Ibid.*, pp. 18 and 20.

existing pollution. The Government expressed its hope that plans for a new centralized water system in the north-eastern part of the country will help to address the pollution problems there.

17. The independent expert received detailed information about pollution in Celje reportedly having an impact on the health of the population. According to information from the “civil initiative” in Celje, the number of people dying from diseases caused by pollution, including various types of cancer, is higher in this region than the overall rate in Slovenia. Reportedly, of the 85 inhabitants living in Bukovžlak, the community in Celje that is closest to the chemical industry, 69 are ill. This pollution is a result of industrial activity and affects the wider environment. The health problems reported by the population include increased incidence of cancer, pulmonary problems, kidney disease and cardiovascular disease. The Government explained that while special water-protection rules are in place in Celje, effective implementation of these rules requires the cooperation of surrounding municipalities, which is not always forthcoming. Drinking water is provided for residents of Celje in a manner that complies with health regulations. It was explained that, in exceptional circumstances where the water supply for residents in Celje contains a high level of contaminants, water from other areas is mixed with the local supply to make it safe for human consumption. However, the water pollution problems in this area remain a concern. More open consultation must be undertaken with the community in Celje in order to address concerns about the drinking-water quality and to explain strategies and plans in place to improve this situation. Furthermore, the central Government has a role to play in requiring inter-municipal cooperation to ensure that the human rights of all people in the country are protected.

18. In Slovenia, 97 per cent of drinking water comes from groundwater sources; surface water represents only 3 per cent of the total supply. In this regard, it is important to note that Slovenia enjoys significant groundwater resources. However, reliance on groundwater sources, even when they are abundant, can lead to depletion if systematic monitoring of groundwater availability is not ensured. The independent expert was pleased to note that the Government engaged in constant monitoring of groundwater resources available for current and future generations. This is commendable, as it enables the country to know exactly how much water it is using and to predict and avoid possible situations of water scarcity.

19. Despite the abundance of available water, some areas of the country experience water stress during certain seasons. For example, in the coastal region, where tourism in the summer period increases the number of water users from 85,000 to 130,000 people, demand exceeds the available supply. In those circumstances, the water provider has arranged to buy water from other sources, including from a neighbouring country. A more sustainable solution is needed, however, since the option to purchase the supplementary water may not be available indefinitely. In this regard, the Istria region intends to build a dam to ensure a more stable water supply to the region. Implementing such technology may be an important step for guaranteeing future water supply in this seasonally water-scarce region. In carrying out these plans, it will be crucial to fully engage with the local community and affected individuals and ensure a transparent process. The central Government will also need to work closely with local authorities to find appropriate solutions for the unique water situation in this region. In accordance with the opinions of the Committee on Economic, Social and Cultural Rights, while Governments have a “margin of appreciation ... to take steps and adopt measures most suited to their specific circumstances”²² for the implementation of human rights, they must ensure that “the means

²² Committee on Economic, Social and Cultural Rights, statement entitled “An evaluation of the obligation to take steps to the ‘maximum of available resources’ under an Optional Protocol to the Covenant” (E/C.12/2007/1), para. 11.

of implementation chosen [are] adequate to ensure fulfilment of the obligations under the Covenant”²³ and must choose the policy option which least restricts other Covenant rights (E/C.12/2007/1, para. 8 (d)).

B. Sanitation

20. Concerning sanitation, over half of the population is connected to a wastewater treatment facility, and the Government is undertaking significant efforts to increase this number further in order to meet the 2015 deadline for complying with the European Union Urban Wastewater Treatment Directive. In 2009, it was reported that there were 231,243 connections to the public sewage network while the total of reported households in Slovenia was 529,642. Almost 116 million cubic metres of wastewater were treated, with 4.1 million cubic metres receiving primary treatment, 82.8 million cubic metres receiving secondary treatment and 29 million cubic metres receiving tertiary treatment. About 52.5 million cubic metres of wastewater was untreated; 76.4 per cent of this wastewater was discharged into surface water and 23.6 per cent into groundwater.²⁴

21. Where people are not connected to sewerage, they generally have cesspools, which also hygienically separate human excreta from human and animal contact, thus meeting some important dimensions of the human rights requirements concerning sanitation. The independent expert was informed about concerns regarding the sustainability of cesspools and other older sanitation systems, namely, that the materials with which these were built might now be deteriorating, leading to leakages into the soil. Service providers are responsible for monitoring small wastewater treatment systems, including cesspools and septic tanks. However, the independent expert received information that such monitoring did not systematically take place, and thus cesspools and septic tanks might leak unabated. This threatened the surrounding environment, as well as the safety of the groundwater for drinking.

22. The activities described by the Government demonstrated that it was making significant efforts to meet the requirements of the European Union Urban Wastewater Treatment Directive, but those efforts will need to be maintained, and even strengthened, if the Government wants to ensure its compliance with human rights standards. Inadequate wastewater treatment poses a serious threat to the environment, including to water resources. The special procedures mandate holder encourages the Government to continue priority attention to this issue.

IV. Non-discrimination

A. “Erased” people

23. After achieving independence, Slovenia passed a law (Citizenship of the Republic of Slovenia Act) providing that non-Slovene citizens from other republics of the Socialist Federal Republic of Yugoslavia would cease their permanent resident registration unless they obtained Slovenian citizenship. The Citizenship Act provided for a six-month window in which to apply for Slovenian citizenship if a person had registered permanent residence on the date of independence and had been living in Slovenia since the date of

²³ General comment No. 9 (1998) on the domestic application of the Covenant, para. 7.

²⁴ Statistical Office of the Republic of Slovenia, “Public sewage system, Slovenia, 1009 – final data”. Available from www.stat.si/eng/novica_prikazi.aspx?id=3320.

independence. According to the official data, 171,132 citizens of the former Yugoslav republics living in Slovenia applied for and were granted citizenship of the new State under section 40 of the Citizenship Act. It is estimated that an additional 11,000 persons left Slovenia.²⁵

24. Those who either failed to apply for Slovenian citizenship within the prescribed time limit or whose requests were not granted became subject to the 1991 Aliens Act. In this regard, their names were removed from the Register of Permanent Residents and transferred to the Register of Aliens without a Residence Permit.²⁶ According to information obtained during the mission, persons whose names were removed from the Register received no official notification.²⁷ They realized only later that they had become aliens, when, for example, they attempted to renew their personal documents (personal identification card, passport or driving licence). Without identification documents or residency permits, these “erased” persons became illegal residents in Slovenia, and their access to housing, work, basic services, health services and social security were limited, constituting a serious violation of their economic, social and cultural rights.²⁸ People in this situation also reportedly faced challenges in obtaining legal connections to the water and sewage networks. It is further reported that many of the people erased from the register are Roma, an issue discussed further below.

25. Following a decision of the Constitutional Court in 2003,²⁹ the Minister for the Interior has made important efforts to issue residence permits to the above-mentioned persons, with effect from 1992. In June 2010, the Act on Changes and Amendments to the Act governing the Status of the Citizens from other Successor States to the former Socialist Federal Republic of Yugoslavia living in Slovenia was enacted,³⁰ and the Act on arranging the Status of the Citizens from other Successor States to the former Socialist Federal Republic of Yugoslavia living in Slovenia was enacted a month later (in July 2010). The Constitutional Court has indicated that the provisions of the latter Act would be in line with its decision from 2003;³¹ implementation of this Act is thus a crucial step to resolving the outstanding issues of “erased” people. The special procedures mandate holder welcomes these developments and encourages the Government to regularize the situation of the remaining members of this population group without delay, and to recognize the human rights violations that they have suffered as well.

B. Roma

26. Official statistics in Slovenia report that a little over 3,000 Roma people live within its borders, although other estimates put the number as high as 10,000.³² The number of

²⁵ See *Kurić and others v. Slovenia*, European Court of Human Rights, para. 37 (pending before the Grand Chamber).

²⁶ Sixth and seventh periodic report of Slovenia submitted to the Committee on the Elimination of Racial Discrimination (CERD/C/SVN/7), para. 82.

²⁷ See, for example, *Kurić and others v. Slovenia*, para. 41.

²⁸ See concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/SVN/CO/6-7), para. 13.

²⁹ Constitutional Court ruling No. U-I-246/02-28 of 3 April 2003.

³⁰ *Official Gazette*, No. 50, 24 June 2010.

³¹ Constitutional Court ruling No. U-II-1/10-19 of 10 June 2010

³² Peace Institute, Institute for Contemporary Social and Political Studies, thematic study by the RAXEN National Focal Point of Slovenia on housing conditions of Roma and Travellers (March 2009), p. 5. Available from http://fra.europa.eu/fraWebsite/attachments/RAXEN-Roma%20Housing-Slovenia_en.pdf.

settlements also differs, ranging from 90 to 105 and located in 25 municipalities.³³ These numbers do not take into account Roma people who are not settled. The majority of Roma people in Slovenia live in Prekmurje and Dolenjska.

27. Article 65 of the Constitution of Slovenia provides that “the status and special rights of the Romany community living in Slovenia shall be regulated by law”. The Roma Community Act, which entered into force in April 2007, lays out the framework for protecting the rights of Roma people in Slovenia, especially rights related to education, work and preservation of the Romani language. The Act also establishes the Council of the Roma Community of the Republic of Slovenia, which is intended to represent Roma interests in relation to State institutions. Notably, in March 2010, the Government adopted a new integrated national programme of measures for Roma for the period 2010-2015, of which one of the main strategic goals is improving the living conditions of the Roma community and arranging Roma settlements in an orderly manner.

28. A variety of laws and regulations concerning spatial planning and environmental protection are also relevant to the situation of Roma people because of the sometimes illegal nature of their settlements. While these laws play a critical role in providing the framework for legalizing Roma settlements, in some cases the laws have been used as a pretext to evict communities without assuring the necessary due process. The independent expert received information about a case in 2006 where the Water Act was used to justify the removal of a family from their property because it had been marked as a water protection zone. Reportedly, however, no expropriation procedure had been carried out.³⁴ While the protection of water quality is critical, appropriate procedures must be in place to ensure that such protection does not result in other human rights abuses. Evictions of people from land should be exceptional occurrences, and when they take place, they must be in accordance with international human rights law. This includes consultation with affected communities, ensuring access to information, and full consideration of alternatives to eviction. Furthermore, the State must ensure that affected individuals are provided with alternative housing that meets human rights standards and just compensation.³⁵

29. Disaggregated data based on ethnicity is not collected in Slovenia. The independent expert requested information concerning how many Roma people were receiving social benefits, but was informed that collection of such data might be considered discriminatory. While recognizing the sensitivity surrounding issues of ethnicity and concern about potential improper use of such data, the mandate holder notes that disaggregated data is crucial for assessing the magnitude of a problem (for instance, whether Roma people living in poverty are benefitting from social welfare systems, as well as the incidence of poverty among the Roma population or access by the Roma community to safe water and sanitation). The Committee on the Elimination of Racial Discrimination has also commented on the lack of data on minorities in Slovenia.³⁶ Without such data, targeted solutions to improve the situation of groups experiencing discrimination will be difficult to formulate.

30. The Constitution of Slovenia refers only broadly to the Romany population, but subsequent laws have introduced a distinction, for some purposes, between autochthonous and non-autochthonous Roma populations. Autochthonous Roma are considered

³³ Ibid., p. 37.

³⁴ Ibid., pp. 15-16.

³⁵ For more information, see the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I).

³⁶ Concluding observations on the fifth periodic report submitted by Slovenia (CERD/C/62/CO/9), para. 8.

“traditionally settled” while non-autochthonous Roma are considered immigrants, although the term has not been defined in legislation.³⁷ Non-autochthonous Roma live predominantly in urban centres, and few statistics relating to their situation are available.³⁸ One estimate places the number of non-autochthonous Roma in Slovenia between 2,500 and 3,000, while another estimate places the number at 60 per cent of all Roma in the country.³⁹

31. The Roma Community Act reportedly applies only to autochthonous Roma populations. Furthermore, article 39 of the Local Self Government Act specifies that only municipalities with autochthonous Roma populations are obliged to ensure that there is a Roma councillor on the municipal council. As discussed below, the absence of Roma councillors may inhibit efforts to find solutions to the inadequate living conditions of certain Roma populations. The independent expert urges the Government to remove the distinction between the two types of Roma status, as was previously recommended by the Human Rights Committee in its concluding observations for Slovenia (CCPR/CO/84/SVN, para. 16).

32. Although Slovenia has taken important steps to address the situation of Roma in its territory, including, most recently, the adoption of the National Programme of Measures, the independent expert received information that discrimination against Roma in Slovenia was still widespread. Most Roma people still live apart from the majority of the population, in isolated settlements or on the borders of larger towns. These settlements are generally below the minimum living standards. It is estimated that 39 per cent of Roma live in brick houses, 12 per cent in apartments, and the rest, or 49 per cent, live in barracks, containers, trailers or other makeshift accommodation. The independent expert visited these homes - one of which had no roof, and another was built in a flood zone. All of the homes visited were in a very poor condition. In her meeting with the Office for National Minorities, it was further indicated that about 10 per cent of these settlements should be relocated because they were situated in a hazardous area.

33. Concerning water and sanitation, according to the findings of an analysis on the theme “Territorial issues of Roma settlements in Slovenia” and prepared by an expert group tasked to deal with the spatial problems of Roma settlements, about 21 of 95 settlements in Premurje and Dolenjska have no access to water, either from public water works or from a local water source.⁴⁰ Many of them also have no access to sanitation.

34. The impact of the lack of access to water and sanitation on these communities is devastating. The individuals with whom the independent expert met explained that they were systematically ill with diarrhoea and other diseases. In Škocjan, a community visited by the independent expert, people had no access to safe water and they drank from a polluted stream, or had to walk for two hours to obtain safe water. The hygienic conditions in this community were deplorable and the lack of accessible safe water seriously contributed to this situation. A doctor working with this community confirmed that the people there had very high levels of diarrhoea. Some houses in the settlement were profoundly inadequate, including being flooded whenever it rained. The independent expert met with people there who were forced to defecate in a nearby forest, as they had no access to sanitation.

35. In Ribnica, people get water from a stream about 10 kilometres away from the settlement. The residents must fetch water to provide for their personal and domestic needs,

³⁷ Peace Institute, Institute for Contemporary Social and Political Studies, thematic study (note 32 above), p. 29.

³⁸ *Ibid.*, pp. 5-6.

³⁹ *Ibid.*, p. 18, footnote 29.

⁴⁰ *Ibid.*, p. 99.

each time transporting 20 litres. When asked whether 10 kilometres was not a very long distance, a woman answered that “to survive it is not too far to walk 10 kilometres to get water”. In response to a question about the location of their toilets, they said that “nature is our toilet”. Concerning hygiene, the people explained that they bathe in the stream in the summer, but in the winter, this is impossible given the very low temperatures. They reported that their children were sick from lack of water. Residents also highlighted that without water, the personal hygiene situation was very difficult. The children did not want to go to school because they were teased by other students about their smell and they were ashamed that they were unable to clean themselves. Missing school has implications for obtaining social benefits, since these benefits are made available only if the children go to school. They are also reportedly chased by the police when bathing in the stream in summer. Some residents also told the independent expert that they had been requesting a water connection for 30 years.

36. The implications of the lack of access to water and sanitation for hygiene have a broader impact on the communities in which there is still no access. Adults face difficulties in finding work when they have no way of maintaining minimum standards of hygiene. Women are confronted with particular issues when they are menstruating and indicated that they were ashamed about the conditions in which they had to practice their menstrual hygiene. Moreover, the lack of hygiene perpetuates discriminatory stereotypes about Roma among Slovenians. Roma are perceived as dirty and unhygienic and, even in public places, they are not a welcome presence.

37. Non-autochthonous Roma also face challenges in accessing safe water and sanitation. According to the only study that has been carried out concerning non-autochthonous Roma living in Ljubljana, members of a community on Koželjeva Street do not have secure tenure because no formal lease has been arranged, despite the fact that some of the families have been living there for over two decades. The study further observes that the water and electricity supply in that community “do not suffice for all the needs of the inhabitants”.⁴¹ Furthermore, many non-autochthonous Roma are not Slovenian citizens, including as a result of the 1992 removal of names from the Register of Permanent Residents.⁴² Their lack of citizenship prevents them from applying for social housing. The story of one woman, as told by a representative of non-autochthonous Roma interviewed for the RAXEN report, illustrates this problem:

Born here, [she] has no citizenship, has permanent residence, lived in a shed, without sanitation, water, anything. The apartment was owned by another person. They came to pull down the apartment. I addressed various institutions, from the mayor, to the municipality, to the director of the housing fund, all over the place they showed no understanding for this woman’s case. Now this woman with five children ended up on the street. She wanted to place a tent by Drava river to live there, but our community managed to offer her an apartment, where she has no water or electricity. She still has no water or electricity, kids may not go to kindergarten or school since they have no place to wash.⁴³

38. In order to be connected to the water and sanitation networks in Slovenia, one must apply to the municipality and present evidence of ownership and a building permit, among other documentation. Although Roma communities have been present in Slovenia for centuries, their settlements were frequently established in an irregular manner. Authorities have used the “illegality” of the settlements as a principle justification for not connecting

⁴¹ Ibid., p. 46 (citing M. Hrženjak et al.).

⁴² Ibid., p. 52.

⁴³ Ibid., p. 52-53.

these communities to water and sanitation services. The irregular status of Roma settlements is historically attributed to their inability to buy land legally, but also to prejudices in communities that forced Roma to settle on the outskirts of towns - problems that persist today. Several of the people with whom the independent expert met reported that they had tried to buy land but had been refused by sellers. Lack of documentation is also reportedly a problem for some Roma people when they attempt to legally purchase land. In addition to lack of ownership and documentation, Roma people frequently lack building permits for the structures in which they live.

39. The special procedures mandate holder notes with appreciation that some municipalities have found positive solutions to address the sometimes difficult and complex problems associated with the Roma community in Slovenia. For example, some municipalities have waived the requirements outlined above in order to facilitate access to water and sanitation. Almost all Roma settlements in Prekmurje in the north-eastern part of the country have access to water and sanitation and report higher levels of integration within the larger population. In Prekmurje, only 3 settlements out of 38 do not have a water supply, and all Roma settlements in Prekmurje are connected to electricity. Furthermore, most Roma in this area own the land that they live on. The improved situation in this region is largely attributable to a different attitude towards Roma. This is reflected in the fact that nearly 60 per cent of people in Prekmurje are mostly or partially prepared to sell their land to Roma people, while in the south-eastern region, such as Dolenjska, only a little more than 20 per cent of people are mostly or partially prepared to sell their land to Roma.⁴⁴

40. In a settlement visited by the independent expert in Trebnje, in the Dolenjska area, important efforts have also been made to ensure that the community is connected to water and sanitation. There, the community is working with the municipality to legalize the land and buildings where they live, which will represent a longer-term solution to their situation. Most of the residents in Trebnje have a household water connection. Those who do not have their own connection are able to use the connection at their neighbour's. The independent expert was informed that, on average, the amount paid for the water corresponded to approximately 3 per cent of a household's income. In this settlement, however, 50 per cent of the population does not have toilets. It was reported to the independent expert that with water available in this neighbourhood, the children were able to go to school clean, whereas before the Roma children had to take showers at school.

41. Measures to regularize settlements must be taken in full consultation with and ensure the participation of the Roma community concerned. Without this, solutions risk disregarding the reality of these individuals. For instance, several regularization schemes envision the municipality buying the land on which the Roma community is living, and then selling it back to them so that they can own it, which is a good solution in theory. However, given that many Roma people live only on social assistance, the prospect of buying the land, even if it is offered at reduced rates, is a distant hope. Alternative solutions such as long-term leases may be more appropriate in these situations.⁴⁵ By working closely with the community concerned, municipal authorities will be able to better understand the feasibility and appropriateness of proposed solutions. Furthermore, access to information and transparency in regularization processes is crucial.

42. As regularization of Roma settlements can be a lengthy process, immediate measures are needed to ensure that all people living in those settlements have access to safe water and sanitation. With regard to water, while household connections are the ideal

⁴⁴ Ibid., p. 41.

⁴⁵ Amnesty International, *Parallel Lives: Roma Denied Rights to Water and Housing in Slovenia* (London, 2011), p. 34.

solution, in the meantime, efforts must be made to find interim solutions. Such solutions could include extending the network to a public water point that would be available to all people living in the settlement, or delivering safe water in tankers. Additionally, urgent measures are necessary to improve the current status of sanitation in many Roma settlements where there is either no latrine, or only a hole in the ground. With the majority of the population in Slovenia enjoying access to sewerage, extending the network to provide safe sanitation in Roma communities would be one means to addressing this problem. However, as with water, interim measures are critical; there are an increasing number of sanitation technologies to choose from that do not require connection to the network, and that could be installed sooner than any extension of the sewage network. Devising the most appropriate solutions will require consultation with the communities concerned, and it is important that the authorities do not treat interim measures as definitive solutions. Regular monitoring and improvements will be necessary for Slovenia to live up to its human rights obligations in this regard.

43. The independent expert was told that all mayors have an obligation to engage with the Roma population inside their municipality in a serious and constructive manner. However, the fact that the local community has to co-finance any projects means that any initiatives aimed at promoting the rights of Roma are dependent on the political climate inside each municipality and the support of the local population. For example, in Trebnje, the mayor explained that there was broad support within the local non-Roma population, and good communication with the Roma community, which enabled a satisfactory solution.

44. Political will is the critical dimension in determining whether solutions to the problems faced by Roma people will be found. The independent expert observed with concern that the political will and commitment to satisfactorily address challenges facing the Roma community is lacking in some municipalities in Slovenia. According to information she received, some local politicians use anti-Roma sentiments as a way of gaining votes in elections, since the majority population in certain communities may harbour prejudices against Roma. The independent expert visited Škocjan, where she spoke with Roma people who reported that their discussions with local authorities left them with no hope for an improved situation and fearing eviction. There are reportedly about 170 Roma people living in Škocjan.⁴⁶ Despite attempts by some Roma people in that community to buy the land they live on, they are not able to, and they are not allowed to move. Similarly, in Ribnica, residents informed the independent expert that they had been requesting a water connection for 30 years, but the municipality continued to refuse. The independent expert met at least four families living under electricity cables that were declared to be dangerous. However, the proposal of the authorities to move the people to another place would reportedly continue to leave them isolated and segregated. The residents reported that there was broader discrimination in the community, which made it difficult to find employment. One woman with whom the independent expert met explained that she requested to move to a government-supported apartment because her children were sick, potentially as a result of drinking water from a nearby stream, and that she was told instead to put her children in foster care.

45. There are an estimated 25 municipalities in Slovenia with Roma populations;⁴⁷ the Government reports that 20 of these have Roma representatives on their municipal councils (CERD/C/SVN/7, para. 41). However, neither Škocjan nor Ribnica figure within this group. The municipal council is a critical forum for discussing strategies for improving the lives of

⁴⁶ Peace Institute, Institute for Contemporary Social and Political Studies, thematic study (note 32 above), p. 91.

⁴⁷ Ibid.

Roma. The independent expert notes an urgent need for a more fruitful dialogue between the communities and the authorities in these municipalities.

46. All people have the rights to water and to sanitation, and the authorities must make all efforts to ensure enjoyment of these rights. If municipal authorities are failing in their obligations in this regard, the central Government must step in to correct the situation. Article 5 of the Roma Community Act stipulates that the central Government may intervene to regulate the living conditions of Roma, where the “lack of legal and infrastructural regulation of Roma settlements in a self-governing local community leads to a serious threat to health, long-lasting disturbance of public order or a permanent threat to [the] environment”.⁴⁸ The special procedures mandate holder strongly encourages the central Government to use its power to ensure that Roma are not discriminated against by public or private entities in any municipality. She reminds the Government that it is obliged under human rights law to ensure that all people in its territory have at least minimum essential levels of safe drinking water and access to sanitation. The current situation of some Roma communities in Slovenia is in contravention of that obligation.

47. The special procedures mandate holder welcomes the call by the Ministry of the Environment and Spatial Planning in 2008 for municipal spatial plans to include plans to regularize Roma settlements, including offering funds for such projects. However, she regrets that only half of the funds available were used on that occasion, due to lack of interest from the municipalities.⁴⁹ This is yet another reflection of the lack of political will in municipalities to address discrimination against Roma. Reportedly, the Ministry intends to issue a similar call in 2011, although it will apply only to municipalities with autochthonous Roma populations.⁵⁰ The mandate holder strongly recommends the removal of the distinction between autochthonous and non-autochthonous Roma. She further encourages the central Government to use this occasion and other initiatives to oblige all municipalities to comply with the obligations of Slovenia under human rights law. For instance, instead of only offering incentives to municipalities, the central Government could also intervene in municipalities with Roma communities where they do not integrate Roma concerns into their plans.

48. The central Government should also monitor and report on the activities of all municipalities in improving the living conditions of Roma people, and should closely follow efforts to regularize Roma settlements to ensure that they are being made in accordance with human rights standards. Targeted health monitoring of Roma populations is also necessary to track water- and sanitation-related health deterioration or improvement in the community. This monitoring could be undertaken in the context of the National Programme of Measures for Roma, mentioned above.

49. Promoting the exchange of good practices between municipalities and with other European countries with Roma communities would also be an important step for addressing the Roma situation. Furthermore, the State must not tolerate any form of discrimination, including based on ethnicity.⁵¹ Awareness-raising campaigns to promote tolerance and end discrimination are equally essential measures; these could be specifically targeted at municipalities where there is weak political will to find a solution for ensuring the human rights of Roma people.

⁴⁸ Ibid., p. 17.

⁴⁹ Amnesty International, *Parallel Lives*, p. 31.

⁵⁰ Ibid., pp. 31-32.

⁵¹ See, inter alia, CERD/C/SVN/CO/6-7, para. 10.

V. Affordability

50. According to official statistics, about 240,000 people in Slovenia were at risk of poverty in 2008. Nearly 14,000 additional beneficiaries have registered for social benefits since 2002, marking a steady increase. Unemployed persons and one-member households experienced the highest levels of poverty.⁵² However, there may be many more living in poverty since the manner in which poverty thresholds are established depends on seeking information from a sample of the population. Those without an official address (because they live in an illegal building or in a shelter or are homeless) may not be captured in those samples. Furthermore, the methodology used in Slovenia to establish the thresholds, which is in line with European Union practice, may establish the poverty threshold at an artificially low level depending on the distribution of wealth in society, as the threshold is determined in relation to a median income, rather than average income.

51. In her meetings with experts on the issue of poverty, the independent expert was informed that individuals are more frequently resorting to charity assistance such as through the Red Cross. Such experts thus suspect that those living in poverty or under considerable financial hardship may be more numerous than reflected in the statistics. There is a need for more research on poverty to ensure that the situation of all people in the country is taken into account in policy design and planning.

52. People living in poverty in Slovenia face potential problems when paying for basic services, including water and sanitation. The Ombudsman has observed that the level of financial social assistance, currently set at €229 per month for an individual plus supplements for additional family members, is inadequate to assure survival.⁵³ The new Financial Social Assistance Act will enter into force in June 2011 and will raise the monthly amount to €288. Financial social assistance is set at the national level, while water and sanitation prices are defined by the municipalities. This may result in problems with affordability in some regions. For instance, experts have suggested that the cost of water and sanitation services should not exceed 3 per cent of a household's income.⁵⁴ In Ljubljana, the reported price of water was about €1.78 per cubic metre in 2010. A single-parent household with two children would receive approximately €436 per month at the current level of social assistance.⁵⁵ Such a family would require 9 cubic metres per month for basic needs (equal to about 100 litres per day per person), meaning that they would pay at least €16 per month. This would constitute slightly more than 3 per cent of the household income. Although this concern might be rectified by the plans to increase social assistance to €288 per month, the price of water may be higher in some regions, and may also be increasing in line with the rising cost of living. For example, in some regions, the independent expert was told that the price of water was expected to rise because of the need to introduce new treatments for removing pollutants. In general, people will prioritize their access to water because it is so fundamental for survival. Thus, in order for people to afford water and sanitation services, they compromise on other essential needs, such as food, health or education.

53. The Government must make sure that access to safe drinking water and sanitation does not jeopardize a person's ability to enjoy other basic rights, such as the rights to

⁵² Statistical Office of the Republic of Slovenia, "Income and poverty indicators, Slovenia, 2007 – provisional data". Available from www.stat.si/eng/novica_prikazi.aspx?id=2032.

⁵³ Human Rights Ombudsman, *14th Regular Annual Report* (note 2 above), p. 117.

⁵⁴ United Nations Development Programme, *Human Development Report 2006: Beyond Scarcity – Power, Poverty and the Global Water Crisis* (New York, 2006), p. 97.

⁵⁵ Monthly social assistance in August 2010 was €229.52. Supplements are added for each child and for being a one-parent household of around €69 each.

health, housing and food. Adequate measures must be in place to take account of financial vulnerabilities of certain groups of people, such as social tariffs, subsidies, or lifeline access, among other interventions, and to ensure that they still enjoy adequate access to water and sanitation.

VI. Monitoring

54. Although Slovenia has a monitoring system in place to control water quality, new construction and environmental protection, the independent expert was informed that monitoring is not always satisfactory: Responsibility for monitoring falls within the competency of the Ministry of the Environment and Spatial Planning, and the Ombudsman has observed the need for reinforcing the staff of the inspectorate at that Ministry. Certain issues, such as cesspits and septic tanks, are monitored at the local level, as mentioned above. The central Government should have an overview of whether local authorities or service providers are effectively monitoring the areas that fall under their responsibility, since the extent to which monitoring is carried out could have an impact on the enjoyment of the rights to water and to sanitation.

55. The independent expert was informed that discussions were under way to examine the possibility of establishing an independent regulator for water and sanitation. In her opinion, the establishment of such a regulator would be a positive development. In particular, such a regulator could have competencies to control compliance with water quality and environmental protection standards. In addition, the regulator could be responsible for monitoring the price of water and sanitation, and ensuring that the price does not reach unaffordable levels. It could also monitor the extent of access to water and sanitation, including determining which communities are excluded and proposing measures to enable their access. In other countries, such regulators also receive complaints and work with consumers and service providers to find solutions to problems with access. Establishing such a mechanism would assist Slovenia to ensure that it is complying with its obligation to guarantee the rights to water and to sanitation.

56. Furthermore, in addition to monitoring that is specifically focused on water and sanitation, there is a need for the monitoring of patterns of discrimination in Slovenia. For instance, the information currently available on the Roma population in Slovenia is largely based on self-reporting. Mandating an independent institution to undertake such monitoring efforts would result in more accurate information about the degree to which Roma and other disadvantaged groups are enjoying their human rights. As mentioned above, at present, neither the Ombudsman nor the Advocate for the Principle of Equality exercises monitoring functions. If empowered to regularly report on the situation of vulnerable groups and groups experiencing discrimination, those bodies could make more robust recommendations for legal and policy changes in Slovenia.

VII. Conclusions and recommendations

57. The special procedures mandate holder concludes that Slovenia is meeting its human rights obligations related to water and sanitation for the vast majority of its population. Nevertheless, she has serious concerns about those who are excluded from the enjoyment of these rights, as such exclusion constitutes a violation of the international human rights obligations of Slovenia. The fact that the main responsibility for ensuring access to water and sanitation is within the competencies of the municipalities does not absolve the Government of its human rights obligations. The mandate holder recalls that human rights obligations pertain to all levels of government, and calls on the central Government to ensure that all people in Slovenia

are able to enjoy the rights to water and to sanitation on an equal basis. The working group on solving spatial problems in Roma settlements has the potential to play a valuable role in this regard, and should particularly ensure broad-based participation and consultation with Roma people. It should also ensure that its recommendations are fully in line with international human rights obligations.

58. Certain challenges also persist in terms of fighting pollution, and ensuring adequate sanitation and water availability in some regions. The Government has demonstrated a willingness to tackle those issues in line with its human rights obligations and, in this regard, the special procedures mandate holder recommends that the State:

(a) Explicitly recognize the rights to water and to sanitation in law, make them justiciable and amend relevant laws to reflect these human rights obligations;

(b) Urgently address the situation of people, especially Roma communities, who do not have access to safe drinking water and sanitation, and implement measures to ensure that their rights to water and sanitation are fully protected;

(c) Eliminate all forms of discrimination, including de facto discrimination, which deprives certain segments of the population of access to safe drinking water and sanitation. Ensure that any instances of discrimination are fully investigated and prosecuted, and that redress is provided to the victims;

(d) Establish national-level monitoring programmes to ensure that municipalities are complying with the human rights obligations of Slovenia to guarantee access to safe drinking water and sanitation to all within its territory;

(e) Provide security of tenure to all Roma communities by taking measures to regularize their settlements. These measures must be undertaken in full consultation with and ensure the meaningful participation of the communities concerned. The Government should also consider multiple models of regularization and recognize that no one solution will be appropriate in all cases. In the interim, the Government should ensure that all communities have access to safe drinking water and sanitation regardless of the legal status of the land on which they live. Furthermore, special attention should be paid to ensuring that the most disadvantaged groups, such as women, people with disabilities, and children, have access to safe water and sanitation;

(f) Ensure that the National Programme of Measures for Roma for the Period 2010-2015 is implemented in all municipalities, including by offering incentives for municipalities to pay special attention to improving the lives of Roma people within their jurisdiction, and holding municipalities accountable where they fail to respect the human rights of Roma communities within their jurisdiction;

(g) Collect disaggregated data to enable a fuller understanding of the socio-economic situation of Roma people, in order to design targeted measures to address problems faced by this population. The State should also engage in health monitoring to identify improvements in or deterioration of health in Roma communities;

(h) Eliminate the distinction between “autochthonous” and “non-autochthonous” Roma communities in order to ensure the equality of rights of all Roma people;

(i) Establish a mechanism for monitoring and reporting on patterns of discrimination in the country;

(j) Ensure full engagement with the community in Celje to eliminate pollution in the area and to assist those who have become ill due to such pollution;

(k) Monitor the quality of cesspools, including whether wastewater is leaking into the environment, develop a plan for addressing degrading sanitation systems, and continue to give priority attention to the issue of sanitation;

(l) Allocate more funds for research into the issue of poverty in Slovenia, as the current statistics may not fully reflect the extent to which people are living in poverty in the country;

(m) Develop a system for ensuring the affordability of water and sanitation, taking into account the nationally determined amount received for social assistance and municipal determination of water and sanitation costs, as well as the different costs of living in different municipalities;

(n) Consider establishing an independent regulator that could monitor prices, water and sanitation quality, and access, as well as receive complaints and ensure consistency of service provision across municipalities.
