

## American University Washington College of Law

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2000

# Report on the Situation of Roma and Sinti in the OSCE Area

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**Organization for Security and Co-operation in Europe  
High Commissioner on National Minorities**

## **I. Foreword**

As will be recalled by OSCE participating States, my initial attention to the overall situation of Roma and Sinti in the OSCE region followed an April 1993 request from the CSCE Committee of Senior Officials that I conduct a study and issue a report, which I did in September 1993. At that time, I recommended, and OSCE participating States subsequently endorsed, creation of the Contact Point on Roma and Sinti Issues as part of the Office for Democratic Institutions and Human Rights.

As time passed, I noted in many parts of Europe the persistent plight of the Roma and Sinti. While improvements could be observed in the situations of many other groups as part of the on-going transitions in Central and Eastern Europe or amid the general prosperity of Western Europe, by contrast Roma and Sinti were generally left outside the scope and beyond the reach of progressive developments. Moreover, the persistence of racially-motivated hatred and violence directed against the Roma and Sinti can only be considered a blight on the records of individual participating States and of European society in general.

On the basis of these considerations, I felt that the situation of Roma and Sinti – often the worst off of all groups – merited fuller study and analysis than I had done in the past, with a view to offering OSCE participating States some recommendations for practical and effective action in overcoming particular aspects of the general problem. To this end, I thought it important to examine specific issues and certain cases in some detail, including through direct contacts with representatives of Roma and Sinti communities. With the generous assistance of the United States Government, I was able to embark upon such a project at the beginning of 1999. Specifically, a financial contribution from the United States Government allowed Professor Diane Orentlicher of the Washington College of Law at the American University in Washington, D.C., to assist me for two-thirds of a year in collecting information, visiting communities in a variety of countries, and drafting substantial portions of this report. I wish to thank Professor Orentlicher for her most valuable assistance. Rachel Guglielmo, of the Project Unit of my office, also contributed substantially to the study and report. In addition, I wish to thank my legal adviser, John Packer, and assistant, Sally Holt, for the care they took in finalizing the text and bringing this report to publication.

My intention in embarking upon this study was and remains principally to raise the awareness of policy makers to the particular situation and needs of Roma and Sinti, to focus debate on their conditions, and to offer some general recommendations. By doing so, I hope to stimulate concrete action leading to real improvements in the nearest future. The result of my study, as reflected in this report, indicates the main fields in which action is needed: 1) combating discrimination and racial violence; 2) improving access to and quality of education; 3) improving general living conditions; and 4) increasing the effective participation of Roma and Sinti in public life, especially with regard to matters affecting them. My recommendations, while generic in nature, are directed to the governments of all OSCE participating States, as appropriate, as well as to the OSCE as a whole. I hope that in the new millennium all OSCE participating States will prove fully responsive to the needs of Roma and Sinti and wholly respectful of their rights. As a community of values, the OSCE must assure this for all.

Max van der Stoep  
OSCE High Commissioner on  
National Minorities

The Hague, 10 March 2000

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## **II. INTRODUCTION**

### **A. Overview**

The extraordinary complexity of challenges confronting Romani communities<sup>1</sup> is manifest, as the range of issues in this report attests. By equal measure, the rich diversity among Roma within the OSCE makes all but a few general conclusions inappropriate. One, however, is plainly warranted: discrimination and exclusion are fundamental features of the Roma experience.

Ten years after the iron curtain fell, Europe is at risk of being divided by new walls. Front and center among those persons being left outside Europe's new security and prosperity are the Roma. In many countries, Roma have been decreed illegal residents on their own property, banished beyond municipal boundaries, and left outside the community of common concern. These are not isolated incidents, but widespread practices - sometimes systematic and on occasion systemic. To redress the long and hard experience of Roma requires, therefore, considerable attention, careful analysis, development of specific policies and commitment of adequate resources.

Having studied the situation of Roma and Sinti throughout Europe and reflected upon OSCE values and commitments, certain issues stand out for comment. In this introduction, I provide an overview of these issues, as well as a review of OSCE commitments and initiatives, and a brief summary of the historical situation of Roma in Europe. The chapters of the study will then address four principal areas of concern: 1) discrimination and racial violence; 2) education; 3) living conditions; and 4) political participation. While I will draw conclusions and offer recommendations throughout this report, I will bring together my principal recommendations in a final section.

### **1. Discrimination and Racial Violence**

Even against the backdrop of a decade blighted by extreme forms of racist intolerance, the phenomenon of prejudice against Roma is singular. Romani communities are the subject of hostile perceptions across an extraordinary range of countries. In some, politicians and citizens feel few scruples about expressing derogatory stereotypes of Roma. In this climate, Roma have been prime targets of skinhead violence and, at times, what must properly be called pogroms.

Not surprisingly, therefore, the most immediate concern for many Roma is their lack of personal security. The collective violence visited upon Kosovo's Roma in the

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<sup>1</sup> This report frequently refers to Romani "communities" to reflect the extraordinary diversity among groups comprised in the terms "Roma" and "Romani". The term "Roma", as with any single term used to connote the many groups that are the focus of this report, is problematic. This report uses "Roma" rather than "Gypsy", a term many consider pejorative, in acknowledgement of the preference of many Roma who are active in the international and national movements on behalf of Roma rights. I nonetheless wish to emphasize the importance of respecting the choices in this regard of individuals and groups concerned. Thus, when speaking of a group that identifies itself by a different name, including "Gypsies", this report uses what appears to be the preferred name of a majority of that group.

aftermath of war has been singular in some respects, but scarcely unique in others: like Romani communities who have in the past endured organized group violence directed against them in Romania, Italy and Spain in retaliation for the apparent delinquencies of individuals, entire Romani communities in Kosovo have recently been made to bear the blame for those presumed to have collaborated in or supported crimes committed by or attributed to ethnic Serbs. In other places where anti-Roma violence has flared, the victims have often faced significant obstacles in securing justice; many have been denied effective protection of the law. These are among the factors leading increasing numbers of Roma to leave their countries.

Although racist violence has claimed its largest toll in the countries of Central and Eastern Europe, where the majority of European Roma live, Romani communities experience widespread discrimination, including violence, in Western Europe as well. While several governments have in recent years made significant efforts to reverse these patterns, few have done enough to combat anti-Roma racism and intolerance. There may be no easy solution to many of the problems confronting Roma, but it is equally plain that present approaches are inadequate. Specifically, greater attention must be given to the elaboration and implementation of effective policies to combat discrimination and racial violence.

It is incumbent on government officials to provide leadership in condemning acts of racial violence and, indeed, all forms of discrimination against Roma. In particular, when racial violence occurs, political leaders must condemn the crimes lest their silence be interpreted as tolerance. When it comes to racism, what is said - words alone - can make a difference. When officials have publicly condemned acts of racist violence, they have made a significant contribution to the alleviation of racial tensions and toward preventing similar crimes.

But words alone are not enough. Above all, States must ensure that Roma are protected by the rule of law. As a first and indispensable step, governments must ensure that their laws prohibit discrimination against Roma and provide adequate remedies when discrimination occurs. Moreover, paragraphs 40-40.2 of the June 1990 Document of the Meeting of the Conference on the Human Dimension in Copenhagen (hereafter, Copenhagen Document) require participating States to take measures to protect Roma and others against "any acts that constitute incitement to violence" and against "threat or acts of discrimination, hostility or violence". These commitments are in accordance with Article 20 of the 1966 International Covenant on Civil and Political Rights (ICCPR) which expressly requires States parties to prohibit "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence".

Prejudice and intolerance are commonly fed by negative stereotypes. These must be countered through public education about Romani culture and history. In countries where Roma have been part of national history, *their* history and culture must be part of *every* child's education. I have also found merit in initiatives that readily enable non-Roma to *see* the contributions of Roma to their societies. For example, in the course of my inquiry I learned of a housing project in the eastern Slovakian town of Kremnica where Roma, as well as non-Roma, were employed to build the houses they would occupy. Against the stereotype many local citizens had previously held of Roma as passive recipients of social benefits, the community saw

the reality of highly-motivated, industrious Roma constructing homes for non-Roma as well as Romani families.

Another important measure in combating anti-Roma discrimination is to ensure that law-enforcement officials receive adequate training. Police, prosecutors and judges need to be more aware of what constitutes racial discrimination and racially-motivated crimes. Part of the solution could be to introduce conflict-management mechanisms for police and between police and Roma communities. In a similar vein, I would encourage the recruitment of more Roma into police forces.

In some cases it may be necessary to establish specialized State bodies to combat discrimination. In a number of OSCE countries, such bodies have made a valuable contribution toward combating racism and other forms of discrimination. Another model that has proven effective in some countries is that of an ombudsman.

In dealing with issues of discrimination and trying to document violations, one frequently encounters vexing issues relating to the collection and use of ethnic data. Ethnic data evokes memories of registration of “undesirables”, and also raises many ethical and legal issues. But without statistical data, it is very hard to have a clear picture of patterns of discrimination, to design programs of assistance for Roma, or to evaluate those programs. Even the absolute numbers of Roma/Gypsies in Europe can only be approximated, as they are underestimated in the national census figures and statistics of many States; estimates range from seven to eight and a half million Roma in Europe.<sup>2</sup> I suggest that a seminar or conference should be held to look at this issue in greater depth. Such a conference could, hopefully, provide valuable insights and guidance on how to solve this dilemma.

As OSCE participating States rededicate themselves to ensuring that Roma are treated as full citizens in our democracies, we must ensure that the fundamental rights of Roma are respected at all levels of society. The roles of local government and civic organizations are important in this respect; some of the most impressive programs launched in recent years have been undertaken at local levels, frequently at the initiative of non-governmental organizations (NGOs). But local governments have also served to block promising initiatives; some have even sought to institutionalize anti-Roma discrimination through exclusionary policies. It falls to State authorities to ensure that Roma enjoy the fundamental right to equality, both in law and in fact, irrespective of the division of jurisdiction within the State. While the principle of equality requires protection against discrimination, it also entails proactive policies and special measures to ensure equality of opportunity. This is especially relevant for Roma, who have been excluded from opportunities and otherwise disadvantaged for so long - indeed, for generations.

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<sup>2</sup> Gypsy Research Centre, René Descartes University, Paris, 1994. *Quoted in* Jean-Pierre Liégeois and Nicolae Gheorghe, “Roma/Gypsies: a European Minority”, Minority Rights Group International Report 95/4, London, 1995, p. 7.

## **2. Education**

Exclusion of Roma extends to every sphere of social life, perhaps nowhere with more far-reaching and harmful effect than in respect of schooling. In certain countries of Central and Eastern Europe, this has occurred through systematic routing of Romani children to “special schools” for the mentally disabled. Aside from the obvious disadvantage this entails in terms of the sub-standard quality of education made available to Romani children - depriving them of the equal opportunity to learn and to develop as capable and self-reliant citizens - the effect is also automatically to disqualify Romani children from admission to certain secondary and tertiary educational and professional institutions.

Exclusion from educational opportunities holds significant negative implications and gives rise to other problems. A large percentage of Romani children avoid classes and eventually drop out altogether, partly because they feel unwelcome in many public schools. Lacking basic qualifications, many Roma fare poorly in increasingly competitive job markets. Others, whose academic accomplishments satisfy basic job qualifications, face nearly impenetrable barriers of discrimination. Their frustrations lead other Roma to wonder whether there is anything to be gained by sending their children to schools where they are all but certain to face rejection - especially given that many ultimately fail to find decent jobs even if they succeed in school. The decision of some Roma parents to keep their children out of school - even if this may be the result of discrimination, impoverishment or poor health - leads to problems later in life. It is essential that Roma children get a good start in life. Special emphasis should therefore be put on pre-school and kindergarten education for Roma children to increase their proficiency in the language of instruction and, more generally, to prepare them for school.

Like any other group, Roma have the right to establish their own schools with a view to maintaining and developing their identities. In terms of mainstream education, OSCE participating States should encourage integrative schooling and do away with the practice of involuntary segregation. Roma children should not be relegated to Roma classes within mixed schools. Alienation in, or even from, school strengthens the image of the Roma as perennial outsiders. In this connection, I see a need for making improvements to curricula that provide all students (including non-Roma students) a greater understanding of Roma culture in particular, and multi-culturalism more generally. To these ends, greater effort should be made to employ Romani teachers' assistants and mediators and to develop extra-curricular support programs.

These problems must be overcome not only as a matter of respecting rights and ensuring equal opportunities, but for clear purposes of public interest. In an increasingly integrated and fluid economy, OSCE participating States cannot afford to leave entire segments of their populations unskilled, untrained, uncompetitive and unproductive. Public interest within each OSCE participating State and in our region as a whole requires educational policy which stimulates and facilitates each and every child in developing their talents, skills and interests in order to become full and equal citizens in our increasingly open and mobile societies.



### **3. Living Conditions**

Beyond exclusion from education, Roma face profound challenges in virtually every sphere of social life: rates of unemployment, poverty, illiteracy and infant mortality are staggeringly high among Roma. In a classic downward spiral, each of these problems exacerbates the others in a self-perpetuating cycle.

Equality of opportunity does not exist in the absence of minimum guarantees of an adequate standard of living. Aside from personal security, participating States must do much more to ensure adequate housing and good health for Roma, who suffer amongst the worst conditions in Europe. In this connection, special attention must be given to the particular situation and needs of Romani women and children.

Among the most obvious and pressing problem is that of securing adequate and appropriate housing. This demands immediate attention. Resettlement projects, ghettoization and the exclusion of Roma families from municipalities have become common occurrences in many countries. There needs to be greater support for projects aimed at integrative housing. Because of the substantial resources that are required, governments should show greater readiness to assume the risk of guaranteeing loans that may be available from international organizations and financial institutions for housing projects. Targeted international, national or local support could kick-start community development. Involving Roma in the planning, renovation, building and maintenance of houses that they live in can help advance their integration in society and avoid patterns of dependency associated with some public housing programs. Governments must, at the very least, ensure that housing projects do not foster segregation. In view of the extreme insecurity that many Roma now experience in respect to housing - whether nomadic or sedentary groups - governments should also endeavor to regularize the legal status of Roma who now live in circumstances of unsettled legality. This is particularly important in the context of nomadic and semi-nomadic Roma who often encounter difficulties in relation to encampments and halting sites.

Non-existent or inadequate access to health care is also of immediate concern. Numerous chronic tendencies bear upon Romani communities. Typical among these are a high incidence of disease, malnutrition and infant mortality. These tendencies are largely the result of endemic poverty giving rise, for example, to very high rates of tuberculosis among Roma in some countries. Such diseases underline not only the serious situation experienced by Roma, but also the clearly inadequate reach of public health. In this relation, special attention needs to be paid to sanitation, clean water and medical care. With regard to the situation of Romani women, improvement is necessary not only in terms of immediate health concerns, such as a high incidence of frequent and sometimes unwanted pregnancy, but also more generally with respect to gender issues. Improvement in the health of Roma demands equal access to public health care with a view to achieving the highest attainable standards of health.

### **4. Political Participation**

Perhaps no principle is more essential to the success and legitimacy of initiatives to alleviate the concerns of Romani communities than that Roma themselves should be centrally involved in developing, implementing and evaluating

policies and programs. The basic democratic principle that individuals should have a say in how they are governed requires nothing less, and pragmatic considerations counsel the same approach. The importance of minority participation in public affairs is specifically provided in paragraph 35 of the Copenhagen Document which requires participating States to “respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities.”

Unfortunately, countless programs for Roma have been destined to fail because they were developed without Roma participation, and, correspondingly, with scant awareness of the specific culture and needs of the intended beneficiaries. Equally important, programs *for* Roma designed *without* Roma are scarcely likely to earn the confidence and commitment *of* Roma. At the same time, the active engagement of Roma in developing and implementing projects helps ensure that they do not inadvertently create or perpetuate a classic syndrome of dependency and passivity on the part of the intended beneficiaries.

Encouragingly, recent years have seen an increase in the dynamism of the Romani movement. With renewed and energetic commitment on the part of the OSCE participating States, the disturbing trends in the treatment of Roma can be reversed. This must begin with the establishment of structures of dialogue for direct and open communication between Roma representatives and governmental authorities.

Constructive and effective communication must feature mutual respect on the basis of which mutual trust may be built. More specifically, efforts should be made to engage Roma more actively in public service, and to improve the representation of Roma in elected and appointed office at all levels of government; only then will they feel that they have a stake in the system. In addition, mechanisms that are set up to allow for Roma participation must be genuine in their intentions and meaningful in their endeavors; without this they will represent nothing more than window dressing or tokenism. The effectiveness of consultative mechanisms can be measured by a number of criteria: the scope for early involvement of Roma in Roma-related policy formation; the extent to which the process is broadly representative; transparency; and the involvement of Roma in implementation and evaluation of Roma-related programs. These benchmarks hold true for more than political consultative bodies. In order to enjoy legitimacy and success, any initiative relating to the Roma should involve Roma in the development, implementation and evaluation phases.

Paragraph 33 of the Copenhagen Document commits all OSCE participating States to “protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity.” Clearly, policies and practices of coerced assimilation are incompatible with this standard; just as clearly, effective policies and programs of promotion of Romani identities will require special measures of facilitation (e.g. improving access of Roma to the public and private media, both in general and in respect of their own cultural needs). In this regard, account must also be taken of the need for Roma to adapt to new realities; the traditional trades that have sustained Roma across centuries are no longer sufficient. It is for these reasons that a rising generation of highly educated Roma is committed to improving the educational prospects of Romani youth in a fashion that honors, reclaims and revives Romani identities.

The challenge facing participating States, then, is to include Roma as full and equal members of our political communities while respecting their distinct identities. This is a challenge that does not lend itself to facile solutions. However, significant experience gained in relation to the protection of promotion of the identities of other minorities may be drawn upon. In this respect, and as paragraph 33 of the Copenhagen Document prescribes, “due consultations, including contacts with organizations or associations of such minorities” are vital in devising, developing and implementing effective policies and programs.

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There should be no doubt that primary responsibility to respect and ensure the rights of Roma falls to the governments of OSCE participating States. In addition, the community of States shares responsibility, in particular through the relevant international organizations. Just as States must intensify their activities to improve the lives of Roma, so, too, must the OSCE.

The Organization took an important step in this regard when its Ministerial Council decided in December 1998 to strengthen the Contact Point for Roma and Sinti Issues in the Office for Democratic Institutions and Human Rights (ODIHR). It took another major step when ODIHR appointed Dr. Nicolae Gheorghe, a highly-respected Romani leader, to head the Contact Point as its Advisor on Roma and Sinti Issues. OSCE participating States must now ensure that they provide the Contact Point the support it needs to carry out its important mission.

To focus the OSCE’s work on Roma issues I would recommend that the Contact Point give priority to a specific range of issues, as for example, improving the effective participation of Roma at all levels of government, developing and refining mechanisms to alleviate tension and conflict between Romani and non-Roma communities, and combating racism and discrimination within public administrations. In this work, I encourage the Contact Point to carry out on-site inquiries. A precedent has already been established through the joint ODIHR/Council of Europe Field Mission on the Situation of the Roma in Kosovo. I know from personal experience that the effectiveness of an instrument like the Contact Point relies a great deal on the ability to conduct on-site visits as necessary, particularly in response to crisis situations. The Office should be assured the necessary resources and facilities to undertake such initiatives when they are indicated.

At the same time, States must target their resources effectively - establishing priorities and minimizing duplication of efforts. This point is equally relevant to inter-governmental bodies. The past decade has seen increasing efforts on behalf of Roma by regional and international bodies: the Council of Europe has undertaken a range of initiatives in this area, including the activities of its Specialist Group on Roma/Gypsies. Among the European Commission’s (EC) various activities aimed at improving conditions of Roma, it may be recalled that a precondition to European Union (EU) accession is the protection of minorities.<sup>3</sup> In this context, the

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<sup>3</sup> In November 1999, the European Union (EU) adopted “Guiding Principles” for improving the situation of Roma in candidate countries. The Guiding Principles are based expressly on recommendations of the Council of Europe’s Specialist Group of Roma/Gypsies and of the High

Commission has taken special note of the situation of Roma and has provided financial support to several candidate countries to assist them in meeting related accession criteria. Both the World Bank and the Council of Europe's Social Development Fund have explored opportunities to include Roma in their development programs. These developments are most welcome, and it is to be hoped that they signify a further intensification of efforts in the years ahead. As this trend continues, the co-ordination and co-operation that has long characterized the respective efforts of various organizations will be more important than ever. The impact of these initiatives can be maximized if each organization's efforts draw upon its particular strengths. In this report, I have drawn upon the complementary work being done by several international bodies.

## **B. CSCE/OSCE Commitments and Initiatives relating to Roma and Sinti**

At the OSCE Istanbul Summit held on 18-19 November 1999, the Heads of State or Government of OSCE participating States made, inter alia, the following declaration:

31) We deplore violence and other manifestations of racism and discrimination against minorities, including the Roma and Sinti. We commit ourselves to ensure that laws and policies fully respect the rights of Roma and Sinti and, where necessary, to promote anti-discrimination legislation to this effect. We underline the importance of careful attention to the problems of the social exclusion of Roma and Sinti.

In addition, as part of the new Charter for European Security adopted at the same Istanbul Summit, OSCE participating States made the following statement in the context of the Human Dimension:

20) We recognize the particular difficulties faced by Roma and Sinti and the need to undertake effective measures in order to achieve full equality of opportunity, consistent with OSCE commitments, for persons belonging to Roma and Sinti. We will reinforce our efforts to ensure that Roma and Sinti are able to play a full and equal part in our societies, and to eradicate discrimination against them.

Issues relating to Roma have received substantial attention in the Human Dimension activities of the CSCE/OSCE since 1990.<sup>4</sup> While the CSCE's early efforts

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Commissioner on National Minorities (i.e. the High Commissioner's recommendations which appear at the end of this report, and which were previously published as part of his report to the Human Dimension Section of the OSCE Review Conference in OSCE doc. RC.GAL/2/99).

<sup>4</sup> The 1990 Copenhagen Document recognized the "particular problems" of Roma and Sinti in regard to racial and ethnic hatred, and discrimination. The Report of the Geneva Meeting of Experts on National Minorities (1991) stressed the determination of the participating States "to condemn, on a continuous basis," acts of discrimination against Roma, and affirmed their readiness "to undertake

to address problems confronting Roma focused on awareness-raising, since 1993 the CSCE/OSCE's initiatives in this area have also included institutional responses. The office of the High Commissioner on National Minorities and ODIHR have been the two principal OSCE institutions involved in these initiatives.

## 1. The Role of the High Commissioner

At the 21<sup>st</sup> meeting of the CSCE Committee of Senior Officials (CSO), held in Prague on 26-28 April 1993, the High Commissioner on National Minorities (hereafter, High Commissioner or HCNM) was requested to "study the social, economic and humanitarian problems relating to the Roma population in some participating States and the relevance of these problems to [his] Mandate" and to report his conclusions to the CSO through the Chairman-in-Office. My resulting study was presented at the 23<sup>rd</sup> Meeting of the CSO on 21-23 September 1993.<sup>5</sup>

While the aforementioned request provided a specific mandate for my earlier inquiry, that same request invited me to report on the relevance to the High Commissioner's mandate of social, economic and humanitarian problems relating to Roma populations in some participating States. Responding to this request, my 1993 report concluded:

The High Commissioner should become involved in only those situations that meet the criteria of the mandate. In view of the seriousness and complexity of the issues related to the Roma, however, a number of general and specific recommendations, as elaborated below, should be made for considering further CSCE involvement in addressing their problems.<sup>6</sup>

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effective measures in order to achieve full equality of opportunity between persons belonging to Roma ordinarily resident in their State and the rest of the resident population." The Document of the Moscow Meeting (1991) recognized that effective human rights education contributes to combating intolerance, racial and ethnic prejudice against Roma, while the Document of the Helsinki Follow-Up Meeting (1992) affirmed "the need to develop appropriate programs addressing problems of . . . nationals belonging to Roma . . . groups . . . , and to create conditions for them to have equal opportunities to participate fully in the life of society." Concerns relating to Roma were the subject of a major conference co-sponsored by the Council of Europe and OSCE in September 1994. The situation of Roma and Sinti is also now a standard item on the Human Dimension Section of the agenda of OSCE Review Conferences. In addition, in September 1999 a Supplementary Human Dimension Meeting on Roma and Sinti Issues took place in Vienna, to which the High Commissioner on National Minorities contributed a key-note address; see OSCE doc. RC.GAL/3/99. For an overview and analysis of OSCE policies concerning Roma, see Nicolae Gheorghe and Jennifer Tanaka, "Public policies concerning Roma and Sinti in the OSCE Region", Background Paper 4, OSCE Human Dimension Implementation Meeting, October 1998.

<sup>5</sup> "Roma (Gypsies) in the CSCE Region", Report of the High Commissioner on National Minorities, Meeting of the Committee of Senior Officials, Prague, CSCE Communication No. 240 of 14 September 1993 and Add.1 of 17 September 1993.

<sup>6</sup> *Id.*, at p. 13, paragraph 5.1.

In particular, I recommended that ODIHR's capacities should be enhanced to ensure that the serious and complex issues relating to Roma receive the attention they plainly warrant.

While my first report thus recognized that the serious and complex problems affecting Roma could be most effectively addressed through an enhanced role by ODIHR, in my capacity as High Commissioner I have also periodically taken up Roma-related issues in situations that fall within my mandate. I have, for example, raised issues relating to Roma with the governments of Romania, Hungary, the Slovak Republic and the Czech Republic.

Beyond the general parameters established by the mandate set forth in the 1992 Helsinki Document, the High Commissioner has occasionally been requested to place particular emphasis on specific issues falling within his mandate. For example, in 1993 the Council of Ministers invited the High Commissioner, "in light of his mandate, to pay particular attention to all aspects of aggressive nationalism, racism, chauvinism, xenophobia and anti-semitism."<sup>7</sup> This issue has obvious relevance for Romani communities, as the Report of the CSCE Meeting of Experts on National Minorities which took place in Geneva in 1991 (hereafter, Geneva Meeting) makes clear:

The participating States, concerned by the proliferation of acts of racial, ethnic and religious hatred, anti-semitism, xenophobia and discrimination, stress their determination to condemn, on a continuing basis, such acts against anyone. In this context, they reaffirm their recognition of the particular problems of Roma (gypsies). . . .<sup>8</sup>

While concerns relating to Roma may and sometimes do fall within the mandate of the HCNM, Romani communities experience a complex set of problems which are beyond the competency of the High Commissioner to address. These are matters falling squarely within the human dimension of OSCE commitments and require long-term programmatic assistance, monitoring and financial support. Adequate support should be given to ODIHR to carry out its functions in this important European matter.

## **2. The Scope and Methodology of this Study**

This study was prompted by two interrelated concerns. First, in the period since my last report, conditions of Romani communities in Europe have continued to

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<sup>7</sup> Declaration on Aggressive Nationalism, Racism, Chauvinism, Xenophobia and Anti-Semitism, CSCE and the New Europe - Our Security is Indivisible, Decisions of the Rome Council Meeting, 1993.

<sup>8</sup> See also paragraph 40 of the Copenhagen Document, which provides:

(40) The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. In this context, they also recognize the particular problems of Roma (gypsies).

deteriorate in several respects. Second, despite the seriousness of the problems now confronting Roma, neither the OSCE nor its participating States has devoted the attention or resources to this issue that are plainly warranted. There has, to be sure, been progress in some areas. In recent years several States have developed or are now developing national policies on Roma. Some of these initiatives include elements that may productively be emulated by other countries. With this in mind, the present study seeks to highlight some of the more promising initiatives that have been undertaken in the region. But despite commendable efforts on the part of some OSCE participating States, many States with substantial Roma populations have yet to give this issue the priority it deserves.

To gain a deeper understanding of the principal issues meriting attention in this area, in the period between February and July 1999 visits were made to a number of OSCE participating States in which there are substantial Romani communities. It was, of course, impossible to visit every country in which there are significant numbers of Roma; nor was it possible even to visit every country where the situation of Roma is dire. Within the constraints imposed by time and resources, visits were undertaken in the Czech Republic, Bulgaria, the United Kingdom, France, Greece, Hungary, Romania, the Slovak Republic and Spain. By doing so, a basic appreciation of key issues and policies affecting Romani communities was acquired.

The selection of countries to be visited was based above all on the substantial size of their Romani populations. This is notably the case, for example, in Spain and countries in Central and Eastern Europe. Several other countries were selected in large measure because discrete issues in those countries, such as the adequacy of provisions for halting sites, exemplify issues and experiences that have salience in numerous countries.

Aside from *in situ* visits, additional primary documentation and secondary materials were collected and analyzed in the process of composing an initial draft report. After some revision, the substantive portions of a draft report were submitted in the early autumn of 1999 to those States which were mentioned frequently or with regard to particular issues. Their responses were received some four to six weeks later, whereupon they were analyzed with a view to correcting any error within the circulated draft, clarifying official positions and views, as well as taking note of additional good practices. Other developments were noted through 31 December 1999, the cut-off date for this report. The co-operation of responding governments is appreciated by the HCNM.

While this is not a report *on* particular countries, a key premise of the methodology underlying this study is that it is necessary to understand concrete situations and policies in order to draw valid conclusions. This premise is reflected in the overall structure of the report. While organized thematically, addressing issues of common concern to several countries, the report cites specific examples that exemplify major concerns and, in some instances, general conclusions. Its structure also reflects the fundamental logic that physical integrity, freedom from discrimination, the right to education, freedom from want and equality of opportunities, as well as effective participation in public life must all be ensured before Roma and Sinti will be in a position to maintain and develop their cultural

identities. Successful social integration also depends on these minimum conditions of human dignity being met.

The report cites specific country practices for another reason as well: at a time when many European governments are developing or seeking to improve national policies on Roma, these governments are keenly interested to learn from the experiences of others. While this report does not provide a comprehensive description of any country's national policies on Roma, it describes a range of approaches undertaken by various OSCE participating States in the hope that this information will assist governments in their own search for constructive approaches. The HCNM is fully aware of the genuine and increasing commitment of various governments to address the situation of Roma and Sinti and to take effective steps to respect and ensure their rights with a view to integrating them, along with all others, in democratic societies.

### **3. The ODIHR Contact Point for Roma and Sinti Issues**

My first report on Roma, which was presented at the Meeting of the Committee of Senior Officials of 21-23 September 1993, offered several recommendations aimed at enhancing the CSCE's institutional support to States in meeting their commitments vis-à-vis Roma. These included the following:

1. In light of the general applicability of the Human Dimension to Roma issues, it is recommended that such issues be a standard topic of consideration at Review Conferences, Implementation Meetings, and other relevant fora organized within the context of the Human Dimension of the CSCE. At such fora, participating States and NGOs should be encouraged to present concrete information on the current state of the Roma population in individual participating States, recent progress in implementing constructive new policies for addressing their issues, and an evaluation of issues still to be addressed.
2. It is furthermore recommended that the resources available in the Human Dimension relevant to Roma-related affairs be enhanced, most logically through ODIHR, and that a point of contact for Roma issues be established within ODIHR.

The latter recommendation led to the establishment of a Contact Point for Roma and Sinti Issues within ODIHR. The initial mandate of the Contact Point was to:

- act as a clearing-house for the exchange of information on Roma and Sinti (Gypsies) issues, including information on the implementation of commitments pertaining to Roma and Sinti (Gypsies);
- facilitate contacts on Roma and Sinti (Gypsies) issues between participating States, international organizations and institutions and NGOs;
- maintain and develop contacts on these issues between CSCE institutions and other international organizations and institutions.<sup>9</sup>

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<sup>9</sup> The Budapest Document: Towards a Genuine Partnership in a New Era, 6 December 1994.



The document establishing the Contact Point provided that, in fulfilling these tasks, ODIHR would “make full use of existing resources”.

The very establishment of the Contact Point signified the importance that the CSCE attached to issues concerning Roma. But in the period since its establishment, it became clear that neither its initial mandate nor the resources made available to the office were adequate in light of the urgency, importance and complexity of issues relating to Roma.

Thus in December 1998, the Ministerial Council decided “to enhance the capability of the OSCE regarding [Roma and Sinti] Issues by strengthening the existing ODIHR Contact Point for Roma and Sinti Issues.”<sup>10</sup> Pursuant to that decision, ODIHR appointed Nicolae Gheorghe as its Advisor on Roma and Sinti Issues, and he assumed office in May 1999.

One of the priorities for the Contact Point identified in the decision to enhance its capabilities was that it “develop [a work program] on the basis of input from,” inter alia, “the OSCE Institutions, and in particular the [High Commissioner on National Minorities].” In accordance with this decision, the present study offers several recommendations concerning the work program of the Contact Point.

My recommendations in this regard are based upon several considerations, of which one has overriding importance: at a time when various inter-governmental bodies have developed initiatives relating to Roma, it has become increasingly important for each to allocate its resources in areas where it can make the most effective contribution. With this general consideration in mind, the contributions of the Contact Point can be most effective if the office establishes targeted priorities in implementing the broad mandate outlined above. The following initiatives may be especially useful contributions by the Contact Point:

- A Pro-active Role in respect of States’ Human Dimension Commitments: As noted above, the mandate of the Contact Point includes “acting as a clearing-house for the exchange of information on Roma and Sinti (Gypsies) issues, including information on the implementation of commitments pertaining to Roma and Sinti (Gypsies).” The December 1998 Decision of the Oslo Ministerial Council provides that the enhanced Contact Point’s priorities will include “collect[ing] information from the participating States on legislative and other measures related to the situation of Roma and Sinti with a view to making it available to the OSCE community, as well as to other interested international organizations, and to elaborating additional reports on the situation of Roma and Sinti in the OSCE area.”

The effectiveness of these functions will be maximized if the Contact Point assumes a pro-active role in analyzing information concerning measures undertaken by participating States in meeting their OSCE commitments vis-à-vis Roma and in advising governments concerning their efforts to meet those

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<sup>10</sup> Decision No. 5, OSCE Ministerial Council, MC(7).DEC/5, 3 December 1998.

commitments. Among other forms of assistance, the Contact Point could serve as a clearinghouse on relevant initiatives undertaken by participating States. Beyond making information of this kind available upon request by interested parties, the Contact Point should, where it would be productive, facilitate cross-fertilization among OSCE governments that have developed or are seeking to improve national policies on Roma. OSCE participating States should, of course, respond in a timely fashion to any specific questions concerning their policies and practices in respect of Roma that may be formulated by the Contact Point.

- Targeted Expertise: In light of the broad range of issues that have a substantial bearing on the well-being of Romani communities, effective contributions in this area inevitably require the Contact Point to focus its efforts on a comparatively small set of issues. Bearing in mind the contributions of other organizations working on behalf of Roma, the following areas may commend themselves to the special attention of the Contact Point:

- Effective participation of Roma at all levels of government: For reasons developed at some length in Section V of this report, the participation of Roma in the elaboration and implementation of public policies concerning Roma is compelled by both principles of international law and pragmatic considerations. In view of the role of ODIHR as a vehicle for promoting democratic processes, the Contact Point has a special role to play in advising governments on mechanisms that are likely to ensure the effective participation of Roma.

One aspect of this subject that may merit particular attention is the relationship between national and local administrations. In this regard, the Contact Point may wish to address the related questions of how to (1) ensure effective Roma participation in local and regional policy processes as well as in national policy-making processes, and (2) effectively link national policies aimed at improving conditions of Romani communities to local levels of administration.

- Mechanisms for alleviating tension and conflict between Romani and non-Roma communities: Drawing upon ODIHR's past work in this area, the Contact Point can make a significant contribution in advising governments about mechanisms, such as ombudsmen offices, for alleviating tensions between Romani and non-Roma communities.<sup>11</sup>
- Combating racism and discrimination within public administrations: The Contact Point may also be particularly well-placed to monitor anti-Roma discrimination by public officials and institutions, including police,

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<sup>11</sup> In October 1998, ODIHR convened a meeting of European ombudspersons. See Human Dimension Seminar on Ombudsman and National Human Rights Protection Institutions, Consolidated Summary, Warsaw, 25-28 May 1998, ODIHR.GAL/30/98, 26 June 1998. See also "Ombudsman and Human Rights Protection: Institutions in OSCE Participating States", Background Paper 1, OSCE Human Dimension Implementation Meeting, October 1998.

and to advise governments about effective means of combating such discrimination.<sup>12</sup>

- On-Site Inquiries: The effectiveness of the Contact Point turns upon the ability of the Adviser on Roma and Sinti Issues to conduct on-site visits as necessary to investigate conditions affecting Roma populations. His office should be assured the necessary resources and facilities to undertake such initiatives when they are indicated.
- Responding to Crisis Situations: The vulnerability that Romani communities experience in many societies can have the effect of exposing them to heightened risks during situations of crisis, as recent events in Kosovo remind us. In these circumstances, there is a manifest need for the Contact Point to be able to respond effectively by, inter alia, undertaking on-site inquiries and co-operating with relevant governments and inter-governmental bodies to ensure protection of Romani communities at risk.<sup>13</sup> The work of the Contact Point in this area can also be an invaluable resource to the Director of ODIHR in his determination of circumstances that may merit consideration by the Permanent Council.

How to anticipate and prepare effectively for such crises is also a subject meriting in-depth analysis. As an important step in this direction, the Supplementary Human Dimension Meeting on Roma and Sinti Issues organized by ODIHR in September 1999 devoted special attention to the subject of “Confronting crisis situations: building and implementing a platform for action to approach new problems in emergency situations.”

One aspect of this issue that may merit special consideration is the role the Contact Point may play as a resource to the OSCE in its programs to train members of missions in countries where Roma are at risk. This could be a particularly useful way of realizing the goals contemplated in the December 1998 Decision of the Oslo Ministerial Council, which identified as a priority of the strengthened Contact Point “enhanc[ing] co-operation among OSCE institutions and mission/field presences with respect to Roma and Sinti, if applicable”.

- Seminar on Ethnic Data: The mandate of the Contact Point includes developing a work program that “should include . . . seminars [and] workshops.”<sup>14</sup> As in other aspects of the work program of the Contact Point, this area of its mandate would be best served through targeted implementation. One area in which a seminar or conference would make a particularly useful contribution relates to the issue of ethnic data collection by governments. As noted in this report, the laws of some

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<sup>12</sup> This may also be an area in which close co-ordination with the European Commission against Racism and Intolerance (ECRI) of the Council of Europe would be productive.

<sup>13</sup> A joint mission to Kosovo by Nicolae Gheorghe on behalf of ODIHR and Josephine Verspaget on behalf of the Specialist Group on Roma/Gypsies, Council of Europe, in July-August 1999 is a positive example of such an initiative. See Nicolae Gheorghe and Josephine Verspaget, Report on the Joint OSCE/ODIHR-Council of Europe Field Mission on the Situation of the Roma in Kosovo, 27 July - 6 August 1999, ODIHR.GAL/29/99.

<sup>14</sup> Decision No. 5, Oslo Ministerial Council, *supra* (note 10).

OSCE States include prohibitions on gathering and maintaining ethnically-coded data, while various international bodies concerned with combating discrimination affirmatively encourage States to collect data that would enable them to monitor discrimination. Further, the contemporary generation of national policies on Roma presents the question of how governments will assess the effectiveness of their policies—a question that turns in significant measure on whether and how ethnically-coded data can be gathered and maintained. Although complex dilemmas relating to this issue arise in many contexts, they have not been adequately analyzed. An expert seminar or conference exploring the different issues and possible approaches relating to this subject may, therefore, be particularly valuable. As in other areas in which issues addressing Roma policy are addressed, Roma must, of course, be leading participants in any such seminar.

- Coordination with Other Inter-Governmental Organizations: One of the positive developments in the past decade has been the increased attention to issues concerning Roma by various inter-governmental organizations (IGOs). The Council of Europe has long been active in this area, and issues relating to Roma now figure prominently in the European Commission's efforts to prepare several candidate countries for EU accession. Both the World Bank and the Social Development Fund of the Council of Europe have explored or developed initiatives to support projects that would benefit Roma.<sup>15</sup> In this setting, the desirability of coordination and mutual reinforcement speaks for itself, and is affirmed in the Decision of the OSCE Ministerial Council on the Enhancement of the OSCE's Capabilities Regarding Roma and Sinti Issues.<sup>16</sup> The efforts of the principal IGOs involved in Roma issues have, in fact, been greatly enhanced by their mutual co-operation. Especially notable in this respect has been the co-operation and periodic collaboration between the Council of Europe and the OSCE.<sup>17</sup>

While co-ordination is desirable to avoid replication of effort, it is also desirable

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<sup>15</sup> The Social Development Fund (SDF) is a multilateral development bank that extends long-term investment loans to its 35 member countries for certain aims. Loans may be extended to contribute to the financing of social housing, with a guarantee by the State government. The SDF is enhancing co-operation with the EU and World Bank with the aim of co-financing projects that will advance, inter alia, the housing, educational, and vocational needs of Romani communities. Projects are envisaged in Bulgaria, the Czech Republic, Slovakia and the former Yugoslav Republic of Macedonia (FYROM).

<sup>16</sup> Paragraph 1 states that the priorities of the enhanced Contact Point will include:

[enhancing] the OSCE's interaction with . . . international organizations, initiatives and NGOs relevant to Roma and Sinti issues, and in particular [securing] further mutual reinforcement of co-operation with the Co-ordinator for Roma in the Council of Europe with a view to avoiding duplication of effort, including the establishment of regular consultations with those organizations, initiatives and NGOs in order to develop synergies and common approaches designed to facilitate full integration of Roma and Sinti communities into the societies they live in, while preserving their identity.

<sup>17</sup> Another valuable initiative in this respect was a meeting hosted by the European Commission in Brussels on 19 April 1999. Representatives of several IGOs and NGOs that have been actively involved in initiatives relating to Roma met in an effort to enhance co-ordination among them.

as a means of fostering mutually-reinforcing contributions by various organizations. There may be times when the programs of the Contact Point should be shaped, at least in part, by the possibility of enhancing the contributions of important initiatives undertaken by other organizations. For example, the Contact Point might productively undertake initiatives involving the Roma dimension of economic development policies in light of major initiatives undertaken by the World Bank, the United Nations Development Programme and other international financial institutions that lack specialized expertise in Roma policy.

By equal measure, there may be times when joint action by several organizations is warranted, either because collaboration can be an effective means of highlighting the seriousness of a situation or because it enables different organizations to contribute their respective expertise to projects that have complex dimensions.

It should, finally, be noted that questions of co-ordination apply equally within the OSCE as among various inter-governmental bodies. Although the respective mandates of the Contact Point and the HCNM are different, there could be areas of overlap. In such cases, and where joint action would be productive, I would welcome the opportunity to collaborate.

### **C. Situating the Roma in European History; A Note**

Several features of Romani culture and history help place in perspective the core issues addressed in this report, and are therefore briefly noted in this section.

First of all, it is important to appreciate that the groups that are the focus of this study are highly diverse. A central, though not sole, reason for this is the phenomenon of dispersal that is central to Romani history.

It is now generally agreed that Roma originated in the northwest region of the Indian subcontinent - a conclusion derived principally from linguistic science. Despite wide variations among Romani dialects, linguists have been able to trace a common origin in Sanskrit.<sup>18</sup> But if Roma share a common lineage, their migrations produced numerous distinct communities and dialects as particular groups established roots in various countries and regions.<sup>19</sup> The major migrations from India that initiated the Roma diaspora are believed to have occurred in several waves, dating between the ninth and fourteenth centuries,<sup>20</sup> and successive waves of migration brought Romani communities to a range of countries over time. Among the earliest records of what may have been a Romani community are a tenth century historical

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<sup>18</sup> See Angus Fraser, *The Gypsies*, Blackwell, Oxford (second ed.), 1995, pp. 10-22.

<sup>19</sup> Even within countries, there is often a plurality of distinct Romani communities. There are, for example, three major Romani linguistic groupings in Hungary - the Hungarian-speaking Romungros, the Romanian-speaking Beás, and the Romani-speaking Olach.

<sup>20</sup> See Jean-Pierre Liégeois, *Roma, Gypsies, Travellers*, Council of Europe Publications, Strasbourg, 1994, p. 18.

account of the appearance of “Zott” in Persia several centuries earlier.<sup>21</sup> The first major migrations to Europe are dated primarily to the fourteenth and fifteenth century, and it is in Europe - principally in Central and Eastern Europe - that a majority of the world’s Roma live today.<sup>22</sup> These migrations produced a dispersed mosaic of peoples, united by common origins, culture and to some extent language,<sup>23</sup> but also distinguished by their diverse historical experiences and the resulting impact on each group’s culture.

For present purposes, the significance of this history is that approaches to Roma policy must be rooted in recognition of and respect for the plurality of Romani groups. As two scholars of Romani history and culture have observed, “Gypsies have lived (and still live) in many countries with different historical circumstances and socio-cultural environments. Hence, the search for a common and universal approach to solve the ‘Gypsy problem’ in all its dimensions and aspects is predestined to failure.”<sup>24</sup>

The second aspect of Romani history that should be borne in mind is that, despite popular associations of Roma with nomadism, Roma have been stable residents of many of the countries addressed in this study for hundreds of years. The Romani communities in Romania and Bulgaria, for example, are traced to groups believed to have settled in the territories now comprising these States between the twelfth and fourteenth centuries.<sup>25</sup> Even so, Roma are still widely perceived and treated as outsiders in many countries where they have centuries-old roots - a phenomenon whose contemporary manifestations are a key focus of this report.

Finally, contemporary challenges confronting Roma cannot be understood without a basic appreciation of their historical experience of persecution and rejection. Although Roma history includes episodes of comparatively benign treatment, reflected, for example, in writs of safe-conduct from fifteenth-century monarchs,<sup>26</sup> the dominant European response to Roma has been one of social and legal rejection. As Jean-Pierre Liégeois has written,

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<sup>21</sup> See Fraser, *supra* (note 18), at p. 33.

<sup>22</sup> Nicolae Gheorghe, “Roma-Gypsy Ethnicity in Eastern Europe”, *Social Research*, Vol. 58, No. 4, Winter 1991, pp. 829-844.

<sup>23</sup> By one estimate, there are some 60 Romani dialects in Europe alone, “obviously related to each other to an important degree, but often mutually unintelligible.” See Fraser, *supra* (note 18), at p. 12.

<sup>24</sup> Elena Marushiakova and Vesselin Popov, *Gypsy minority in Bulgaria - Literacy, Policy, and Community Development (1985-1995)*, Culture Concepts Publishers, Toronto & UNESCO Institute for Education, Hamburg, 1997.

<sup>25</sup> See David M. Crowe, “The Gypsies of Romania Since 1990”, *Nationalities Papers*, Vol. 27, No. 1, March 1999 pp. 57-67; Elena Marushiakova and Vesselin Popov, “The Gypsy Minority in Bulgaria - Policy and Community Development.” (The latter monograph is part of a larger research project on “Possibilities of external intervention in Eastern European socio economic change: Roma and diaspora migration as examples of the use of development policy as an instrument of migration control,” Berliner Institute for Comparative Social Research 1993-1997.)

<sup>26</sup> See Fraser, *supra* (note 18), at pp. 63 ff.

The State, officialdom, and local populations have always seen Gypsies and Travellers as a threat of disorder, be it political or psychological. Gypsies are seen not so much as strangers who are difficult to categorise, but as embodiments of the strange and different which must be driven out to be overcome. The difference of the Traveller and of the Gypsy is perceived as dissidence, and in tandem with this gut reaction, or in its wake, further attitudes and policies have developed, all of them, whatever their forms and methods, expressions of that rejection.<sup>27</sup>

The instinctive reaction described by Liégeois found expression in early public chronicles of Roma that helped establish a stereotype of Romani communities as essentially sinister. In Bologna, it was remarked in 1422 “that there is no worse breed than these savages”; five years later, they were described in Paris as “sorcerers who look at people’s hands.”<sup>28</sup> In what may be the earliest reference to Roma in Constantinople, a Georgian text composed in the early eleventh century records the presence of “a Samarian people, descendants of Simon the Magician, who were called Adsincani, and notorious for soothsaying and sorcery.”<sup>29</sup>

It was a short step from the social construction of Roma in these terms to the enactment of decrees effectively outlawing Roma. Liégeois recounts a few illustrative examples:

The first response of the authorities towards nomad groups was generally one of rejection, banishing them from the territory of the State. This trend very quickly became unanimous. . . .

In Germany, . . . the *Reichstag*, meeting in . . . 1496, 1497, and 1498, declared the Gypsies to be traitors to the Christian lands, spies in the pay of the Turks, and carriers of the plague. They were accused of brigandry, sorcery, and the abduction of children. They had to disappear. In 1500, Emperor Maximilian I . . . repeated the demand that measures be taken. Gypsies were no longer tolerated on German territory, and could be killed with impunity. . . . [I]n 1661, in Saxony, Elector George II published a decree imposing the death penalty on any Gypsy caught in his territory; over the following years they were hunted down by cavalry. . . . In 1721 Emperor Charles VI

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<sup>27</sup> Liégeois, *supra* (note 20), at p. 122.

<sup>28</sup> *Id.*, at p. 124.

<sup>29</sup> Fraser, *supra* (note 18), at p. 46.

ordered their extermination: men were to be executed, women and children to have an ear cut off. . . . [I]n the Czech lands in the 17<sup>th</sup> century, Gypsies were hanged all along the border as an illustration of the punishment awaiting any who dared cross.<sup>30</sup>

In the Netherlands, . . . [p]ainted signposts depicting hanged Gypsies were posted at crossroads as a warning of what awaited those who had slipped through the net that far. Other signs . . . informed the general public that it was forbidden to assist Gypsies in any way whatsoever. . . . [In 1525, Charles V published an edict ordering Gypsies] to quit the country within two days. . . . Later, in the 17<sup>th</sup> and early 18<sup>th</sup> centuries, *Heidenjachten* - “heathen hunts” - took place; dreadful anti-Gypsy drives with the joint participation of infantry, cavalry, and the police. Anybody could murder Gypsies with absolute impunity. . . . “Gypsy hunts” took place in many countries during this period.

[In Sweden, a] royal ordinance of 1637 . . . demands the banishment of all Gypsies; any remaining could be executed without trial. . . . In Norway, [ordinances in force from 1687 to 1845 provided that] “Gypsies and Travellers . . . must be arrested, and their goods confiscated, their chiefs executed and the remainder deported. Once deported, re-entry carried the death penalty. . . . After 1845, nomadism *per se* was made illegal, as were Travellers’ traditional trades.”<sup>31</sup>

After providing numerous other examples, Liégeois concludes: “The bottom line was that Gypsies’ very existence was forbidden: the common aim of all the legislation was the suppression of the people it was directed at. . . . Although the target group is always named, . . . [it is not] always clear exactly what they are being accused of, apart from living an independent life, being nomadic and different, and, mostly as a direct result of these, inspiring fear.”<sup>32</sup>

In more recent years, official policies toward Roma have included enslavement, containment, extermination, and forced assimilation. In the Romanian principalities, Roma were enslaved until the mid-nineteenth century.<sup>33</sup> In eighteenth-century Hungary, Gypsies were subjected to measures aimed at eradicating their identity. To

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<sup>30</sup> Liégeois, *supra* (note 20), at p. 125.

<sup>31</sup> *Id.*, at p. 128.

<sup>32</sup> *Id.*, at p. 130.

<sup>33</sup> Roma were enslaved from the time they first appeared in the principalities of Wallachia and Moldavia in the twelfth century. By the fifteenth century, “the practice of Gypsy slavery was widespread throughout the two provinces.” Crowe, *supra* (note 25), at p. 57.



this end, the Habsburg ruler Maria Theresa decreed in 1761, *inter alia*, that Gypsies were to settle; to ensure this they could no longer own horses and wagons and would need special permission to leave their villages; that the word “Gypsy” should henceforth be replaced with “*Új magyar*” (“New Hungarian”) or other constructions, such as “New Settler”; that Gypsies were forbidden to set themselves apart in dress, speech or occupation; in an effort to eradicate the Gypsy “race,” that marriage between Gypsies was forbidden; and, finally, that Gypsy children over the age of five were to be taken away and raised by non-Gypsy families.<sup>34</sup>

In this century, Roma have been treated as *de facto* aliens and inherent outlaws in several countries. The extermination of Roma and Sinti by Nazi Germany was preceded by the establishment of a central register in Munich in 1899 to collate reports of Gypsy appearances and actions taken against them.<sup>35</sup> The man in charge of the register produced a book to aid police in Bavaria and neighboring *Länder* in eradicating what he called *die Zigeunerplage* (“the Gypsy plague”). Other countries, including Sweden, followed suit, establishing their own national registers.<sup>36</sup> In France, a law enacted in 1912, repealed only in the late 1960s, required itinerants to carry a *carnet anthropométrique*, an identity document. Many communes posted signs at their borders warning “*interdit aux nomades*” (“prohibited to nomads”).

During World War II, Roma and Sinti, along with Jews, were the only ethnic groups slated for wholesale extermination.<sup>37</sup> An estimated quarter to half a million of Europe’s Roma and Sinti were exterminated in the Holocaust, known in Romani as the “*Porajmos*” - “the Devouring.”<sup>38</sup>

After the war, a majority of Europe’s Romani communities lived under Communist regimes. Variations not only among countries but also across time within countries make it impossible to describe the post-war experience of European Roma in general terms, but certain recurring patterns should be noted in light of their enduring impact on the contemporary Romani experience. Most important, although Roma had during earlier periods received state support for the development of their cultural identity in some Communist countries, during later periods they were subjected to policies of forced assimilation in many. In 1958, for example, Czech authorities decreed that Roma were not an ethnic group but people “maintaining a markedly different demographic structure,” and enacted a law to enforce school attendance and settlement of nomadic people by registering them in one place and refusing them employment anywhere else.<sup>39</sup> A subsequent policy sought to integrate Roma through their “dispersal and transfer” from settlements in Slovakia to the Czech

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<sup>34</sup> Her policies were continued by her son, Joseph II. See Fraser, *supra* (note 18), pp. 156-159.

<sup>35</sup> See *id.*, at p. 251.

<sup>36</sup> *Id.*, at p. 252.

<sup>37</sup> For a fuller account of the extermination of Roma and Sinti during the Holocaust, see sources cited in *id.*, at p. 257, note. 11.

<sup>38</sup> *Id.*, at p. 268.

<sup>39</sup> *Id.*, at p. 277.

lands (whose pre-war Romani population was almost entirely exterminated during World War II). The plan was “to spread them as thinly as possible throughout the Republic.”<sup>40</sup>

Similarly, although earlier Communist policies in Bulgaria had provided support for Romani cultural activities, a decree of 1958 prohibited Roma from travelling. In the ensuing 30-year policy of assimilation, Romani children were forbidden to speak Romani at school, and authorities banned Roma newspapers and associations. From the 1970s, the term “Gypsy” was abolished and Roma, along with Turks, were required to take on Slavic names.

The weight of this history falls heavily across contemporary Europe. In many respects, this report is about the enduring legacy of centuries of anti-Roma policies, entrenched in law and deeply embedded in the collective consciousness of European societies. Only in the very last part of the twentieth century has a concerted effort been made within Europe to address the individual and cumulative effects of this history. While good will coupled with some effective initiatives can be observed on the part of certain authorities in some States, the overall picture remains one of the extreme alienation of a Europe-wide under-class. The challenges are many and great.

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<sup>40</sup> *Id.*, at p. 278.

### III. DISCRIMINATION AND RACIAL VIOLENCE

Discrimination is a defining feature of the Romani experience. Anti-Roma bias has a profound impact on access to employment opportunities, education, housing and health care. As summarized by one specialized NGO, “Hostility against Roma is a generalised attitude, and there is particular concern over the way prejudiced attitudes and stereotypes affect public officers, journalists, and other persons working in social institutions. The racist nature of this violence and discrimination is increasingly acknowledged.”<sup>41</sup> In some States, racial stereotyping has fostered a climate in which it can be dangerous to be a Rom: Roma have been targets of racial violence in several OSCE participating States. These patterns are contrary to OSCE values and breach core norms of international law.

#### A. OSCE and Other International Standards

As noted previously, OSCE Heads of State or Government made specific declarations concerning Roma and Sinti in paragraph 31 of the Istanbul Summit Declaration: “We deplore violence and other manifestations of racism and discrimination against minorities, including Roma and Sinti. We commit ourselves to ensure that laws and policies fully respect the rights of Roma and Sinti and, where necessary, to promote anti-discrimination legislation to this effect.” In addition, in paragraph 20 of the Charter for European Security adopted at the same Summit Meeting, OSCE participating States recognized “the particular difficulties faced by Roma and Sinti and the need to undertake effective measures in order to achieve full equality of opportunity, consistent with OSCE commitments, for persons belonging to Roma and Sinti. We will reinforce our efforts ... to eradicate discrimination against them.”

The 1999 Summit Declaration followed on earlier commitments, notably those of the 1992 Helsinki Meeting, at which OSCE participating States clearly stated their rejection of “racial, ethnic and religious discrimination in any form”<sup>42</sup> and expressed their concern over “recent and flagrant manifestations of intolerance, discrimination, aggressive nationalism, xenophobia ... and racism”.<sup>43</sup> In this context States:

33) Will consider taking appropriate measures ... to ensure to everyone on their territory protection against discrimination on racial, ethnic and religious grounds, as well as to protect individuals ... against acts of violence... Moreover, they will make full use of their domestic legal processes, including enforcement of existing laws in this regard.

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<sup>41</sup> The Roma Center for Social Intervention and Studies (Romani CRISS), “Implementation and Its Shortcomings – An Update on the Situation of Roma and Sinti in the OSCE”, Working Paper for the OSCE Human Dimension Implementation Meeting, November 1997, p. 2.

<sup>42</sup> 1992 Helsinki Document, paragraph 12.

<sup>43</sup> *Id.* at paragraph 30.

In paragraph 35 of the Helsinki Document participating States went on to “Reaffirm, in this context, the need to develop appropriate programmes addressing problems of their respective nationals belonging to Roma and other groups traditionally identified as Gypsies...”

The prohibition of discrimination in the enjoyment of rights occupies a central place in the standards affirmed by OSCE participating States, as well as in the constitutional law of virtually all OSCE participating States. Within the CSCE/OSCE context, several instruments have affirmed that persons belonging to national minorities are entitled to enjoy human rights on a basis of equality and without discrimination. For example, paragraph 31 of the Copenhagen Document provides: “Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.” In paragraph 40 of the Copenhagen Document, the participating States “clearly and unequivocally condemn[ed] . . . racial and ethnic hatred . . . and discrimination against anyone,” and in this context also recognized “the particular problems of Roma.” Both of these provisions were reaffirmed and further elaborated in the Report of the Geneva Meeting.

The principle of “[n]on-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.”<sup>44</sup> The central importance of these norms is reflected in Article 1(3) of the Charter of the United Nations, which affirms that one of the Organization’s purposes is to “achieve international co-operation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” Human rights conventions typically include a provision assuring the enjoyment of enumerated rights without discrimination based on such grounds as race, color, and national origin,<sup>45</sup> and the prohibition of discrimination is further elaborated in such specialized treaties as the Convention on the Elimination of All

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<sup>44</sup> Human Rights Committee, General Comment No. 18: Non-discrimination, paragraph 1, in UN Doc. A/45/40, 1990.

<sup>45</sup> For example, Article 2(1) of the ICCPR, which now has 144 States Parties, provides that “Each State Party . . . undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” *See also* Article 2 of the Universal Declaration of Human Rights, and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The principal assurance of non-discrimination in the European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention”) is set forth in Article 14, which provides:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

A proposed protocol to the European Convention now under consideration would expand the protection against discrimination set forth in Article 14 beyond the context of the enumerated treaty rights. The European Commission of Human Rights has also suggested that “discrimination based on race could, in certain circumstances, of itself amount to degrading treatment within the meaning of Article 3 of the Convention.” *See East African Asians v. UK*, 3 EHRR 76, 1973, paragraph 196.

Forms of Racial Discrimination (hereafter, Race Convention),<sup>46</sup> the Framework Convention for the Protection of National Minorities (hereafter, Framework Convention),<sup>47</sup> ILO Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation, and the UNESCO Convention against Discrimination in Education.

Beyond the exclusion and loss suffered by Roma as a result of discrimination in employment, education, access to public services, housing and health care, Roma are also targeted as objects of physical violence, sometimes resulting in injury and even death. Such racially-motivated hatred and violence arises not only from other citizens, but also from agents of the State including police. Aside from the fact that such experiences obviously feed alienation among Roma and reinforce their deeply held suspicions about *Gadjé*<sup>48</sup> society and authority, racially-motivated violence is first of all a violation of human rights respecting physical integrity, including the rights to security of person and life. In accordance with Article 3 of the 1948 Universal Declaration of Human Rights (hereafter, Universal Declaration) “Everyone has the right to life, liberty and the security of person”.<sup>49</sup> These rights are to be both respected and ensured by the State: in *respecting* these rights, agents of the State must not in the exercise of their lawful authority violate the rights to security of person and life, while the State must act *to ensure* these rights through legislation and exercise of lawful authority protecting against harmful acts on the part of private persons (so-called horizontal effects). With regard to Roma and Sinti, the evidence strongly indicates that many OSCE participating States fall short of their obligations both to respect and to ensure rights of physical integrity.

It is to be emphasized that the motivations underlying discrimination and violence are legitimate matters of concern and, indeed, are to be addressed according to international standards. Racially-motivated violence is especially dehumanizing and repugnant.<sup>50</sup> It is also dangerous from a social perspective.

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<sup>46</sup> See especially Articles 2 and 5. Racial discrimination has, moreover, long been recognized as a breach of the United Nations Charter and of customary international law. See “Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276, 1970” (advisory opinion), ICJ Rep. 3, 1971, at 57, paragraph 131; See also “South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)” ICJ Rep. 4, 1966, at 290 and 293 (Tanaka, J. dissenting).

<sup>47</sup> See especially Article 4(1), pursuant to which States Parties “undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.”

<sup>48</sup> The Romani term for non-Roma.

<sup>49</sup> See also ICCPR, Article 6(1) “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”; ICCPR Article 9(1) “Everyone has the right to liberty and security of person”; and the European Convention, Article 2(1) “Everyone’s right to life shall be protected by law”, and Article 5(1) “Everyone has the right to liberty and security of person.”

<sup>50</sup> In 1978, the General Conference of UNESCO adopted a Declaration on Race and Racial Prejudice by which it contested the scientific validity of the notion of “race” and unequivocally condemned racial prejudice and its consequences.

In order to combat racial hatred, discrimination and violence, international law expressly proscribes its advocacy. At the universal level, Article 20(2) of the ICCPR stipulates the following in unequivocal and mandatory language:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 4 of the Race Convention stipulates more specific and far-reaching obligations, as follows:

State Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end . . .

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

At the regional level in Europe, Article 6(2) of the Framework Convention obliges State Parties “to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.” The Explanatory Report to the Framework Convention states in paragraph 50 that this provision is inspired by paragraph 40.2 of the OSCE's Copenhagen Document which, as noted earlier, addresses the Roma specifically in providing the following:

The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-semitism, xenophobia and discrimination against anyone as

well as persecution on religious and ideological grounds. In this context, they also recognize the particular problems of Roma (gypsies). They declare their firm intention to intensify the efforts to combat these phenomena in all their forms and therefore will

(40.1) - take effective measures, including the adoption, in conformity with their constitutional systems and their international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-semitism;

(40.2) - commit themselves to take appropriate and proportionate measures to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic or religious identity, and to protect their property;...

Several CSCE instruments note the particular relevance for Roma of participating States' undertakings to combat racial and ethnic hatred, discrimination and violence. Discrimination against Roma just as clearly violates the broadly-defined prohibition of discrimination set forth in various human rights instruments.<sup>51</sup> Of these, the meaning of one - the Race Convention - merits brief comment as the case law of some OSCE participating States has at times evinced confusion in this regard. Article 1(1) of the Race Convention broadly defines "racial discrimination" as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Thus "racial discrimination" is defined to include negative discrimination based not only on "race" or color, but also on "national or ethnic origin." In light of this broad definition, it is not surprising that the Committee on the Elimination of Racial Discrimination (CERD), the body that monitors States Parties' compliance with the

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<sup>51</sup> See Human Rights Committee, General Comment No. 18: Non-discrimination, *supra* (note 44), at paragraph 7, which states the Committee's belief that "the term 'discrimination' as used in the [ICCPR] should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."

Race Convention, has repeatedly treated discrimination against Roma as a breach of the Convention.<sup>52</sup>

The principal obligations cited above require States not only to refrain from acts of discrimination on the part of State organs and agents, but also to take affirmative measures to ensure that individuals enjoy freedom from discrimination and full equality in the enjoyment of fundamental rights. Within the CSCE/OSCE context, participating States have affirmed in particular their readiness “to undertake effective measures in order to achieve full equality of opportunity between persons belonging to Roma ordinarily resident in their State and the rest of the resident population.”<sup>53</sup> Pursuant to other conventions to which many OSCE participating States have adhered, States Parties must ensure not only that their agents respect the principle of equality, but also that private actors do not interfere with individuals’ enjoyment of fundamental rights on a basis of equality. For example, Article 2(1)(a) and (d) of the Race Convention impose a duty on States Parties not only “to engage in no act or practice of racial discrimination”, but also to “bring to an end, by all appropriate means, . . . racial discrimination by any persons, group or organization.”

Not all distinctions on such grounds as “race” or association with a national minority violate the aforementioned prohibitions. The European Court of Human Rights has held that a distinction on one of the grounds enumerated in Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter, European Convention on Human Rights or European Convention), might be permissible if it pursues a legitimate aim and utilizes proportionate means to achieve that aim.<sup>54</sup> In similar fashion, the Human Rights Committee, the body that monitors compliance with the ICCPR, has expressed its view that “[t]he enjoyment of rights and freedoms on an equal footing . . . does not

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<sup>52</sup> See e.g. Concluding observations of the Committee on the Elimination of Racial Discrimination: Spain, UN Doc. CERD/C/304/Add.8, 1996, at Section D; Concluding observations of the Committee on the Elimination of Racial Discrimination: Hungary, UN Doc. CERD/C/304/Add.4, 1996, at paras. 11, 12 and 14; Concluding observations of the Committee on the Elimination of Racial Discrimination: Czech Republic, UN Doc. CERD/C/304/Add.47, 1998, at paras. 8, 10, 12-14, 16 ; Concluding observations of the Committee on the Elimination of Racial Discrimination: Italy, UN Doc. CERD/C/304/Add.68, 1999, at paras. 9, 11-12, and 15.

<sup>53</sup> Report of the Geneva Meeting.

<sup>54</sup> In the *Belgian Linguistics Case*, the Court, “following the principles which may be extracted from the legal practice of a large number of democratic States,” held that

the principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such a justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. A difference in treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim: Article 14 is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.



mean identical treatment in every instance.”<sup>55</sup> Distinctions based upon reasonable and objective criteria that are undertaken in pursuit of a legitimate aim do not breach the Covenant’s prohibition of discrimination.<sup>56</sup> The Committee has indicated that “positive measures” undertaken by States “to protect the identity of a minority” may constitute such a legitimate differentiation (and may even be necessary), provided they “are aimed at correcting conditions which prevent or impair the enjoyment” of the minority rights guaranteed by Article 27 of the Covenant.<sup>57</sup>

In particular, special measures undertaken by States to achieve full equality of groups who are in a position of inequality do not constitute discrimination. Within the CSCE/OSCE context, participating States have reaffirmed “the importance of adopting, where necessary, special measures for the purpose of ensuring persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.”<sup>58</sup> Indeed, the Race Convention, to which 155 States have adhered, explicitly *requires* States Parties to undertake such measures when they are warranted until their objectives have been achieved.<sup>59</sup>

In a number of OSCE participating States, some proposals aimed at overcoming de facto inequality of Roma have encountered opposition on the asserted ground that they create “special privileges.” This reflects a misunderstanding of the rationale for, and scope and content of, special measures. International law recognizes that, against a history of discrimination that has placed a particular group in a position of

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<sup>55</sup> Human Rights Committee, General Comment No. 18: Non-discrimination, *supra* (note 44), at paragraph 8.

<sup>56</sup> *Id.*, at paragraph 13.

<sup>57</sup> Human Rights Committee, General Comment No. 23(50) (Article 27), in UN Doc. CCPR/C/21/Rev.1/Add.5, 1994, paragraph 6.2.

<sup>58</sup> Report of the Geneva Meeting. This principle has been recognized in the law of some OSCE participating States. *See e.g.* The Constitution of the Republic of Hungary, Article 70/A(3) (“The Republic of Hungary promotes the realization of equality before the law with measures aiming to eliminate inequalities of opportunity”); Act LXXVII on the Rights of National Minorities, Article 6 (“The Hungarian Republic shall aid the realisation of equality before the law by measures aiming [at] the elimination of inequality of chance”). *See also* Thirteenth Periodic Report of Spain to the Committee on the Elimination of Racial Discrimination, UN Doc. CERD/C/263/Add.5, 1995 at paragraph 25 (noting that “the Constitution . . . recognized (Article 9) that there were inequalities in practice that might lead to de facto discrimination against specific groups of citizens. Consequently, it makes it incumbent upon the public authorities to take action and to remove any obstacles that might give rise to such discrimination, so as to ensure genuine and effective equality for individuals and groups.”)

<sup>59</sup> Article 2(2) of the Race Convention provides that:

States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

substantial inferiority, a rigid insistence on formal equality may further entrench that group's inferior status. In consequence, while appearing to treat all groups equally, this type of formal equality may in fact operate to favor the majority by reinforcing its privileged status relative to minorities.

One of the most lucid explanations of the approach taken by contemporary instruments comes from the inter-war period. Interpreting an international instrument that assured certain minorities in Albania the "same treatment and security in law and in fact" as compared with other Albanian nationals, the Permanent Court of International Justice reasoned that this phrase "implies a notion of equality which is peculiar to the relations between the majority and minorities." The Court explained:

This special conception finds expression in the idea of any equality in fact which . . . supplements equality in law. . . .[;] the former notion excludes the idea of a merely formal equality . . . .

Equality in law precludes discrimination of any kind; whereas equality in fact may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations.

It is easy to imagine cases in which equality of treatment of the majority and of the minority, whose situation and requirements are different, would result in inequality in fact . . . The equality between members of the majority and of the minority must be an effective, genuine equality . . .<sup>60</sup>

The Human Rights Committee has echoed this analysis, explaining why in some circumstances special measures may not only be compatible with the ICCPR, but necessary:

[T]he principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population . . .<sup>61</sup>

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<sup>60</sup> *Minority Schools in Albania* (Advisory Opinion), 1935 P.C.I.J. (ser. A-B).

<sup>61</sup> Human Rights Committee, General Comment No. 18: Non-discrimination, *supra* (note 44), at paragraph 10. *See also* ILO Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation, paragraph 5.

In short, programs aimed at assuring genuine equality, far from creating “special privileges”, may be necessary to assure basic equality of opportunity.

This is not to deny that some special measures may be controversial in particular political communities. Certain approaches in this regard have acquired a negative connotation in some countries and may even be counterproductive. It falls to political leaders and civil society to frame appropriate policies within the parameters permitted and, in some instances, required by international law. As with all policies aimed at improving the status of Roma, it is crucial that Roma play a central role in developing these policies. By equal measure, political leaders must assume their responsibility for educating citizens about the justification for such policies when they are indicated.

## **B. Discrimination**

As elaborated in other sections of this report, Roma experience substantial discrimination in respect of education, housing, health care and political participation.<sup>62</sup> Here, it is to be noted that they experience widespread discrimination in other spheres to the detriment of their economic and social well-being.

### **1. Employment**

Although some Roma enjoy substantial economic success, rates of unemployment among Roma tend to be extremely high. For example, it is estimated that 70 percent of Hungary’s Gypsies are unemployed; in some villages, 90-100 percent of the Gypsy population is unemployed.<sup>63</sup> In countries that have substantial Romani communities and whose national unemployment rates are high, Roma tend to constitute a disproportionate share of the unemployed. In the Slovak Republic, for example, the rate of unemployment has reached 16.7 percent nationally—the highest level since 1990. A major portion of the unemployed are Roma, among whom unemployment rates approach close to 100 percent in some areas.<sup>64</sup> In the former

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<sup>62</sup> In this context, it is worth noting that Roma women are doubly disadvantaged, both as women and as members of the Roma minority. *See* ECRI General Policy Recommendation No. 3: Combating racism and intolerance against Roma/Gypsies, 6 March 1998. *See also* “Establishing a General Framework for Equal Treatment in Employment and Occupation”, Explanatory Memorandum, Proposal for a Council Directive, Commission of European Communities, Brussels, 25 November, 1999, COM (1999), paragraph 1, in which the Commission notes that “discrimination on the grounds of either race/ethnic origin...may affect women and men differently. The structural inequalities linked to sex and gender roles of women and men are frequently more important in the context of dual, triple or multiple discrimination on any of the grounds included in Article 13 of the Treaty [establishing the European Community as modified by the Amsterdam Treaty].”

<sup>63</sup> Remarks of Gabriella Varjú, Deputy President, Office of National and Ethnic Minorities, “Social Integration Opportunities of the Roma Population in Hungary and Governmental Measures Affecting the Process of Integration,” Conference on Legal Protection of Roma in Contemporary Europe on the occasion of the 50<sup>th</sup> anniversary of the Council of Europe, 28-29 June 1999, Charles University in Prague – European Information Centre in co-operation with the Ministry of Foreign Affairs of the Czech Republic and with the support of the Embassy of Canada to the Czech Republic.

<sup>64</sup> Interviews with government officials, Bratislava, the Slovak Republic, 10 March 1999. A press statement issued by the European Roma Rights Center (ERRC) states that, at that time, Slovakia’s national unemployment rate was approximately 13 percent, while the rate among Roma was

Yugoslav Republic of Macedonia (fYROM), where national unemployment rates are an estimated 36 percent, the rate among Roma is 76.4 percent.<sup>65</sup> Unemployment rates of Roma are also high in countries where national unemployment rates are comparatively low. In the Czech Republic, for example, government estimates in 1999 indicate that 70 percent of Roma are unemployed, compared to approximately ten percent for the population as a whole.<sup>66</sup> While both Romani men and women experience high unemployment in many States, the figures tend to be even higher for Romani women.<sup>67</sup>

These disparities are not solely the function of discrimination, but its impact is substantial. In some countries in Central and Eastern Europe, advertisements for job openings sometimes specify that Roma should not apply. Indeed, one government official in Romania stated that the Attorney General had taken the position that such advertisements were “much too common to be prosecuted.”<sup>68</sup>

The Hungarian Parliamentary Commissioner for National and Ethnic Minority Rights has noted the appearance of a number of discriminatory job advertisements. His 1998 report includes the following example:

In the 8 July 1998 issue of the Expressz newspaper, an employment notice with the following text appeared: “We will immediately hire a white-skinned, non-alcoholic bricklayer”. Following this, in a radio interview, the individual who placed the notice made it clear that by using the term “white-skinned” he wanted to obtain the result that Gypsies would not apply for the position.<sup>69</sup>

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more than 80 percent. “ERRC Calls for Investigation of Police Assault on Roma Settlement in Slovakia”, Press Statement, 2 November 1998.

<sup>65</sup> Ministry of Foreign Affairs, the former Yugoslav Republic of Macedonia, “The Status of the Roma in the Republic of Macedonia”, 1 March 1999, p. 3.

<sup>66</sup> Office of the Government of the Czech Republic, Comments Prepared by the Office of the Inter-Ministerial Commission for Roma Affairs, 27 October 1999, p. 2 (*on file with the Office of the OSCE High Commissioner on National Minorities*), [hereafter, Comments Prepared by the Czech Government].

<sup>67</sup> A 1990 Romanian study, for example, reported unemployment statistics of over 70 percent for Romani women. HIV/AIDS Situation and Response Analysis, UNICEF Romania, 1999, at p. 19. In the fYROM the employment rate within the Roma population is 21.5 percent for men compared to only 6.9 percent for women. “The situation of the Roma in the Republic of Macedonia”, Document circulated at the OSCE Supplementary Human Dimension Meeting on Roma and Sinti, September 6 1999, Vienna, *cited in* Nicoleta Bitu, Rromani CRISS, independent consultant on Romani women issues for the Network Women Program of the Open Society Institute, The Situation of Roma/Gypsy Women in Europe, Council of Europe doc. MG-S-ROM (99) 9e, Strasbourg, 17 September 1999, p 11.

<sup>68</sup> Interview, Bucharest, Romania, 17 March 1999.

<sup>69</sup> Annual Report of the Parliamentary Commissioner for National and Ethnic Minority Rights, 1 January – 31 December 1998, Office of the Parliamentary Commissioner, at Section 4.2.5., [hereafter, 1998 Report of Hungarian Commissioner].

The Commissioner concluded that “the text of the notice violates national and international legal regulations”<sup>70</sup> (though, as noted below, he also concluded that Hungary’s legal regime provided no effective remedy).

In many countries, including the Czech Republic and Bulgaria, Roma frequently find that, when they apply in person for a job that has been advertised, they are told that the position has been filled even though they had been told otherwise when they made telephone inquiries. (In an inversion of this common experience, a non-Rom who works as a volunteer for a Roma NGO in Bulgaria was told that no positions were available when he called on behalf of the organization, but was offered a position when he applied himself.<sup>71</sup>) In some countries, Romani job applicants allegedly have been tracked by government employment offices. In a recent interview, the general director of the Slovak National Labour Office reportedly admitted that Slovak labor offices marked unemployed Roma with the letter “R” in their registers, and referred to the practice as a means of “identifying a risky group.”<sup>72</sup>

Such systematic discrimination compounds the effects of other factors that contribute to high levels of Romani unemployment. As has often been noted, Roma were particularly hard hit by the transition of formerly communist countries to market economies in the early 1990s. As state industries and agricultural collectives were closed or privatized, Roma tended to be the first to lose their jobs. Today, they are ill-prepared to succeed in a competitive labor market: in many Central and Eastern European countries, assimilation of Roma had meant their incorporation into the lowest strata of society; although employed, many worked in low-skill jobs. In larger perspective, the phenomenon of industrialization has presented Roma with an unprecedented challenge, radically diminishing their prospects for surviving through traditional trades that sustained Roma for centuries. Low levels of educational achievement among Roma further diminish their prospects for employment.<sup>73</sup> Moreover, as low levels of educational achievement persist among the Roma while required skill levels increase, especially in connection with the ever-expanding influence of information technologies, Roma increasingly find themselves simply unqualified for employment opportunities; in this way, systematic discrimination and exclusion in education result in effective exclusion from employment later in life. In Western Europe too, the disappearance of traditional trades, the difficulties faced by people with an itinerant lifestyle, and the transition to a service economy requiring education and qualifications have all contributed to a high unemployment rate.<sup>74</sup>

It is to be noted that certain States have taken measures in recent years to prevent or overcome discrimination suffered by Roma in employment. For example,

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<sup>70</sup> *Id.*

<sup>71</sup> Interview, Plovdiv, Bulgaria, 19 May 1999.

<sup>72</sup> See “Marking down unemployed Romanies is not discrimination,” Czech News Agency, 4 November 1999. This practice has also been reported in the Czech Republic. See “Czech Unemployment Offices Mark Roma with ‘R’”, RFE-RL Reports, 27 October 1999.

<sup>73</sup> See Section III, *infra*.

<sup>74</sup> Council of Europe, Economic and Employment Problems faced by Roma/Gypsies in Europe, Council of Europe Doc. MG-S-ROM (99) 5.e.rev, Strasbourg, August 1999, p. 4.

Bulgaria amended its Penal Code to prohibit as a criminal offence racially-motivated discrimination in employment.<sup>75</sup> Similarly, Finland amended its Criminal Code in 1995 to render discrimination in employment a criminal offence.<sup>76</sup> In September 1998, the Czech Government approved an amendment to the law on employment including a new anti-discriminatory clause on the basis of which the Government is able to impose sanctions for racial discrimination.<sup>77</sup> In addition, with a view to overcoming past discrimination and improving chances for employment among Roma, the Czech Republic runs a number of retraining schemes for Roma and has created the post of an Advisor on Roma Issues to the Director General of the Employment Services Administration of the Ministry of Labour and Social Affairs.<sup>78</sup>

## 2. Public Services

In several OSCE participating States, Roma are frequently denied entrance to restaurants, nightclubs and other service establishments. In April 1998, the Hungarian press reported that nearly half of the popular nightclubs in Békéscsaba, a town in southeastern Hungary, deny entrance to Roma.<sup>79</sup> In the Czech Republic, where such incidents are frequently reported,<sup>80</sup> the sole Romani Member of Parliament, Monika Horáková, was reportedly barred from entering a discotheque in the city of Brno on 17 October 1998; although she was told that the establishment was full, non-Roma were allowed to enter, and Ms. Horáková overheard a guard telling a visitor shortly before she attempted to enter the club that it was almost empty.<sup>81</sup>

More recently, on 29 May 1999, a Romani family was reportedly barred from using a public swimming pool in Brno when they were unable to produce health certificates. According to an eyewitness, the guard who demanded this documentation did not request similar certificates of non-Roma who were in line to use the pool. When members of this family protested that they had not previously

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<sup>75</sup> See Report submitted by Bulgaria to the Committee on the Elimination of Racial Discrimination, UN Doc. CERD/C/299/Add.7, 5 August 1996, paragraph 18.

<sup>76</sup> See European Commission against Racism and Intolerance, "Legal measures to combat racism and intolerance in the member States of the Council of Europe", Report Prepared by the Swiss Institute of Comparative Law, Council of Europe Doc. CRI (98) 80, Strasbourg 1998, p. 141.

<sup>77</sup> See Report of the Czech Republic under the Framework Convention for the Protection of National Minorities, Council of Europe Doc. ACFC/SR (99) of 1 April 1999, paragraph 16.3.

<sup>78</sup> See Report of the Czech Republic to the Committee on the Elimination of Racial Discrimination, UN Doc. CERD/C/289/Add.1 of 17 July 1997, paras. 110-111.

<sup>79</sup> See Dimitrina Petrova, Executive Director, ERRC, "The Human Rights Situation of Roma in Europe," Statement prepared for the OSCE Implementation Meeting on Human Dimension Issues, Warsaw, 26 October - 6 November 1998, p. 11.

<sup>80</sup> A 1996 survey conducted in five Bohemian towns found that well-dressed Roma were refused service in 24 of 40 restaurants. See *id.* For other examples in the Czech Republic, see "Romani clients have difficulties in Czech Pubs," Roma Rights, Spring 1998, ERRC, Budapest, pp. 9-10.

<sup>81</sup> See "Czech Romani MP barred from entering a disco," Roma Rights, Autumn 1998, ERRC, Budapest, p. 9.

been required to produce health certificates, the guard reportedly replied that new rules had been adopted pursuant to which Roma would be allowed to use the pool only after producing documents certifying their good health.<sup>82</sup>

In a recent positive development, on 26 October 1999 the Regional Court of the Czech city of Ostrava approved the settlement of a lawsuit initiated by a Romani activist in 1998 after he had been refused service in a local hotel. The lawsuit claimed infringement of the claimant's human dignity and racial discrimination, in violation of Article 11 of the Czech Civil Code. According to the terms of the settlement, the hotel will pay compensation to the claimant and to a civic association which is supporting construction of an integrated Romani and non-Romani housing project. The Court's approval of this settlement constitutes an important step forward in challenging racial discrimination in access to public accommodations in the Czech Republic.<sup>83</sup>

There have also been recent reports of discrimination against Travellers in Ireland. The Irish Olympic boxer Francie Barrett reportedly was refused admission to a nightclub in Galway because he is a Traveller (the club's owners later invited him back, saying the refusal was a mistake on the part of staff). In 1998, two hotels in Dublin reportedly canceled a reservation for a dinner for participants in an international conference on discrimination when they learned that Gypsies and Travellers were involved.<sup>84</sup>

### **3. The Administration of Justice**

In a number of OSCE participating States, Roma experience discriminatory treatment in their encounters with police and judicial authorities. Evidence suggests that, in several countries, Roma believed to have committed a crime are more likely than members of the majority suspected of similar crimes to be arrested, detained and prosecuted and, if convicted, sentenced harshly.<sup>85</sup> In this connection, the United Nations Committee Against Torture has expressed concern with regard to Hungary "that a disproportionate number of detainees and/or prisoners serving their sentence are Roma."<sup>86</sup> In some countries, Roma also appear more likely than members of the majority to suffer abuse at the hands of police. There is also concern with respect to

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<sup>82</sup> See Roma Rights, No. 2, ERRC, Budapest, 1999, p. 6.

<sup>83</sup> See "ERRC Applauds Court-Approved Compensation for Racial Discrimination against Roma by Czech Hotel Owner", ERRC Press Release, 29 October 1999.

<sup>84</sup> See Roma Rights, No. 2, *supra* (note 82), at p. 6. In an inversion of the pattern described above, teachers at a school in the Czech city of Ostrava reportedly refused to be served by a Romani woman. Before it acquired its own building, the Premysl Pitter School, whose student body is predominantly Romani, spent one year sharing space with another school in Ostrava. The Premysl Pitter School employed a Romani woman on its staff, who served lunch to the teachers and students. The teachers of the other school, who shared a common dining room with the Premysl Pitter School, "had a big problem receiving lunch from a Gypsy woman, so they found a white woman to serve them." Interview, Ostrava, the Czech Republic, 10 April 1999.

<sup>85</sup> See Petrova, *supra* (note 79), at p. 8.

<sup>86</sup> Concluding observations of the Committee Against Torture : Hungary, UN Doc. A/54/44 of 19 November 1998, paragraph 81.

several countries that violent crimes committed against Roma are not investigated and prosecuted with the same vigor as violent acts committed against members of the majority population.

Establishing that such discrimination occurs on a systematic basis would require statistical research and analysis of a kind that has not been undertaken in countries where these concerns are particularly pronounced - and which may be difficult to undertake in light of some countries' laws and policies regarding ethnic data collection. What is clear, however, is that in several OSCE participating States, Roma frequently experience serious abuse at the hands of police, many of whom express racist attitudes in the course of these encounters, and that legal redress for violations of Romani individuals' rights is often long delayed or denied altogether, as the following examples attest.

### **C. Racial Violence**

The past decade has seen numerous incidents of anti-Roma violence. In several countries in Central and Eastern Europe, Roma have been targets of skinhead violence and other racially-motivated attacks. In some States, including Spain, Italy, and Romania, Romani communities have been attacked. Most recently, the Roma community in Kosovo has been the target of racially-motivated violence. These pogroms sometimes bear the mark of collective retribution against the supposed offense of an individual Rom; often it is impossible to identify any precipitating event.

In several countries, victims encounter significant obstacles in their efforts to secure legal redress for these attacks. A notable example is Romania, where Romani communities were victims of a considerable number of serious incidents, in the course of which some Roma were killed while the homes of many others were burned, in the period between 1990 and 1996.<sup>87</sup> There have been prosecutions in respect of only a few of these. In those cases, only some of the people believed to have been involved in the attacks were ever charged; fewer still have been convicted.

One case in which there have been convictions involves a 23 September 1993 pogrom in Hadareni, in which three Roma were murdered, fourteen houses were burned down, and five other homes destroyed by a mob of ethnic Romanians and Hungarians. An appeals court reduced the sentences of two of those convicted from seven to six years. According to Romanian NGOs, the government now asserts that the statute of limitations prevents further prosecutions in most of the cases from the early 1990s.

There have also been frequent instances of abuse of Roma at the hands of police. As with crimes of private violence, alleged instances of police abuse frequently go unpunished and sometimes are not even seriously investigated.

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<sup>87</sup> See e.g., Human Rights Watch, *Lynch Law: Violence against Roma in Romania*, Vol. 6, No. 17, New York, November 1994; Helsinki Watch, *Destroying Ethnic Identity: the Persecution of Gypsies in Romania*, New York, Human Rights Watch, New York, 1991. See also Jean-Pierre Liégeois and Nicolae Gheorghe, *supra* (note 2), at p. 20.



Shortcomings in this regard led the European Court of Human Rights in 1998 to find the Government of Bulgaria in breach of the European Convention.<sup>88</sup>

As noted below, in recent years some governments have undertaken initiatives to address these patterns. But violence against Roma remains a grave problem in several participating States.

## 1. Skinhead Attacks and Other Private Acts of Violence

Widespread civilian violence against Roma has been documented in recent years.<sup>89</sup> Although the largest number of skinhead attacks against Roma have been recorded in the Czech Republic,<sup>90</sup> Bulgaria and the Slovak Republic, instances of such violence have also been registered in Albania, Austria, Bosnia, Croatia, Hungary, Poland, Romania, Russia, Ukraine and Yugoslavia.<sup>91</sup>

Recent reports of attacks against Roma by private individuals include the following:

- On 15 June 1999, a 33-year-old Romani woman, Nadezda Dimitrova, was beaten to death by a group of teenaged boys in Sofia, Bulgaria. The suspects reportedly came across a group of younger children provoking the victim, and joined in attacking her. Three of the suspects hit and kicked her in the head repeatedly until she died. Three suspects have been arrested, one of whom has confessed.<sup>92</sup>
- On 29 April 1999, three men reportedly assaulted Šemsa Šecic, a 36-year-old Rom, in Zagreb, Croatia. According to Croatian press accounts, on the evening of 29 April 1999, Mr. Šecic and two non-Romani men were collecting scrap metal at a rubbish dump at the invitation of inhabitants of the neighboring buildings. They left immediately when asked to do so by two young non-Romani men. According to the Budapest-based European Roma Rights Center (ERRC):

They then went to another dump 100 metres away,  
and as they started collecting iron again they noticed

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<sup>88</sup> See *Assenov and Others v. Bulgaria*, Case 90/1997/874/1086, 28 October 1998.

<sup>89</sup> See e.g. Petrova, *supra* (note 79), at p. 5.

<sup>90</sup> By 1998, domestic and international NGOs as well as international organizations, including Amnesty International, the Czech Helsinki Committee, the European Roma Rights Center, Human Rights Watch/Helsinki, and HOST (a Czech NGO), had reported numerous murders of Roma in the Czech Republic since 1990. See Erika B. Schlager, "Czech Chamber of Deputies passes amendment to citizenship law," CSCE Digest 22, July 1999, at p. 53. The classification of these murders as "racially-motivated" has been disputed by the Czech Government and courts; an amendment to the Czech Criminal Code that took effect on 1 September 1995 introduced tougher sanctions for murders motivated, *inter alia*, by racial hatred. However, not a single racially-motivated murder has been recorded by the Czech Ministry of Justice, which has kept statistics on racially-motivated murders since 1 January 1998.

<sup>91</sup> See Petrova, *supra* (note 79), at pp. 5-6.

<sup>92</sup> Roma Rights, No. 2, *supra* (note 82), at pp. 16-17.

the same two men running towards them. Mr Šecic started running for shelter, and found himself in another street where a third young non-Romani man stood in his way. The third man hit him with a wooden plank, knocking Mr Šecic to the ground. One of the men put his foot onto Mr Šecic's chest, and the others continued beating him with wooden planks.<sup>93</sup>

As a result of the attack, the victim sustained two broken ribs. It is further reported that no investigation had taken place as of late July 1999, even though police were called to the scene of the incident.<sup>94</sup>

- In another incident in Croatia, a group of four or five non-Roma reportedly beat a 49-year-old Rom, Jakob Beita, in Rijeka on 19 May 1999. According to the ERRC, Mr. Beita, who is from another part of Croatia, was in Rijeka for a visit when he was attacked on a public street, thrown onto nearby rocks, and kicked. After some time, his assailants reportedly threw Mr. Beita onto the road, where a driver found him and took him to a hospital. A medical certificate records that he sustained fractures to his pelvis and two ribs.<sup>95</sup>
- During the weekend of 12-13 June 1999, unidentified persons threw two Molotov cocktails at the window of a flat known to be inhabited by Roma in the village of Plavy, near the northern Czech town of Tanvald. One exploded in the flat, where a Romani mother was sleeping with her three children. A similar incident occurred on 4 June 1999 in Tanvald; a Molotov cocktail was thrown through the window of a flat occupied by a Romani family. Although a curtain caught fire, the family escaped without injury.<sup>96</sup>
- On 23 April 1999, Amet Asanov, a 16-year-old Rom, was beaten by a group of non-Romani youth in the eastern Macedonian town of Vinica. Twelve days earlier, the victim's brother Šenil had been playing basketball with three other Roma in the courtyard of a local elementary school when a non-Romani man approached them and said they should leave, as this was "no place for Gypsies." The man began to attack Šenil Asanov, when his brother Amet arrived and intervened to protect him. On 19 April, the same non-Romani man, joined by a larger group, waited for Amet Asanov outside his school. Although Mr. Asanov was able to elude them by leaving the school through a window, the same group assaulted him in the schoolyard on 23 April, kicking and punching him, and hitting him with a baseball bat. When Mr. Asanov's father reported this incident to local police, they reportedly responded that it was not in their jurisdiction, as the incident took place in the schoolyard and the assailants were minors.<sup>97</sup>

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<sup>93</sup> *Id.*, at p. 17.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*, at p. 5.

<sup>97</sup> *Id.*, at pp. 19-20.

While such attacks against Roma continue to occur, victims of many earlier attacks have had difficulty securing legal redress. Even when efforts to prosecute those responsible have led to convictions and sentences that are commensurate with the gravity of the crimes, these results have often required the intervention of a nation's highest courts, which have had to reverse disturbing rulings by lower tribunals. For example:

- A second instance court in the Czech city of Ostrava recently returned the murder case of Milan Lacko to the first instance court for retrial. Mr. Lacko was killed on 15 May 1998 when a group of skinheads beat him and left him lying unconscious in a road, where he was reportedly killed by a truck. Although found guilty on several charges by the first instance court in October 1998, the court rendered suspended sentences for all four defendants. According to a Czech press account, the Chairman of the Appeal Senate of the second instance court cited deficiencies in the investigation as the basis for its decision.<sup>98</sup>
- In late May 1999, the Czech Supreme Court overruled the January 1999 decision of the High Court in Prague in the case of Tibor Danihel. Along with three other Romani youths, Mr. Danihel, 17 years old, was attacked in 1993 by some 40 skinheads, who chased them into the Otava River in Písek. When the boys attempted to climb out of the river, they were beaten and kicked back in until Mr. Danihel drowned. The case was closed in June 1997 when a regional court in Ceské Budejovice handed down light sentences against four defendants. In February 1998, that ruling was overturned by the Supreme Court, which returned the case to lower court for retrial. In January 1999, a regional court in Tábor sentenced three skinheads to varying lengths of imprisonment; the High Court had annulled those verdicts. The case will now be retried before the High Court.

In many instances of skinhead violence, police have been slow to respond. Further, police and other authorities have often resisted the obvious implication that the crimes might have been racially-motivated. Responding to an inquiry concerning reported skinhead attacks in the Slovak city of Košice, for example, municipal and police officials stated that they had not identified any racially-motivated crimes there in the past eight years. They dismissed the possibility that attacks against Roma by youth dressed in the characteristic fashion of skinheads actually were committed by skinheads; rather, these officials suggested, the assailants' emblems of membership in a skinhead movement were merely fashion statements.<sup>99</sup>

Some governments have taken positive steps to counter racially-motivated violence. The Czech Government, for example, has acknowledged that "racially motivated violence ... must be viewed as a major negative phenomenon".<sup>100</sup>

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<sup>98</sup> *See id.*, at p. 6.

<sup>99</sup> Interviews, Košice, the Slovak Republic, 14 March 1999.

<sup>100</sup> Report of the Czech Republic to the Committee on the Elimination of Racial Discrimination, *supra* (note 78), at paragraph 33.

Responding to problems of this nature, in November 1998 Interior Minister Vaclav Grulich criticized police detectives for their slow performance in addressing racially-motivated crimes and ordered police to consider the possibility of racial motivation at the beginning of every inquiry where this seems plausible. State attorneys in Northern Moravia subsequently announced that they would seek harsher penalties for racially-motivated crimes if it could be proved that the perpetrators belonged to organizations advocating violence against particular groups.<sup>101</sup> The Government reports that it has: increased penalties for racially-motivated crimes; instructed public prosecutors to ensure prompt judicial action in such cases; appointed in each district police department an expert on combating racial violence; standardized methods of recording racially-motivated offences; and acted to discipline police officers who have neglected their duties when handling cases of racially-motivated crime.<sup>102</sup>

## 2. Collective Violence

In the past decade, Romani communities have been targets of pogroms in several OSCE participating States. In some instances, the attacks were in apparent response to alleged crimes by or altercations involving Romani individuals; in others, there was no immediate precipitating event. A recent instance of the former occurred in Italy:

- According to Italian press reports, on the evening of 18 June 1999, a Romani man visiting the Italian town of Scampía on the northern periphery of Naples seriously injured two local girls riding a motor scooter while driving his car. The driver, who was reportedly drunk, fled the scene of the accident. The next morning, local men described as having shaved heads, earrings and tattoos entered one of the town's six Romani camps and told the inhabitants to "leave or be burnt with the camp." They then set the camp on fire. As the camp's one thousand inhabitants fled, neighbors applauded from nearby balconies. According to camp residents, police did not intervene despite several calls to the emergency service. Police have, however, reportedly provided protection to some two hundred Roma who returned to the camp.<sup>103</sup>

Collective retribution against entire Romani communities for the presumed conduct of individuals has also been common in Kosovo in recent months - in this case for the alleged collaboration of some Roma in Serb atrocities.<sup>104</sup> This

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<sup>101</sup> See Schlager, *supra* (note 90), at p. 54.

<sup>102</sup> See Report of the Czech Republic to the Committee on the Elimination of Racial Discrimination, *supra* (note 78), at paragraph 34.

<sup>103</sup> Roma Rights, No. 2, *supra* (note 82), at p. 9.

<sup>104</sup> Evidence suggests that some Romani victims have been targeted because of their skin colour rather than because of any basis for individualized suspicion. See Report on the Joint OSCE/ODIHR-Council of Europe Field Mission on the Situation of the Roma in Kosovo, *supra* (note 13), at p. 3, paragraph 1 ("The testimonies gathered state that acts of violence are committed by ethnic Albanians who do not belong to the same neighborhoods as the victims, the Roma victims being identified by their skin colour."). For further accounts of anti-Roma violence in Kosovo, see ERRC, "The Current Situation of Roma in Kosovo", Press Statement, 9 July 1999.

phenomenon has not been limited to Romani victims; the province's dwindling Serb population has also been subjected to collective reprisals for recent Serb atrocities. However obvious, the point bears reiterating: it is incumbent on the international community to do all that is feasible to protect these vulnerable communities from further attack.

Although Kosovo's Roma are not alone in their vulnerability to violent attacks, some aspects of their plight are singular. As a Kosovo field officer for the United Nations High Commissioner for Refugees (UNHCR) observed, "They are completely marginalized as a part of the Kosovar community, and that makes it very difficult to find a solution." Scarcely embraced by Yugoslav Serbs, Roma in Kosovo are said to be reviled by the province's ethnic Albanians. Thus, the UNHCR officer observed, "In a way, they may be in a more desperate situation right now than the Serbs. Nobody wants them."<sup>105</sup>

### 3. Police Violence

In addition to attacks by skinheads and other private actors, there have been numerous instances in which Roma have suffered physical assaults by police. According to the ERRC, "Roma in most countries of the [Central and Eastern European] region encounter police violence in almost any . . . everyday life situation. . . Information about police ill-treatment of Roma or of use of excessive force . . . against Roma comes from almost all countries of Central and Eastern Europe, and occasionally from Western Europe as well."<sup>106</sup> Between 1992 and 1998, fourteen Romani men in Bulgaria reportedly died after last being seen alive in the custody of police or as a result of unlawful use of firearms by Bulgarian police.<sup>107</sup> A considerably larger number have endured physical abuse in police custody.<sup>108</sup> Few of these cases have been effectively investigated and prosecuted.<sup>109</sup> Recent examples include the following:

- According to László Sárközi, a young Romani college student, on the afternoon of 9 June 1999 he was walking home in Budapest when a car pulled up next to him, and three plainclothes policemen got out. The three asked Mr. Sárközi to show his identification and to give them the documents he was carrying, which included college notes and poems. Although he provided both, he refused to let the police read his papers. At this point, according to Mr. Sárközi, the police threw him on the ground, handcuffed and kicked him, calling him a "stinking Gypsy" and a

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<sup>105</sup> Dan Eggen, "Yugoslavia: Gypsies Seek Protection in Kosovo Camps; Homes Are Targets of Ethnic Albanians", Washington Post, 15 July 1999.

<sup>106</sup> Petrova, *supra* (note 79), at p. 3.

<sup>107</sup> *Id.*, at p. 4.

<sup>108</sup> The UN Committee on the Elimination of Racial Discrimination has expressed its concern about harassment and excessive use of force by police against Gypsies; *see* Concluding Observations of the Committee on the Elimination of Racial Discrimination: Hungary, *supra* (note 52), at paragraph 12.

<sup>109</sup> As noted, these deficiencies led the European Court of Human Rights to find Bulgaria in breach of the European Convention in the Assenov case.

“dirty fag.” Mr. Sárközi was then taken to a police station, where he was reportedly further abused before being released.<sup>110</sup>

- A Slovak Rom died from a bullet wound three days after he had been questioned, in police custody, in connection with a bicycle theft at the police station in the town of Poprad on 13 August 1999. Police reportedly claim that the man shot himself with the pistol of the policeman who was questioning him. Before his death in the hospital, the Rom allegedly told a friend that the injury was caused by a policeman.<sup>111</sup> As of the end of 1999, the case is still under investigation by the Slovak Government commissioner for Romani affairs.
- Roma in the Hungarian town of Hajduhadház have reportedly been subject to persistent police abuse. Several Roma have described ethnic insults by police in Hajduhadház in the course of physical assaults. For example, while kicking, slapping and beating one Rom, officers reportedly called him a “stinking Gypsy” and told him “not to Gypsy,” by which they meant “Don’t lie.”<sup>112</sup> Following reports about patterns of police abuse in this town, the abuse reportedly worsened, and apparently began to target individuals who spoke out against police brutality. On 18 June 1999, the Department of Oversight of Hungary’s Ministry of Interior announced that Hajduhadház has the highest reported level of police violence in Hungary and that 26 police officers - half of the town’s entire police department - had recently been investigated in response to complaints lodged against them.<sup>113</sup>

In several countries, entire Romani communities have been subjected to police raids, often at dawn, frequently characterized by unnecessary or excessive violence. These developments have been summarized as follows:

In a number of countries, law enforcement authorities target Roma communities for special raids - armed assaults in the middle of the night or early hours of the morning during which houses are searched, contents ransacked, inhabitants harassed or subjected to excessive force, and young men are rounded up for arrest and questioning, in many cases in the absence of search and arrest warrants and other legal safeguards . . .

In many cases, police officials readily admit that such raids target Roma communities because Roma, as a group, are said to be prone to criminality.<sup>114</sup>

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<sup>110</sup> Roma Rights, No. 2, *supra* (note 82), at p. 10; *see also* “Romani College Student Beaten Up by Police!”, RomNews Network, 11 June 1999.

<sup>111</sup> “Slovak Police Version of Rom’s Death Questioned,” RFE-RL reports, 24 August 1999.

<sup>112</sup> ERRC, Press Release concerning recent events in Hajduhadház, Hungary, 23 March 1999.

<sup>113</sup> Roma Rights, No. 2, *supra* (note 82), at p. 11.

<sup>114</sup> Statement of James A. Goldston, Hearing before the Commission on Security and Cooperation in Europe on Romani Human Rights in Europe, 21 July 1998, p. 44.

## D. Racial Stereotyping

As the foregoing observation reflects, racially-motivated violence against Roma and other manifestations of discrimination do not occur in a vacuum. Negative stereotyping of Roma is a notable feature of public life in countries where Roma experience frequent acts of discrimination and racially-motivated violence.

In several countries, politicians have played a prominent role in perpetuating negative images of Roma. Although some of the more notorious statements of this kind have been made by opposition figures and local officials, negative stereotypes of Roma have at times been evoked in statements of government officials.

A well-known instance is a statement made by Vladimir Meciar when still Prime Minister of the Slovak Republic. Referring to Romani communities' relatively high birth rate, he publicly evoked the specter "that this [population] ratio will be changing to the benefit of Romanies. That is why if we don't deal with them now, then they will deal with us in time . . ." <sup>115</sup> Apparently alluding to the tradition among Roma of marrying and beginning families while still in their teens, Mr. Meciar continued:

Another thing we ought to take into consideration is an extended reproduction of the socially unadaptable population . . . Already children are giving birth to children - poorly adaptable mentally, badly adaptable socially, with serious health problems, who are simply a real burden on this society. <sup>116</sup>

There is a recurring tenor to many anti-Roma statements: the behavior of Roma and their inherent characteristics, it is implied, account for their social exclusion and even for violence against them. Sometimes the message is explicit. When the teen-aged Rom Mario Goral died after being beaten and then set aflame by skinheads in 1995, Ján Slota, then leader of the Slovak National Party, dismissed the crime as a reaction to "high Gypsy crime rates." <sup>117</sup> These remarks sought to exonerate a particularly depraved crime: on the night of 21 July 1995, some 30 skinheads moved through the central Slovak town of Žair nad Hronom, beating Roma, throwing Molotov cocktails at a pub known to be frequented by Roma, and attacking several Roma with crowbars and knives. Eighteen-year-old Mario Goral was beaten unconscious and then doused with a cocktail of gasoline and polystyrene, a mixture

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<sup>115</sup> Associated Press, 8 September 1993, *quoted in* ERRC, *Time of the Skinheads: Denial and Exclusion in Slovakia*, Budapest, 1997, p. 48.

<sup>116</sup> *Id.*

<sup>117</sup> TASR, 2 August 1995, *quoted in* ERRC, *Time of the Skinheads: Denial and Exclusion in Slovakia*, *supra* (note 115), at p. 12. At the time of this statement, Mr. Slota was a Member of Parliament and Chairman of the Slovak National Party, which was then a member of the governing coalition.

that makes fire burn more deeply into the victim's skin and the flames more difficult to extinguish. Mr. Goral was then set aflame, and died ten days later.<sup>118</sup>

This was not a momentary lapse. In 1998, Mr. Slota said on Slovak National Radio: "I love roasted meat Gypsy-style very much, but I'd prefer more meat and fewer Gypsies." He has also proclaimed that "The only way to deal with gypsies is with the long whip and the small yard."<sup>119</sup> In March 1999, Mr. Slota, made inflammatory statements about both the Hungarian and Romani minorities in Romania; of the latter, he said that the Roma nation did not exist: there were only "Gypsies who steal, rob and pilfer."<sup>120</sup> To its credit, the at the time newly-elected government of the Slovak Republic denounced this statement.<sup>121</sup>

In a statement reminiscent of Mr. Slota's remarks concerning skinhead victim Mario Goral, the leader of the Czech Republican Party, Miroslav Sladek, reportedly told a rally in the South Bohemian town of Písek in May 1998 that "summer's getting near, it's time for swimming lessons again" - a reference to the drowning of the Rom teenager Tibor Danihel at the hands of skinheads in 1993 (see above).<sup>122</sup>

In Romania, as in the Czech and Slovak Republics, racist statements have been made by the leader of an extremist opposition party. On 16 August 1998, Corneliu Vadim Tudor, leader of the Great Romania Party and Senator in Romania's Parliament, reportedly announced a ten-point "program to run the country" which included "isolat[ing] the Roma criminals in special colonies" in order to "stop the transformation of Romania in[to] a Gypsy camp."<sup>123</sup>

By their nature, such statements can foster a climate of intolerance and inspire racist violence. But the responsibilities of State officials to counter racism do not

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<sup>118</sup> See ERRC, *Time of the Skinheads: Denial and Exclusion in Slovakia*, *supra* (note 115), at p. 11.

<sup>119</sup> *Quoted in* Cole Moreton, "The New Nomads - Unwanted, unloved and lost: While Europe tries to unite amid ethnic fighting, gypsies remain the neighbours no one wants," *The Independent*, 18 July 1999.

<sup>120</sup> Slota press interview, Czech News Agency, 9 March 1999.

<sup>121</sup> The government has sought, thus far unsuccessfully, to have Slota's parliamentary immunity lifted so that he could be prosecuted under penal provisions prohibiting the fomenting of racist and national hatred, as well as the defamation of other races and nations. See Bratislava TASR in English 0807 GMT 14, April 1999.

<sup>122</sup> See "Republicans to bring charges for slander over Havel comments," Czech News Agency, 13 May 1998. Mr. Sladek is leader of the extreme-right Republican Party.

<sup>123</sup> *Quoted in* Nicolae Gheorghe, Statement for the OSCE Implementation Meeting on Human Dimension Issues, Warsaw, 26 October - 6 November 1998. Numerous suits have been filed against Mr. Tudor for his racist statements, and in October 1998 the Department for the Protection of National Minorities of the Romanian Government notified the general prosecutor of Romania of the necessity of starting legal proceedings in order to put Senator Tudor on trial. However, no case can be pursued unless Mr. Tudor's parliamentary immunity is lifted. Although the Ministry of Justice has requested Parliament to do so, as of November 1999 this had not yet occurred.



operate only in the public sphere.<sup>124</sup> Unfortunately, many public officials freely express racist attitudes toward Roma in non-public settings while conducting official business. For example, in a recent meeting with representatives of Bulgaria's Ministry of Justice, one official stated that Roma are inferior to the rest of the people in Bulgaria. Addressing proposals to end school segregation, this same official reportedly stated that, due to the specific characteristics of the Roma, they are intolerable to others, who would never agree to allow their children to attend school with Romani children.<sup>125</sup>

In another meeting, an official in Romania's Ministry of Interior stated, when asked about authorities' responses to pogroms against Roma in the early 1990s, that "these conflicts [were] a reaction of the majority to the behavior of the Roma minority"; the Roma were not, therefore, victims of racist violence.<sup>126</sup> These assertions capture in microcosm the phenomenon of racial stereotyping that has long afflicted Roma. The official's remarks apparently were based upon the behavior of specific individuals, whose conduct was generalized to describe that of the group to which they belong. This form of ethnic stereotyping is not only misleading, it is dangerous.

The well-known case of the Hadareni - a case the Romanian official may have had in mind - exemplifies the point. On 23 September 1993, three Romani men were killed by a mob of ethnic Romanians and Hungarians in Hadareni, a village in Mureș County. The immediate provocation was the stabbing to death of an ethnic Romanian by one of the three Romani men earlier that day. This Rom's crime became the collective crime of Roma, and a pogrom ensued. After clubbing to death the two Romani brothers who had been involved in the fatal stabbing and burning a third Rom in his home, a group of villagers set fourteen Romani houses ablaze and damaged others. That night, 175 Roma, whose families had lived in Hadareni for some seventy years, were chased out of the village.

Negative stereotyping of Roma has also been a recurring phenomenon in the media of many OSCE participating States. While the significance of this concern in relation to Central and Eastern European countries has often been noted,<sup>127</sup> press accounts that reinforce negative stereotypes of Roma appear frequently in Western media as well.

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<sup>124</sup> See e.g. Race Convention, Article 2(1)(a) ("Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation").

<sup>125</sup> Interview, Ministry of Justice, Sofia, Bulgaria, 17 May 1999.

<sup>126</sup> Interview, Ministry of Interior, Bucharest, Romania, 16 June 1999.

<sup>127</sup> For two useful discussions of negative Roma stereotyping in the media of various countries in Central and Eastern Europe, see Project on Ethnic Relations, Images and Issues: Coverage of the Roma in the Mass Media, Princeton, New Jersey, 1997; and Project on Ethnic Relations, The Media and the Roma in Contemporary Europe: Facts and Fictions, Princeton, New Jersey, 1996.

For example, an article that reported the arrest of a Romani man in *The New York Times*, included the following statement:

A Gypsy, Mr. Stevens lived in a singular subculture that, in America as elsewhere, consciously considers itself outside the norms of society. And, like many Gypsies, he changed the forms of identification required by the world of the Ganjo [sic], the non-Gypsies - including drivers licenses, Social Security numbers and credit cards - at will.<sup>128</sup>

An obituary of a Romanian Rom in the same paper included the following observation: “[B]y some measures the Gypsy population [in Romania] did better under the [previous] dictatorship because [President Nicolae] Ceausescu suppressed a separate Gypsy culture and forced Gypsy children to go to school, a requirement his successors have been lax in enforcing.”<sup>129</sup>

In the United Kingdom, reports relating to Gypsies frequently emphasize the negative views of Gypsies held by others in a fashion likely to reinforce those perceptions. After monitoring national and local press in the United Kingdom over a one year period, one analyst concluded:

The press . . . routinely represent Travellers in such a way as to actively increase dislike of them and their way of life. The local press, in particular, more often than not cover Traveller-related issues in a manner which seems deliberately designed to inflame local tensions and damage relations between the settled and Traveller communities.<sup>130</sup>

As this analyst noted, “other research has found ‘that the announcement of a large number of small [Gypsy caravan] sites had been used by some local newspapers to produce the image of a major gypsy ‘invasion’, even though the gypsies concerned were already regularly resident in the area’.”<sup>131</sup>

The specter of a “Gypsy invasion” pervaded British press coverage of several recent waves of Romani asylum seekers from the Czech Republic and Slovak Republic. As noted earlier, Roma in both countries have been key targets of skinhead and other racially-motivated violence in recent years and face pervasive discrimination in virtually every sphere of public life. Yet many press reports describing the arrival of these asylum-seekers portrayed them as bogus claimants seeking to exploit British welfare programs, while playing upon public fears of Roma

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<sup>128</sup> John Kifner, “A Gypsy Suspect With Many Names,” *New York Times*, 21 June 1996.

<sup>129</sup> Robert McG. Thomas Jr., “Ion Cioaba, Self-Styled King Of All Gypsies Everywhere, 62”, *New York Times*, 27 February 1997.

<sup>130</sup> Rachel Morris “Feared and Fabled: Travellers and the Press,” Traveller Law Research School, Cardiff Law School, Ph.D. Thesis, (forthcoming), p. 5.

<sup>131</sup> *Id.*, quoting David Todd & George Clark, *Gypsy Site Provision & Policy: Research Report*, Department of the Environment, HMSO, London, 1991, p. 21.

by invoking imagery of a “Gypsy invasion.” While economic motives may, in some cases, have prompted the decision to apply for asylum in the United Kingdom, the British press failed to acknowledge the serious causes, including discrimination and racial violence, which lead many Roma to leave their countries of origin.

Typical of these accounts was a front-page story headlined “Gypsies invade Dover, hoping for a handout.”<sup>132</sup> The article barely alluded to the fact that the Roma who had recently arrived were seeking political asylum, and implied that their real motivation was to take advantage of British welfare opportunities. While failing to include perspectives relating to the conditions of Roma in the Czech Republic and Slovakia, the article prominently featured the purported views of the British authorities, who emphasized the “burden” the new arrivals presented and who suggested that the Roma were not “genuine refugees,” but instead were abusing “the integrity of the [asylum] system.” The British government subsequently made it clear that Roma who entered the country, legally, as asylum seekers would have their cases examined in the same way as all other asylum seekers, i.e. on merit. The validity of Romani asylum claims has been questioned in the press of other States as well.<sup>133</sup>

## **E. Combating Discrimination and Racial Violence**

### **1. Political Leadership**

As the foregoing analysis suggests, there is a manifest need for governments to make concerted efforts to combat discrimination and racial violence against Roma. While efforts are needed on many fronts, the most sophisticated programs will fall short unless backed by the unwavering commitment of political will, manifested both in moral leadership and material resources.

In the context of pervasive racial stereotyping of Roma, one measure of leadership in this regard is government officials’ willingness to acknowledge that anti-Roma racism is a problem in their societies. A non-Romani attorney in the Czech Republic made the case plainly: “Let’s say openly that we have a problem that must be solved.”<sup>134</sup> This simple acknowledgment is the beginning of the search for solutions.

In the past year alone, I have noted that a number of governments took positive steps in this regard. On 7 April 1999, the Czech Government approved a policy resolution that acknowledges the “mistakes and injustice caused by centuries of discrimination” against Roma, and adopts a “basic attitude of . . . respect for Romany

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<sup>132</sup> Kathy Marks, “Gypsies invade Dover, hoping for a handout,” *The Independent*, 20 October 1997.

<sup>133</sup> See, e.g. the remarks of the Belgian Prime Minister with regard to Romani asylum claimants in Belgium, as reported in *Het Laatste Nieuws* on 20 September 1999, cited in Roma Rights, No. 4, ERRC, Budapest, 1999, p. 16.

<sup>134</sup> Interview, Prague, the Czech Republic, 9 April 1999.

national feeling, traditions and culture.”<sup>135</sup> On the same date, representatives of the Bulgarian government signed the Framework Program for Equal Integration of Roma in Bulgarian Society,<sup>136</sup> which declares: “Discrimination against Roma in society preconditions the problems of the community in the socio-economic, educational and cultural field[s],” and states: “The elimination of discrimination towards Roma should become one of the main political priorities of the Bulgarian State.” The Hungarian Government approved a package of “medium term measures to improve the living standards and social position of the Roma population”<sup>137</sup>, in which it resolved to support a variety of anti-discrimination programs, including monitoring and evaluation of the effectiveness of existing anti-discrimination legislation, anti-discrimination and conflict prevention training for law-enforcement officials, and the activities of legal aid organizations dedicated to preventing and eliminating negative discrimination. In September 1999, the Slovak Government approved a comprehensive strategy for Roma which states that “[the Roma] minority was really disadvantaged or even discriminated against for [a] long time”, and that the protection of Romani individuals is “still insufficient” and stipulates concrete governmental measures for the improvement of this situation.<sup>138</sup>

In contrast to these forthright acknowledgments of discrimination and the new undertaking to redress its effects, political leaders in some countries are hesitant even to recognize that there *is* racism against Roma. This reluctance has sometimes been explained in political terms: Roma are so unpopular, it is said, that it would be costly politically to take up their cause. But past experience has surely taught us that we can meet the challenge of combating racism only when political leaders provide moral leadership - when they shape rather than follow public opinion. In any event, as argued below, international obligations and commitments compel public authorities to act against racism.

The leadership provided by Miroslav Nározny, the non-Romani Mayor of the central Slovak town of Kremnica, highlights the importance and effectiveness of such leadership. In 1996, some Roma in Kremnica were targets of skinhead attacks. According to residents, some skinheads from Kremnica had complained about local

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<sup>135</sup> Office of the Government of the Czech Republic, Resolution No. 279 on “Concept of Government Policy towards Members of Romany Community Facilitating Their Integration into the Society”, 7 April 1999, pp. 4-5 [hereafter, Government Policy Concept]. Czech Government Resolution 789/1999 of 28 July 1999 also addresses the problem of racism by directing the Ministry of the Interior to take measures to dissolve civic organizations or movements whose activities limit or deny the personal, political or other rights of other citizens.

<sup>136</sup> For further discussion of this document, *see* Section V.C., *infra*.

<sup>137</sup> Hungarian Government Decision No. 1047/1999 (V. 5.) on medium term measures to improve the living standards and social position of the Roma population.

<sup>138</sup> Government of the Slovak Republic, “Resolution of the Government of the Slovak Republic concerning the Strategy for the Solution of Problems of the Roma Minority and Set of Measures for Its Implementation - Stage 1”, Explanatory Note, 24 September 1999, p. 14 [hereafter, Slovak Government Strategy.] The Resolution tasks the Minister of Labour, Social Affairs and Family, in co-operation with the Minister of the Interior and the Minister of Justice, “with analysing the grounds for racial discrimination, with creation of conditions preventing manifestations of racial discrimination, and, if necessary, to submit draft amendment of relevant acts or new draft laws to the session of the Government”. *See id.*, p. 4, at B. 14.

Roma to friends of theirs in another town, Žair nad Hronom, who responded by coming to Kremnica and attacking local Roma. The Mayor responded by denouncing the skinhead attacks and ensuring that Roma received police protection.

At the same time, he played an effective mediating role between the Roma and non-Romani communities. Although the Mayor denounced the skinhead violence, he was aware that some non-Roma supported it and privately asked them to explain the reasons for their support. In response, he was told that the skinhead attacks had been triggered by two incidents. First, some Romani boys had asked non-Romani boys for money in a threatening manner. Second, two Roma boys reportedly threatened a non-Romani boy at school. The Mayor communicated this to the leader of the Roma Working Group in Kremnica,<sup>139</sup> and arranged for a small meeting involving her, the father of the boys said to have threatened a non-Romani boy, and the state police. During this meeting the father was urged to ensure that his children behaved properly. By all accounts, the Mayor treated his Romani interlocutors with manifest respect in this meeting, as in other encounters. According to local Roma, the father of the two boys in question later said that his sons had not behaved as accused, but he had not spoken up because the atmosphere in the meeting was so positive that he did not want to disrupt it. Notably, Kremnica has not seen similar problems with skinheads since this episode - and the Mayor has been re-elected to office by the majority-non-Roma town.

The example provided by Mayor Nározny illustrates the potential impact of responsible leadership at local levels of government. By equal measure, local political figures have all too often sought to accommodate or have helped foster anti-Roma sentiment. In these instances, it is incumbent on national leaders to ensure that their Romani citizens enjoy the full measure of rights to which all are entitled.<sup>140</sup>

The Government of the Czech Republic has, in recent months, endeavored to provide such leadership in the face of local authorities' efforts to build a "wall"<sup>141</sup> between a Romani community and non-Roma inhabitants of the town of Ústí nad Labem. While the efforts of several officials provided a commendable example of leadership, this episode also highlighted the need for effective legal remedies against institutionalized racism at all levels.

In the Spring of 1998, municipal authorities in the northern Czech town of Ústí nad Labem decided to construct a wall that would separate four blocks of flats inhabited mainly by Roma families on Maticní Street from primarily non-Roma

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<sup>139</sup> See Section III B, *infra*.

<sup>140</sup> See Race Convention, Article 2(1)(a) ("Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and *to ensure* that all public authorities and public institutions, national *and local*, shall act in conformity with this obligation"; emphasis added).

<sup>141</sup> The wall, which has also been referred to as a fence or a barrier, was 1.8 meters high and sixty-five meters long, and consisted of prefabricated concrete units supported by steel girders, with three steel gates. According to the Czech Government, it separated "about 150 or 160 persons, mostly the Roma, from eleven occupants of three terraced houses." Comments Prepared by the Czech Government, *supra* (note 66), at p. 2.

residents. The plan drew international condemnation at what appeared to be an attempt to create a Roma ghetto in the heart of Europe, and was opposed by the national government elected in 1998. For a time, local authorities indicated that they might not proceed with construction of the wall.

In May 1999, the Czech Government passed a resolution recommending that the Ústí District authority forestall implementation of the municipal resolution, and simultaneously referred the issue to the Czech Parliament. The Government maintained that a parliamentary body had authority to order the local government to rescind its decision, but the Chairman of the Parliament's Petition Committee reportedly expressed doubt about whether Parliament should review such matters, which, he said in a radio interview, are best decided at the local level; in his opinion, if such decisions are to be reviewed by other bodies, they should be reviewed by a court. Meanwhile, on 13 October 1999, local authorities went ahead with their plans, and construction of the wall was completed, under the protection of local policemen. Shortly thereafter, the Chamber of Deputies of the Czech Parliament voted to annul the municipal council's original decision to build the wall.<sup>142</sup> Local authorities, who initially insisted they would stand by their action, eventually capitulated to domestic and international pressure and had the wall removed in late November - but only after the government had provided them with funding to purchase the three homes of the non-Roma families who had originally complained about their Roma neighbors.<sup>143</sup> At the same time, the Government provided the local council with additional funds to develop programs to benefit Roma.

Obviously, the attitudes of the local authorities in Ústí nad Labem do not constitute an example of responsible leadership at the local level. Moreover, they no doubt encourage, if not inspire, further discrimination and possibly racial violence on the part of others (both public servants and private persons).

## 2. Legislation

Although national constitutions typically prohibit discrimination and ensure equality, many OSCE participating States have failed to enact or implement legislation necessary to give effect to this fundamental norm. Particularly in Central and Eastern Europe, "there is little legislation specifically designed to combat racism", according to the European Commission against Racism and Intolerance (ECRI).<sup>144</sup> In the previously-noted instance where Hungary's Parliamentary Commissioner for National and Ethnic Minority Rights determined that a

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<sup>142</sup> Chamber of Deputies of the Czech Republic, Resolution No. 457 (13 October 1999). At the same time, the Czech Government also appointed a special plenipotentiary within the Ministry of the Interior to find a solution to the impasse.

<sup>143</sup> Meanwhile, on 12 November 1999 a Romani resident of Maticni Street filed a civil suit against the local government, claiming breach of Article 11 of the Czech Civil Code as well as of international legal norms relating to race discrimination/segregation. See ERRC, "Lawsuit filed by Czech Counsel and ERRC Against Ústí Wall," Press Release, 12 November 1999.

<sup>144</sup> European Commission against Racism and Intolerance, "Legal Measures to Combat Racism and Intolerance in the Member States of the Council of Europe", *supra* (note 76), at p. 9. This is also the case in a number of Western European countries; Italy appears as a case in point at p. 261 ff.

discriminatory employment notice “violates national and international legal regulations,” he also concluded “due to the lack of legal regulations there is presently no public administrative directive or forum at our disposal that would make it possible to take action against the publication of employment notices which are in violation of the Constitution, or that against such actions there is no form of legal administrative sanction.”<sup>145</sup> In many other countries in the region, “there still exists no law or administrative regulation expressly prohibiting racial discrimination - generally, or in specific fields of public life. Accordingly, few civil or criminal remedies are available to victims of racial discrimination, and criminal investigators often have no lawful power to investigate acts of racial discrimination as such.”<sup>146</sup> This failure is itself a breach of commitments undertaken within the CSCE/OSCE framework, as well as under various treaties to which OSCE participating States are Parties. Within the CSCE/OSCE context, participating States have “declare[d] their firm intention to intensify . . . efforts to combat [racial and ethnic hatred and discrimination] and therefore” pledged to:

“take effective measures, including the adoption, in conformity with their constitutional systems and their international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred . . .”, and to

“recognize the right of the individual to effective remedies and endeavour to recognize, in conformity with national legislation, the right of interested persons and groups to initiate and support complaints against acts of discrimination, including racist . . . acts . . .”<sup>147</sup>

CSCE participating States subsequently affirmed their commitment to “take the necessary measures to prevent discrimination against individuals, particularly in respect of employment, housing and education, on the grounds of belonging or not belonging to a national minority. In that context, they [undertook to] make provision, if they have not yet done so, for effective recourse to redress for individuals who have experienced discriminatory treatment on the grounds of their belonging or not belonging to a national minority, including by making available to individual victims of discrimination a broad array of administrative and judicial remedies.”<sup>148</sup>

Various international treaties ratified by many OSCE participating States include similar commitments. For example, the Race Convention requires States Parties to “prohibit and bring to an end, by all appropriate means, including

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<sup>145</sup> 1998 Report of Hungarian Commissioner, *supra* (note 69), at Section 4.2.6 (*unofficial translation*).

<sup>146</sup> Statement of James A. Goldston, *supra* (note 114), at p. 47.

<sup>147</sup> Copenhagen Document, paras. 40, 40.1, and 40.5.

<sup>148</sup> Report of the Geneva Meeting.

legislation as required by circumstances, racial discrimination by any persons, group or organization”<sup>149</sup> and to “assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other States institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”<sup>150</sup> The ICCPR requires States Parties to enact legislation necessary to protect all of the rights enumerated therein and assure an effective remedy for breaches,<sup>151</sup> and imposes further obligations in respect of discrimination:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>152</sup>

The European Convention on Human Rights provides: “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”<sup>153</sup>

In recent years, several States have taken steps to fill the gaps in their law. For example, Finland has made amendments to its Constitution and Criminal Code which strengthen the possibility of action against racism. In Hungary, racial violence was criminalized in 1996, although Hungarian law still lacks other basic legal protections against discrimination. Likewise, in 1996 Spain amended its Penal Code to make incitement to racial or anti-semitic hatred and violence criminal offenses and to add racism or anti-semitic intent to the list of aggravating circumstances for criminal offenses.<sup>154</sup> In its Resolution No. 279 of 7 April 1999, the Czech Government

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<sup>149</sup> Race Convention, Article 2(1)(d).

<sup>150</sup> *Id.*, Article 6. The Committee that monitors compliance with the Race Convention has expressed concern about some States Parties’ failure to comply with these obligations. For example, after reviewing the Czech Republic’s compliance report, the Committee “noted with concern that the State party does not have civil or administrative law provisions expressly outlawing discrimination in employment, education, housing and health care and that there exists no administrative regulation explicitly prohibiting racial discrimination by public institutions and agencies.” Concluding observations of the Committee on the Elimination of Racial Discrimination: Czech Republic, *supra* (note 52), at paragraph 12.

<sup>151</sup> ICCPR, Article 2.

<sup>152</sup> *Id.*, Article 26.

<sup>153</sup> European Convention, Article 13.

<sup>154</sup> See European Commission against Racism and Intolerance, 1998 country report on Spain at <http://www.ecri.coe.int/en/02/02/05/e02020590.htm>.



contemplated presenting draft legislation “restricting racial (or other) discrimination” to the Parliament, though the resolution stopped short of making a commitment to do so.<sup>155</sup> The Framework Program for Equal Integration of Roma in Bulgarian Society recently endorsed by the Bulgarian government<sup>156</sup> similarly includes a commitment to enact legislation that would protect citizens against discrimination. The Romanian Government’s Department for the Protection of National Minorities has elaborated the draft of a Law Against All Forms of Discrimination,<sup>157</sup> which it plans to submit to the Government and the Parliament, pending signature from the relevant Government ministries. Norway has similarly committed itself to strengthening the statutory protection against racial discrimination.<sup>158</sup>

Enacting anti-discrimination legislation should be a high priority for all OSCE participating States that have not yet met their international obligations in this regard.<sup>159</sup> While enacting such legislation is not a panacea for racism, it is a necessity.

Such legislation should, at a minimum, prohibit discrimination in all fields of public life, including access to public accommodations, citizenship, education, employment, health services, housing, the military, and public and social services and establish effective remedies for violations. In addition to providing civil remedies that victims of discrimination can invoke, the law should establish procedures pursuant to which State authorities can act to nullify discriminatory practices by government officials and organs at all levels. For reasons indicated earlier, it is also important that anti-discrimination laws provide clear definitions of the proscribed conduct. It is also recommended that States enact legislation mandating sentencing enhancements for offenses that are racially-motivated.<sup>160</sup> Finally, governments should promulgate and

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<sup>155</sup> The accompanying “Concept of Government Policy towards Members of Romany Community Facilitating Their Integration into the Society” states with less equivocation that the government “will complete and submit to the Parliament drafts of amendatory acts” that will support its efforts to eliminate “all forms of discrimination based on race, nationality, ethnic origin or color.” Czech Republic, Government Policy Concept, *supra* (note 135), at p. 5. *See also* “Grounds of Concept of Government Policy towards Members of Romany Community Facilitating Their Integration into the Society,” April 1999, at 1. At present, the principal exception to Czech law’s general failure to prohibit discrimination and establish mechanisms for sanctioning breaches is Act 534/1992 on Consumer Protection. Although this law is not primarily concerned with discrimination, it has recently been used to sanction persons who discriminate against Roma in a consumer context. The act is enforced by a Czech Trade Inspection body, which now employs several Romani inspectors. The Hungarian Parliamentary Commissioner has also reported success in addressing cases of discrimination through the Consumer Protection Authority. *See* 1998 Report of Hungarian Commissioner, *supra* (note 69).

<sup>156</sup> *See* Section V.C., *infra*

<sup>157</sup> *See* European Commission against Racism and Intolerance, 1998 country report on Norway at <http://www.ecri.coe.int/en/02/02/05/e02020544.htm>.

<sup>159</sup> In meeting these obligations, States may wish to draw upon the expertise of the European Commission against Racism and Intolerance, which has compiled relevant legislation in member States of the Council of Europe. *See* European Commission against Racism and Intolerance, “Legal measures to combat racism and intolerance in the member States of the Council of Europe”, *supra* (note 76).

<sup>160</sup> *See* Copenhagen Document, paragraph 40.2 (participating States “commit themselves to take appropriate and proportionate measures to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic or religious identity . . .”). *See also* Article 20(2) of the ICCPR (“Any advocacy of national, racial or

enforce internal disciplinary standards to ensure that public officials who discriminate, including police, are sanctioned appropriately.

### 3. Training

In several countries where racial violence is common, laws proscribing racially-motivated violence that are theoretically available are rarely enforced.<sup>161</sup> While this is doubtless due in part to discrimination within the legal system, in some States the problem of under-enforcement appears also to be attributable to confusion on the part of police, prosecutors and judges about what constitutes a racially-motivated crime or even racial discrimination. One Czech attorney evoked the difficulties her clients encounter in this respect, saying that skinhead violence “is not qualified as a racially-motivated attack unless the attacker says, ‘I’m going to kill you because you’re a Gypsy.’”<sup>162</sup>

Court rulings in a recent prosecution in the Slovak Republic suggest that some courts might not even find this type of evidence sufficient to qualify a crime against Roma as racially-motivated. The prosecution arose out of an incident on 11 June 1996 in which three non-Romani men accosted a Romani university student, Ivan Mako, at a bus station near the center of Banská Bystrica. The assailants spat upon Mr. Mako, called him a “dirty Gypsy,” punched him and threw cobblestones at him. When Mr. Mako began to defend himself with a knife, the assailants beat him so badly that he had to be hospitalized. On 29 October 1998, one of the assailants was sentenced for the crime of damage to health, but the court declined to characterize the crime as racially-motivated. The court found that the only reason for the attack was the assailants’ hatred for Roma, but nonetheless ruled that such hatred was not “because of race” since by the court’s reasoning Roma belong to the same “race” as Slovaks. Following the prosecutor’s appeal, the case was returned to the district court for a new trial. On 1 July 1999, the district court of Banská Bystrica upheld the decision that the attack could not have been racially-motivated.<sup>163</sup> For reasons suggested in sub-section A, this ruling applies a definition of “race” that affords substantially less protection than that set forth in the Race Convention.

While clear legislative definitions would go a long way toward addressing this type of problem, training of personnel involved in the judicial system is also clearly

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religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”).

<sup>161</sup> Summarizing patterns in this respect in Central and Eastern Europe, the Legal Director of the European Roma Rights Center testified last year: “Perpetrators of violence and discrimination against Roma - whether state authorities or private parties - are rarely prosecuted for their actions. Those governments which have adopted racially-motivated crimes provisions infrequently apply them. In addition, in cases of group violence, prosecutors frequently charge far fewer individuals than the evidence warrants.” Statement of James A. Goldston, *supra* (note 114), at p. 47.

<sup>162</sup> Interview, Prague, the Czech Republic, 9 April 1999.

<sup>163</sup> This summary is based upon an account of the proceedings in, Roma Rights, No. 2, *supra* (note 82), at pp. 18-19. A similar approach by a Czech court was subsequently overruled.

desirable in a number of OSCE participating States.<sup>164</sup> In the view of one Romani leader in the Czech Republic, one of the most significant factors underlying authorities' failure to punish skinhead violence adequately is ignorance of the law. In his words, the "police aren't sure it's right to enforce these laws."<sup>165</sup>

#### **4. Conflict-Management Mechanisms by and between Police and Romani Communities**

In areas where Romani communities have experienced persistent abuse by police, the phenomenon is both symptomatic of, and further cause for, generally conflictive relations between the two. In these settings, efforts to curb police abuse of Roma could productively include the establishment of mechanisms for conflict-management.<sup>166</sup> Such mechanisms can also go a long way toward enabling police to provide Romani communities greater protection against mob violence, which by its nature reflects conflictive relations between Roma and non-Romani communities.

Such mechanisms have been developed in Romania, with apparently positive results in at least some regions. The Romanian initiatives were triggered by a surge in mob violence against Romani communities between 1990 and early 1996 and the failure of police to provide protection. In most of these cases, the Romanian police "were seen as contributing, through direct or indirect means, to the severity of these incidents and the consequences for Roma citizens."<sup>167</sup>

With the assistance of the Project on Ethnic Relations and the U.S. Department of Justice Administration, University of Louisville, the Romanian General Inspectorate of Police developed a program to improve relations between Roma and police and to enhance the capacity of the police to respond effectively in situations of tension between Roma and non-Romani communities. The first step taken by national police authorities was to organize meetings between police representatives and Roma leaders so that they could "identify the problems that [the Roma] have and . . . build together a social peace and stronger community."<sup>168</sup> A hallmark of the program was to develop regular meetings between police and representatives of Roma, as well as non-Romani communities, at both the local and national levels.

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<sup>164</sup> The need for this type of training is explicitly recognized in the governmental programs of several OSCE States. For example, in its recently-adopted governmental strategy on Romani issues, the Slovak Government tasks the Ministry of Justice with "the arrangement of systemic training of the Corps of Prison and Court Guard of the Slovak Republic, and judges in compliance with their continuing education on human rights with regard to the Roma national minority." Slovak Government Strategy, *supra* (note 138), p. 4 at B.15.

<sup>165</sup> Interview, Prague, the Czech Republic, 9 April 1999.

<sup>166</sup> The Public Foundation for Roma in Hungary is now exploring the development of such programs. Participants would be trained in how to prevent conflicts and respond when they are not prevented. Interview with government officials, Budapest, Hungary, February 1999.

<sup>167</sup> Deborah G. Wilson and Larry Watts, Romanian National Police: Democratization Initiatives Involving Various Partnerships, Department of Justice Administration, University of Louisville & Bucharest, Romania (undated), p. 1.

<sup>168</sup> Interview with officials in the Institute for Research and Prevention of Criminality, Ministry of Interior, Bucharest, Romania, 16 June 1999.

As described by officials involved in these initiatives, conflict mediation is a central feature of the Government's program. One official explained that "most problems" between Roma and non-Roma "are the result of a lack of communication."<sup>169</sup> Ideally, police intervene at the earliest sign of tensions that have the potential to (or already do) involve criminal behavior, and attempt to mediate among the various parties, sometimes bringing in other relevant institutions and actors.

Roma leaders are not uniformly enthusiastic about the Government's initiatives. Some regard as ominous the fact that the umbrella for the Government's program, which began as a "Mob Violence Prevention Programme" within the General Inspectorate of Police of the Ministry of Interior, was later renamed the "Institute for Research and Prevention of Criminality." In their view, this signified that a program initially conceived to enhance police protection of Roma was now more concerned with "Roma criminality."

Still, the very fact that the General Inspectorate of Police has established a framework for communicating with Roma leaders makes it easier for the latter to raise and address these and other concerns. In 1997, Roma associations negotiated a protocol with the Inspectorate to address concerns about the manner in which police dealt with Romani communities; the protocol entered into effect in 1998. Some Roma leaders involved in this initiative and others familiar with it believe that there have indeed been improvements in relations between Romanian police and Romani communities. They cite in particular the situation in the city of Sibiu, where representatives of police and of both Roma and non-Romani communities meet regularly and seek to negotiate joint methods of problem solving.<sup>170</sup>

Another measure that would, if implemented properly, help alleviate conflicts between police and Romani communities and reduce instances of police violence against Roma is the recruitment of more Roma into police forces.<sup>171</sup> To this end, a pilot program was instituted by the Ministry of Interior of the Czech Republic in the Summer of 1998 to prepare Roma for the police academy. According to a Rom familiar with this program, there had been only twelve Romani police in the Czech Republic before this program; ten completed the course. The Bulgarian Government has also signaled its interest in increasing the number of Roma in its police forces: in September 1999, the Bulgarian Ministry of Defense reportedly signed an order for the appointment of 15 Roma in the Military Police structure.<sup>172</sup>

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<sup>169</sup> *Id.*

<sup>170</sup> In some areas, such as Plovdiv, Bulgaria, local Roma NGOs have become informal mediators between Romani communities and police.

<sup>171</sup> This approach is not without its skeptics: in Romania, some Romani leaders worry that efforts to recruit Roma to work with police place the latter in the position of becoming "informants" on their communities.

<sup>172</sup> See BTA news agency, in English 1321 GMT, 21 September 1999.

## 5. Specialized State Bodies to Combat Discrimination

In a number of countries, specialized government and/or parliamentary bodies dealing specifically with issues of discrimination have made a valuable contribution toward combating racism and other forms of discrimination. A well-known example is the United Kingdom's Commission for Racial Equality (CRE), which was established pursuant to the 1976 Race Relations Act. The CRE has several roles, ranging from advising the government generally about the functioning of the Race Relations Act to investigating potential violations and instituting enforcement proceedings against persistent violators before designated courts.

Another model that has proven effective in a number of countries is that of an ombudsman. In some countries, including Sweden and Hungary, several ombudsmen have been appointed to address distinct issues, such as discrimination against minorities. Ombudsmen may also be appointed at regional or local levels. While the functions of ombudsmen vary from country to country, it is common for these institutions to receive complaints from individuals who believe that government bodies have denied their rights in areas that are within the competence of the ombudsmen. It is also common for ombudsmen to have a mandate to recommend legislative changes.

Several countries that have significant Romani communities, including Hungary, Romania and Spain, have ombudsmen whose competence includes issues of discrimination against Roma. Perceptions of the efficacy of these ombudsmen of course vary from one country to another. While it is difficult to generalize, ombudsmen who play a highly visible role in identifying problems confronting Roma and promoting reforms to address those problems appear to enjoy significant legitimacy. In these circumstances, even critics who fault the institution of the ombudsman for lacking more vigorous enforcement powers appreciate the fact that their communities have an advocate in government - and this, in itself, can help narrow the chasm of mistrust between Romani communities and national authorities. The legitimacy of ombudsmen's offices within Romani communities is also likely to be enhanced when the ombudsman's staff include Roma.

A number of resources are available to governments that may wish to establish or strengthen such mechanisms. Examples of ombudsmen and other national mechanisms to combat discrimination have been compiled by ODIHR<sup>173</sup> and ECRI.<sup>174</sup> ECRI has also promulgated general principles that can productively guide governments in the establishment of such bodies.<sup>175</sup>

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<sup>173</sup> See "Ombudsman and Human Rights Protection: Institutions in OSCE Participating States," *supra* (note 11).

<sup>174</sup> See European Commission against Racism and Intolerance, Good Practices: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, April 1999.

<sup>175</sup> ECRI General Policy Recommendation No. 2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, 13 June 1997. Very useful recommendations relating specifically to Roma are set forth in another ECRI recommendation: See ECRI General Policy Recommendation No. 3, *supra* (note 62).

In determining the most appropriate model, two considerations are generally relevant. First, as in all areas of policy that have a significant effect on Romani communities, input from Roma should be assured in the process of shaping policy. Second, while this may be accomplished in a variety of ways, it is essential that an independent government agency be given both the responsibility and authority to enforce non-discrimination laws. While citizens must also have effective civil remedies for illegal discrimination, their private right of action is not a substitute for the government's paramount responsibility to enforce the law.

## 6. Legal Aid

Advocates for Roma frequently note that their clients are especially vulnerable to discriminatory practices because many lack basic knowledge about their legal rights and legal institutions. In the words of one Czech attorney, "It's a world they don't understand."<sup>176</sup> It is thus advisable that governments adopt measures aimed at facilitating access to justice for Roma. These may include establishing, funding and implementing effectively an entitlement to legal assistance for indigent persons, including but not limited to Roma, who have been charged with crimes and/or those bringing civil legal action in order to vindicate legal rights.<sup>177</sup>

## 7. Codes for Foreign Investors

In various sections of this report, I urge governments to ensure that Roma do not suffer discrimination in employment and to make efforts to recruit Roma to serve in government positions. These efforts can be productively complemented by policies adopted by foreign investors or donors that support Romani hiring and contracting. For example, foreign companies that establish factories in countries with substantial Romani communities could set a positive example by recruiting and training Roma. A foundation for such initiatives has been established by scores of multinational companies that have, in recent years, adopted codes of conduct governing their overseas operations. A central feature of many of these codes is that the companies will favor business partners that do not discriminate in their hiring practices.

One example is provided by Levi Strauss & Co., which has adopted an affirmative action policy in regard to recruiting and hiring Roma in the Hungarian town of Kiskunhalás, Hungary. At present, the factory – one of the largest employers in the city – employs three persons who identify themselves as Roma, and who were recruited according to this policy, which was developed consistent with Levi's "Global Sourcing and Operating Guidelines", which the company applies to every contractor. The terms of engagement utilized by Levi's in identifying local contractors stipulate that the company aims to "select business partners who follow

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<sup>176</sup> Interview, Prague, the Czech Republic, 9 April 1999.

<sup>177</sup> As noted above, the Hungarian Government has taken steps to promote access to legal aid for Gypsies in its package of medium term measures, which tasks the Office for National and Ethnic Minorities with providing support to "the activities of the legal aid organisations, institutions and those engaged in conflict prevention and management...[w]ith the intention of improving the opportunities of the Roma to enforce their interests as well as preventing and eliminating negative discrimination . . ." Hungarian Government Decision No. 1047/1999 (V.5) *supra* (note 137), at Section 5.5.

work place standards and business practices that are consistent with our company's policies."<sup>178</sup>

Similarly, international financial institutions that support development projects in countries with substantial Romani communities can make a productive contribution by including Roma employers and/or contractors in the programs they help finance.

## 8. Ethnic Data

Statistical data on the ethnic composition of populations is an important tool for establishing patterns of discrimination, for facilitating efforts to enforce legal prohibitions of discrimination and for assessing the efficacy of anti-discrimination and other policies aimed at improving the conditions of Roma. Such information is routinely requested from States by such bodies as the Committee on the Elimination of Racial Discrimination, the body that monitors States Parties' compliance with the Race Convention, and ECRI.<sup>179</sup>

However, more research is needed to address the legitimate concerns of minorities and others regarding the scope for misuse of such data. As recommended earlier in this report, a seminar or conference exploring the various dimensions of this issue in depth - perhaps in the context of how it has been addressed in various countries - could provide valuable insights and guidance to governments struggling to develop effective models for resolving these dilemmas. It is crucial that Roma play a central role in such discussions, and in the development of data collection policies.

## 9. Media

In view of the crucial role of the media in fostering and perpetuating racial stereotypes, programs aimed at ensuring more responsible media treatment of stories relating to Roma, consistent with international standards of freedom of expression, merit support. Initiatives of this kind have reportedly had a positive effect in a number of countries, including the Czech Republic, Hungary,<sup>180</sup> and Spain.<sup>181</sup> These programs should aim at discouraging racial stereotyping in media coverage on the one

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<sup>178</sup> Levi Strauss & Co., "Global Sourcing and Operating Guidelines", 1996, at pp. 3-9.

<sup>179</sup> See, e.g., Concluding observations of the Committee on the Elimination of Racial Discrimination: Hungary, *supra* (note 52), at paragraph 21 (recommending that "[a]dequate indicators and other means of monitoring the economic and social conditions of [Gypsies] should be developed"); *id.*, paragraph 22 (recommending that Hungary "provide, in its next report, statistical data on the minorities in different districts, on their representation in the local authorities, as well as recent data on their situation in the fields of education, culture, the media and employment"); Concluding observations of the Committee on the Elimination of Racial Discrimination: Italy, *supra* (note 52), at paragraph 108 (stating that the Committee would like "to be provided with full and up-to-date data on the composition of the population [and] on the 'social indicators' of non-integration of the least favored social groups of the population...").

<sup>180</sup> See, e.g. Hungarian Government Decision No. 1047/1999 (V.5.), *supra* (note 137), at Section 6; Hungarian Government Decision No. 1072/1998 (VI.22.).

<sup>181</sup> See Thirteenth Periodic Report of Spain to the Committee on the Elimination of Racial Discrimination, *supra* (note 58), at paragraph 58.

hand, and in promoting greater public understanding of Romani culture and access to the media by Roma on the other hand.

#### **10. Ratification of Conventions and Recognition of CERD's Competence to Receive Communications**

To enhance the protections available to their citizens who suffer discrimination, it is recommended that OSCE participating States that have not already done so consider ratifying both the Framework Convention and the Race Convention.<sup>182</sup> It is further recommended that States that have not already done so declare, pursuant to Article 14 of the Race Convention, that they recognize the competence of CERD to receive and consider communications from individuals or groups alleging violations of the Convention.<sup>183</sup>

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<sup>182</sup> See Copenhagen Document, paragraph 40.6 (participating States will “consider adhering, if they have not yet done so, to the international instruments which address the problem of discrimination and ensure full compliance with the obligations therein, including those relating to the submission of periodic reports”).

<sup>183</sup> See *id.*, at paragraph 40.7 (participating States will “consider, also, accepting those international mechanisms which allow States and individuals to bring communications relating to discrimination before international bodies”).



## IV. EDUCATION

In the realm of education as in other areas, the experiences of Roma range across a wide canvas. But disturbing patterns are nonetheless clear: in many OSCE participating States, Romani children encounter widespread discrimination and rejection in public schools. In countries with substantial Romani communities, it is commonplace for Romani children to attend schools that are largely comprised of Roma or to be relegated to Roma classes within mixed schools. In its most pernicious form, segregation is achieved by routing Romani children into “special schools” - schools for the mentally disabled - or into classes for mentally disabled children within regular schools.

In some countries, many Romani parents face a Herculean challenge trying to convince directors of public schools to accept their children. To succeed in this effort is no assurance that their children will be integrated into their schools. Across a wide range of countries, the stories are remarkably similar: directed to sit in the back rows, Romani children are effectively excluded from the classroom experience.

Beyond overt manifestations of bias, the educational experiences of Romani children reinforce broader patterns of exclusion: comparatively few find their own history and culture reflected in course materials. It is thus small wonder that many Romani children experience the classroom as an alien world - or, more aptly, a world in which they are the perennial outsiders.

Although not the sole factor, these experiences contribute to astonishingly low levels of school attendance by Romani children and high levels of illiteracy among Roma. In many OSCE participating States, only a fraction of Romani youth attend school beyond the primary level, and a tiny percentage receive education at university or post-graduate levels. These patterns compound the challenges Roma encounter in the realm of employment: poorly educated, many are ill-prepared to compete in an increasingly competitive job market.

### A. OSCE and Other International Standards

The patterns addressed in this section implicate several international standards.<sup>184</sup> First, to the extent that Romani children are prevented from even enrolling in ordinary primary schools, they are denied the right to education as guaranteed in Article 26(1) of the Universal Declaration, Article 13(1) of the 1966 International Covenant on Economic, Social and Cultural Rights (“ICESCR”), Article 28(1)(a) of the 1989 Convention on the Rights of the Child (hereafter, Children’s Convention),<sup>185</sup> and Article 2 of the First Protocol to the European Convention on Human Rights (1952).

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<sup>184</sup> For an overview of relevant standards, their background and some subsequent jurisprudence, *see* Patrick Thornberry and Dianna Gibbons, “Education and Minority Rights: A Short Survey of International Standards”, *International Journal on Minority and Group Rights*, Vol. 4, No. 2, 1996/97, pp. 115-152.

<sup>185</sup> Paragraph 13 of the Copenhagen Document encourages participating States to “consider acceding to the Convention on the Rights of the Child, if they have not yet done so.”

Second, the pervasive and varied forms of discrimination encountered by Romani children in the realm of education violate the fundamental right of non-discrimination in the enjoyment of protected rights. Within the CSCE/OSCE context, paragraph 63 of the 1989 Concluding Document of the Vienna Meeting of the CSCE (hereafter, Vienna Document) affirmed that CSCE participating States would “ensure access by all to the various types and levels of education without discrimination as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The general right of non-discrimination and equality in respect of national minorities was reaffirmed in paragraph 31 of the Copenhagen Document, and the Report of the Geneva Meeting made clear that this obligation requires participating States to “take the necessary measures to prevent discrimination against individuals, particularly in respect of . . . education, on the ground of belonging or not belonging to a national minority.”<sup>186</sup>

Third, patterns of segregation noted in this section violate Article 3 of the Race Convention, which provides: “States Parties particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”<sup>187</sup>

Fourth, the degrading treatment many Romani children encounter in public schools, particularly those who are inappropriately transferred to “special schools” for the mentally disabled, violate several international standards, including the following:

- Paragraph 40.4 of the Copenhagen Document, pursuant to which CSCE participating States undertook to “endeavor to ensure that the objectives of education include special attention to the problem of racial prejudice and hatred and to the development of respect for different civilizations and cultures”;
- Article 13(1) of the ICESCR, which provides in part: “The States Parties to the present Covenant . . . agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups . . .”
- Article 5(1)(a) of the UNESCO Convention against Discrimination in Education, which provides: “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all national, racial or religious groups . . .”

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<sup>186</sup> See also Article 2 of the Universal Declaration; Article 2(2) of the ICESCR; Article 2(1) of the Convention on the Rights of the Child; Articles 2 and 5(e)(v) of the Race Convention; and the UNESCO Convention against Discrimination in Education.

<sup>187</sup> See also the UNESCO Convention against Discrimination in Education, Article 1(1)(c) (defining discrimination to include “establishing or maintaining separate educational systems or institutions for persons or groups of persons”).

- Article 29(1) of the Children’s Convention<sup>188</sup> which provides in pertinent part: “States Parties agree that the education of the child shall be directed to:
  - (a) the development of the child’s personality, talents and mental and physical abilities to their fullest potential;
  - (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
  - (c) the development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which he or she may originate, and for civilizations different from his or her own;
  - (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origins . . . .”
- Article 6(1) of the Framework Convention, which provides: “The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons’ ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media . . . .”

In order to address the sources of prejudice, discrimination and intolerance (including hatred and violence) to which Roma are subjected not only in education but throughout their lives, OSCE participating States are committed to ensure that the educational curriculum for the whole population (i.e. also the majority) includes the teaching of tolerance and respect for human rights. Aside from the standards mentioned above, in paragraph 42.2 of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991) participating States recognized “that effective human rights education contributes to combating intolerance, religious, racial and ethnic prejudice and hatred, including against Roma, xenophobia and anti-semitism”. In interpreting relevant international standards, independent experts have agreed in The Hague Recommendations Regarding the Education Rights of National Minorities as follows:

19) In view of the importance and value that international instruments attach to intercultural education and the highlighting of minority histories, cultures and traditions, State educational authorities should ensure that the general compulsory curriculum includes the teaching of the histories, cultures and traditions of their respective national minorities.<sup>189</sup>

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<sup>188</sup>This Convention has 191 States Parties.

<sup>189</sup> For the full text of The Hague Recommendations, *see* International Journal on Minority and Group Rights, Vol. 4, No. 2, 1996/97, pp. 199-213.

Several patterns addressed in this section also implicate international norms relating to educational rights of minorities. Of particular relevance in this regard are paragraph 68 of the Vienna Document and paragraph 34 of the Copenhagen Document. The former provides that CSCE participating States “will ensure that persons belonging to national minorities or regional cultures on their territories can give and receive instruction on their own culture, including instruction through parental transmission of language, religion and cultural identity to their children.” The latter provides in pertinent part:

34) The participating States will endeavor to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue . . . In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities.

It is often asserted that the relevance of instruction in the mother tongue, as referred to in this provision,<sup>190</sup> is less pronounced for Roma than for other minorities. The basis for this claim is that, while many minorities place a high value on opportunities for education in the mother tongue, for Roma the paramount concern is that their children have adequate opportunities to learn the national language well enough to be educated in mainstream schools. While this is indeed a pressing issue, the generalization that opportunities to study Romani languages are not a priority for Roma is overdrawn. While views on the importance of such programs vary among Roma, growing numbers place great value on preserving - and, in countries where use of Romani languages was long forbidden - reviving their own language. In this connection, The Hague Recommendations Regarding the Education Rights of National Minorities state as follows: “1) The right of persons belonging to national minorities to maintain their identity can only be fully realized if they acquire a proper knowledge of their mother tongue during the educational process.”<sup>191</sup>

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<sup>190</sup> A variation of this provision appears in Article 14 of the Framework Convention. The second principle affirmed in paragraph 34 also has a counterpart in the Framework Convention. Article 12(1) provides:

The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

To this end, States Parties “shall *inter alia* provide adequate opportunities for teacher training and access to textbooks . . .” (Article 12(2).)

<sup>191</sup> On the importance of education of or in the mother tongue, see György Szépe, “Some Remarks on the Education Rights of National Minorities”, *International Journal on Minority and Group Rights*, Vol. 4, No. 2, 1996/97, pp. 105-113 at 107-108. On the essential objective and meaning of minority education, see John Packer, “The Content and Aim of Minority Education from the Perspective of the International Instruments”, *International Journal on Minority and Group Rights*, Vol. 4, No. 2, 1996/97, pp. 171-174.

## B. Illiteracy, School Attendance and Performance

In virtually every country examined in the course of this study, Romani children attend primary school at levels significantly below the national average; at the secondary and university levels, the disparity typically is drastic. For example, although a majority of Gitano children attend primary school in Spain, only an estimated one percent attend university. One regional study in Italy found that 1,814 Gypsy children were enrolled in primary schools, but only 193 were in “junior” school, the first few years of secondary.<sup>192</sup> In Hungary, more than 70 percent of Gypsy children attend primary school, but only 33 percent go on to secondary school and most of these attend trade schools. Less than one percent of Hungary’s Gypsy population has a degree in higher education.<sup>193</sup> Romani leaders in the fYROM estimate that as many as ten percent of school-aged Romani children never enroll in the first grade, half of those who do drop out by the fifth grade, and only 35-40 percent finish eighth grade. On average, only one Romani child per year finishes tertiary education.<sup>194</sup> The impact of these patterns is readily evident in rates of illiteracy. As a 1996 report of the European Commission concluded, when it comes to illiteracy and scholastic failure, “no other population shows figures approaching those of the Gypsy and Traveller communities.”<sup>195</sup>

On the positive side of the ledger, various initiatives aimed at improving the educational prospects of Roma have registered substantial gains. In countries where programs to address these problems have been implemented for substantial periods, there have been marked improvements in the attendance and achievements of Romani students.

But even in countries where government programs have substantially elevated levels of school attendance by Romani children, the gains have often been shallow. Increased levels of enrollment in primary school often have not led to corresponding improvements in levels of attendance or in matriculation in secondary school. This is notably the case, for example, in Spain and Hungary, where concerted government efforts have led to markedly increased rates of enrollment of Romani children in primary schools, but have had much less of an impact on levels of absenteeism and matriculation in secondary schools and universities.

These patterns result from a complex set of factors, reflecting broader patterns of interaction between Romani and non-Roma cultures. In a substantial number of countries, a key factor underlying many Romani children’s poor scholastic

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<sup>192</sup> These figures were provided in response to a survey undertaken by the European Commission. European Commission, *School provision for Gypsy and Traveller Children: Report on the implementation of measures envisaged in the Resolution of the Council of Ministers and of the Ministers of Education Meeting with the Council*, EC Doc. (89/C 153/02), com(96) 495 final, 22 May 1989, pp. 22-24 [hereafter, EC Report].

<sup>193</sup> Remarks of Gabriella Varjú, *supra* (note 63).

<sup>194</sup> Petrova, *supra* (note 79), at p. 9.

<sup>195</sup> EC Report, *supra* (note 192), at p. 11. The statistics cited above are, in respect of every country, best estimates based on inadequate data.

performance - and propensity to drop out of school early - is that they begin primary school with poor knowledge of the language of instruction.

From the viewpoint of many government officials and teachers, low levels of Romani school attendance and performance are due above all to parental attitudes: Formal education, they say, is not valued in Romani culture.<sup>196</sup> Like many stereotypes, this one has some basis in truth and obscures the far more complex reality, including the central importance of racial discrimination combined with the fear that Roma values and identity will be lost.

Romani culture, broadly defined, is surely relevant to the patterns noted above: although education within the family structure is deeply rooted in traditional Romani cultures, participation in formal public education is not.<sup>197</sup> Such education is not always regarded as a basic social cultural value by Romani communities, in contrast to non-Roma populations, and parents are not confident of the benefits to be derived, particularly where their own experience of schooling has been negative, as is often the case.<sup>198</sup> Furthermore, school as an institution entails a great deal that is at odds with traditional Roma socialization processes, alienating parents and pupils alike: "Strict timetables, immobility, group discipline and obedience to a single authority figure all conflict with Gypsy emphasis on immediacy, flexibility and shared authority. Moreover, and strangely for the gypsy child, school treats him as an individual rather than as a member of his family: brothers and sisters are separated by age, and parents have no say in the classroom".<sup>199</sup>

Although attitudes toward education vary widely, many parents fear that their children will lose their Romani identity in a non-Roma environment. Writing of Vlax Roma in the United States, Professor Ian Hancock explains their concerns in this

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<sup>196</sup> See, for example, a decree adopted by the Czech Ministry of Schooling, Youth and Physical Education in January 1998, which asserts:

The opinions of Romani families about education proceed from the basically lower educational levels of Romani parents, a lack of motivation on the part of Roma toward education, and their entirely different values system . . . .

Alternative Education Programme of Remedial Special Schools for Pupils of the Romani Ethnicity, programme no. 35 252/97-24, January 1998, *quoted in* ERRC, *A Special Remedy: Roma and Schools for the Mentally Handicapped in the Czech Republic*, Budapest, 1999, p. 34 [hereafter, ERRC Report].

<sup>197</sup> See Marushiakova and Popov, "Gypsy Minority in Bulgaria - Literacy, Policy and Community Development (1985-1995)", *supra* (note 24), ("Gypsy literacy exists within the traditional norms and values and is especially strong in the preserved groups and metagroup units . . . . Traditional literacy can function successfully and in reality it indeed does so, but it only concerns life within the specific community, while a different type of literacy, corresponding to the norms and criteria of the macrosociety, is needed in Gypsy relations with the macrosociety.")

<sup>198</sup> Andrzej Mirga, "Roma Children Education Policy Paper: Strategic Elements of Education Policy for Roma Children in Europe", Council of Europe Specialist Group on Roma/Gypsies, Council of Europe Doc. roma\mgsrom\doc97\97.11, Strasbourg, September 1997.

<sup>199</sup> Sinéad ní Shuinéar, "Growing up as a Gypsy: Insights from the October 1992 UNICEF ICDC Workshop", in Sandro Costarelli (ed.), *Children of Minorities: Gypsies, Innocent Insights*, UNICEF, International Child Development Center, Florence, Italy 1993, pp. 17-34, at p. 22.

regard, noting that formal schooling “requires that Roma enter the non-Romani world, which is seen as polluting and counter-cultural. Not only is the environment unclean - particularly with regard to the toilet and cafeteria facilities, but equally unacceptable would be the seating of boys and girls in the classrooms, and the topics addressed in the curricula. . . . Schools are seen not only as environments that do nothing to teach a child to be a better Gypsy, but which seem determined instead to homogenize and de-ethnicize that child.”<sup>200</sup>

These concerns derive special intensity from Romani historical experience of assimilationist practices, in which mainstream education played a central role:

Early modern policies, such as those of modernising Habsburg rulers Maria Theresa and Joseph II in the eighteenth century, attempted to change Roma into “Christians”, “new citizens” and “new farmers” by removing them from Romani families, placing them with non-Romani ones, and sending them to schools to have their difference educated out of them. These strategies were echoed in CEE countries after World War II as governments used schools to enforce policies of assimilation - Roma were forcibly settled, expected to conform closely to rigid standards of sameness, and display a demonstrative loyalty to the ethnic majority. Romani children were to learn such norms by having their Romaniness removed in school, and their culture itself was viewed as a package made up of social disadvantage and deviance which a tide of systematic schooling would cleanse.<sup>201</sup>

The wholesale failure of most schools to reflect Romani history and culture in their curricula reinforces these apprehensions.

But these concerns do not negate the profound desire of many Romani parents to ensure that their children are educated. Even Roma who share the concerns noted by Professor Hancock are often deeply committed to enhancing the educational prospects of Romani youth.

One of the notable features of the contemporary era of Roma activism is the emergence of a new generation of Romani leaders who are committed on the one hand to reviving Romani culture, and on the other hand to helping their communities adapt to the challenges of a post-industrial age - a period where there is radically diminished opportunity to survive by the traditional trades that have heretofore

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<sup>200</sup> Ian Hancock, “The Schooling of Romani Americans: An Overview,” Keynote Paper, Second International Conference on the Psycholinguistic and Sociolinguistic problems of Roma Children’s Education in Europe, Varna, Bulgaria, 27-29 May 1999.

<sup>201</sup> Claude Cahn, David Chirico, Christina McDonald, Viktória Mohácsi, Tatjana Peri and Ágnes Székely, “Roma in the educational systems of Central and Eastern Europe,” Roma Rights, Summer 1998, ERRC, Budapest. *See also* Liégeois, *supra* (note 20), at pp. 206-207.

sustained Romani across centuries. For these Roma, public schools - historically the embodiment of State policies of forced assimilation - are now the repository of both their aspirations and apprehensions. Describing a conference in which Roma educators had participated, one summarized the dilemma they confront this way: "One of the conclusions we arrived at was that the School is the favorite place for Non-Gypsy societies to impose its colonization over our Culture, but at the same time, the School constitutes the best tool within our powers to obtain the emancipation of our People."<sup>202</sup>

Throughout the inquiry underlying this report, Romani parents repeatedly stressed the overriding priority they attach to improving their children's access to education and scholastic achievement. In their experience, the principal explanation for poor attendance and performance levels of Romani youth lies not in "Roma values," but in their children's experience of racism in public schools. Indeed, it is difficult to exaggerate the extent to which discrimination defines the daily experience of many Romani children. This is not to say that a hostile school environment is invariably the experience of Romani children; many have thrived under the tutelage of highly committed teachers.<sup>203</sup> But for many Romani children, it can be a challenge even to enroll in a regular public school. In a number of countries, gains in this area are frequently offset by the reaction of non-Romani parents - removing their children from schools that, in their view, have too many Romani children.

It has often been noted that Romani girls are withdrawn after the first five or six years of primary school, either because they are to be married, their parents fear romantic involvement with non-Romani boys, they are expected to work at home, or for other reasons; adult educational programs for Roma similarly fail to attract many female participants. Attempts to improve the educational opportunities for Romani women, in line with Article 10 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (hereafter, Women's Convention), should be approached both with sensitivity to the cultural context and willingness to show creativity in developing alternative programs; involving Romani women in the development of educational programs for Romani girls and women will go a long way towards ensuring this outcome.<sup>204</sup> At a recent international conference of Romani

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<sup>202</sup> Paper presented by Nicolás Jiménez González, "Schooling of Gypsy Infancy in Spain", Seminar on Integration and Education of Gypsy Children, Snekkersten/Elsinore, Denmark, 1-4 April 1993.

<sup>203</sup> Furthermore, experience tends to demonstrate that in places where space has been given to Romani language and culture in the school curriculum, the level and consistency of the school attendance of Romani children improves. The Finnish Advisory Board on Romani Affairs, for example, notes that "Romani children have participated actively in the teaching of the Romani language, and even those children and young people who have been fed up with school have found again the meaning of learning and attending school." "Roma and Sinti policies from ideas to implementation putting 'best practices' in the Human Dimension into operations - Finland's example", Paper submitted by the Advisory Board on Romani Affairs, Finland, at the OSCE/Supplementary Human Dimension Meeting on Roma/Sinti Issues, 6 September 1999.

<sup>204</sup> The importance of education for women is recognised in the Council of Europe Parliamentary Assembly Recommendation 1203 on Gypsies in Europe, 1993, which states that in the field of education: "special attention should be paid to the education of women in general and mothers together with their younger children".



women,<sup>205</sup> participants called for “specific measures of the Ministry of Education to address Romani women.” They specifically recommended the employment of Romani women as “schooling mediators,” to work both within schools and within Romani communities; where traditions lead to the discontinuation of formal schooling, mediators would be well-placed to design and implement programs of vocational training or alternative education.

The extreme poverty of many Roma often serves as further impediment to their children’s attendance at school. Some Romani parents are reluctant to send their poorly clad children to school, fearing they will face derision. Many simply cannot afford to send their children to school. In a number of countries with cash-strapped economies, even public education is costly: parents have to pay for textbooks, school supplies and meals - expenses that impoverished families simply cannot bear. In addition to these obvious financial obstacles, the Romani child’s social and family background may negatively affect their educational performance. For instance, poor housing conditions of the family have been found to have a negative impact on children’s performance; cramped, noisy living conditions are not conducive to study. Parental health problems and unemployment often make for a troubled family life.<sup>206</sup> A World Bank study in Hungary found that some 70-75 percent of children interviewed in the course of their research did not have a stable family background as parents had divorced or one or both parents had died.<sup>207</sup>

Although many Romani parents would like their children to stay in school long enough to obtain basic literacy skills, believing these are essential to their children’s long-term prospects, some wonder whether further education will advance their children’s interests. This calculation cannot be dismissed as irrational: in many countries with substantial numbers of Roma, Romani youth who graduate from secondary school face bleak employment prospects. And while the economic benefits of advanced education are highly speculative, the costs are immediate: barely able to make ends meet, many Romani parents may need older children to assist in the family trade or, in the case of daughters, to help care for younger children while the parents work. In the words of one Bulgarian Rom, for poor Romani families, “education isn’t as important as survival.”<sup>208</sup> Finally, the impoverishment of many Romani families has had a devastating effect on their health - and this, too, affects school attendance and performance.

In these and other respects, Romani children face a raft of challenges. The subsections that follow address several of the most troubling challenges, and describe various initiatives that have been undertaken to meet them.

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<sup>205</sup> “Romani Women and Public Policies in Countries of Central and Eastern Europe”, Report on the international conference organized by Association of Roma Women in Romania, 3-4 December, 1999, Bucharest.

<sup>206</sup> Eva Hegyesi-Orsós, Evaluation of the Effectiveness of Alternative Secondary School Models for the Education of Roma Children, World Bank Regional Office, Hungary, (forthcoming), p. 32.

<sup>207</sup> *Id.*

<sup>208</sup> Interview, Sofia, Bulgaria, 20 May 1999.

### C. Racially-Segregated Schools and Classes<sup>209</sup>

It is not hard to fathom why racially-segregated education played a key role in triggering some of the major human rights movements of our time. From South Africa to the American South, schools divided by race epitomized the inhumane premise of institutionalized racism. It is thus a matter of the deepest concern that segregated schooling of Romani children is common in several OSCE participating States.

The way in which patterns of segregation emerged varies from country to country. In some, the phenomenon of “Roma schools” is at least partly a function of segregated living patterns. For example, many Romani children attend Roma schools in Bulgaria in large part because they live in predominantly Roma neighborhoods. While some Roma neighborhoods are the product of comparatively recent housing programs, many are derived from the Ottoman-era *mahala* system of ethnically-distinct neighborhoods. In the late 1940s and early 1950s, the government built schools in Roma neighborhoods pursuant to its broader efforts to ensure equal education for all Bulgarian citizens. Since students attended schools according to the region where they lived, this effectively resulted in the creation of Roma schools.

Over time, the Roma schools began to decline vis-à-vis non-Roma schools. In the view of two leading authorities on Bulgarian Roma, Elena Marushiakova and Vesselin Popov, this was due in large measure - though not exclusively - to anti-Roma prejudice.<sup>210</sup> That many Romani children began school without a strong command of the Bulgarian language also contributed to the comparative decline in those schools, as did the fact that Romani schools tended to have more students than other schools.

In the 1970s, Bulgarian education policy began to distinguish among schools, giving some - many of which had predominantly Romani student bodies - a special status. The idea underlying these schools, known as schools for “intensified labor education,” was that there were children who could not succeed in higher education and who should therefore be prepared for menial jobs. Although this policy did not establish “Gypsy schools” as such, it had the effect of legalizing segregation - and further entrenching the idea that Roma schools were inferior.

Although the special status of these schools was abolished after the transition to democracy in Bulgaria, de facto segregation persists - and not simply as a by-product of segregated neighborhoods. Many regions have both schools with predominantly Roma students and schools whose students are principally ethnic Bulgarians. Even when Roma children are legally entitled to attend the latter, some school directors reportedly discourage parents from enrolling their children, suggesting they go instead to the neighboring - predominantly Roma - school. Although the Roma schools tend to be substantially more crowded than others, school principals have at times told

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<sup>209</sup> The most disturbing manifestation of this phenomenon - achieving segregation by sending Romani youth to schools for the mentally disabled - is addressed in subsection E, *infra*.

<sup>210</sup> Interview, Sofia, Bulgaria, 17 May 1999.

Romani parents that their schools are already filled to capacity. In some areas that have mixed schools, Romani children are placed in separate classes.

These patterns are by no means uniform; many Bulgarian schools are genuinely mixed, particularly in smaller towns and villages. Those who are fortunate enough to have unbiased teachers have thrived in this environment. As their experiences make clear, the chief barrier to Romani achievement in education is not the attitudes of Roma parents but, all too often, the biases of educators.

While de facto segregation of Romani children is often justified as an unintended by-product of non-racial factors, in many instances prejudice seems the only plausible explanation. For example, Gypsy children at the Ferenc Pethe school in Tiszavasvári in eastern Hungary were assigned to separate classes, not permitted to use the gym, and forced to graduate in a separate ceremony from non-Gypsy students in 1997. The discrimination was so clear that a Hungarian court of first instance ruled that students who filed suit had suffered discrimination based on ethnicity - the first time a Hungarian court had ruled on discrimination against Gypsies in schools. On 22 April 1999, the second instance County Court of Szabolcs-Szatmár-Bereg county in central Hungary upheld the decision of the first instance court.

Although Hungary's courts ultimately vindicated the rights of students at the Ferenc Pethe school, one aspect of Hungarian law discriminates *prima facie* between Gypsy and non-Gypsy children. The 1993 public education law provides for a national and ethnic minority normative allowance to support special programs which promote and develop minority identity (i.e. language classes, cultural programs, etc.). Controversially, the law stipulates that in the case of Gypsy children, this normative allowance should be utilized to fund special "catch up" programs. One Hungarian educator summarizes the operation of the law, which discriminates against both Gypsy and non-Gypsy children, this way:

Lots of Gypsy kids need remedial classes; but so do lots of kids who merely come from disadvantaged backgrounds. I don't know on what grounds it has been decided that Gypsy children should be shut out from the same possibilities available to children of any other nationality - they have a culture, too; they have a language, too. This money is for national minorities, but some children are accorded positive discrimination on the basis of their ethnicity - cultural classes, national song and dance, language classes - while others, the Gypsies, because of their socially disadvantaged situation, are determined to be in need of remedial classes - as if possessed of some special disadvantage on the basis of their ethnicity. In all the other cases the law is positive; the same law, however, treats Gypsies as a kind of 'negative minority,' which has yet to be brought up to the level of all the others.<sup>211</sup>

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<sup>211</sup> Anna Csongor, *quoted in* Human Rights Watch/Helsinki, *Rights Denied: the Roma of Hungary*, New York, July 1996, p. 70.

Hungary's Parliamentary Commissioner for National and Ethnic Minority Rights agrees that the law is discriminatory. In his 1998 report on education of minorities in Hungary, the Commissioner observed:

According to Section 45(2) of the Act.gen.ed it is possible to create special frameworks of education in order to reduce the educational disadvantages of the Gypsy minority. We consider the above regulation of the Act.gen.ed as extremely disquieting in its wording, since it talks about the disadvantages of the Gypsy minority and not of certain students. Thus it practically suggests that the Gypsy minority as a minority has disadvantages in terms of education which is indubitably untrue....<sup>212</sup>

The Parliamentary Commissioner also condemned "the education of Gypsy children in separate classes without any special educational programme and without the approval of their parents." He continued:

We have no precise information as to the number of Gypsy classes of this type functioning in Hungary but after comparing legal regulations we may declare that the organisation of separate Gypsy classes which are operated without a Gypsy catch-up programme, or on the basis of a programme which is not in accordance with the Directive for the School Education of National and Ethnic Minorities, as well as run without the knowledge and agreement of the parents is against the law, since it constitutes the negative discrimination of Gypsy students. . . . Where separation is not justified either for reasons of minority rights or for educational reasons, the organisation of students into integrated (mixed) classes is advisable.<sup>213</sup>

If the injustice of racial segregation is manifest, experience has taught that there are no easy paths toward reversing its legacy. What is clear, however, is that governments must summon the will to meet that challenge through an unstinting commitment of political leadership as well as material resources. By equal measure, they must find the solution with, and not for, Roma.

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<sup>212</sup> Report by the Parliamentary Commissioner for National and Ethnic Minority Rights regarding the comprehensive survey of the education of minorities in Hungary, 1998, p. 17.

<sup>213</sup> *Id.*, at pp. 17-18.

#### **D. Exclusion from Enrollment**

As already touched upon in the preceding subsection, Romani parents often encounter resistance when they try to enroll their children in mixed or predominantly non-Roma schools. Several women in the Bulgarian town of Plovdiv described the barriers Romani mothers have encountered when trying to enroll their children in predominantly non-Roma schools. They claim that the headmaster of one school in the Stolipinovo neighborhood accepts only four or five Romani children out of every hundred students. According to these mothers, the headmaster explains that the school does not have any more places when, according to them, spaces are still available. This response is a matter of deep concern to the mothers; they believe that Romani children learn more when they are educated with non-Roma children, in part because this forces them to learn to speak Bulgarian which, in turn, enables them to acquire other knowledge. Further, in the view of a young Rom who began his education in a Roma school and then transferred to a mixed school, “teachers in Roma schools teach in an elementary way; they don’t demand that much from the children.”<sup>214</sup>

In the Romanian city of Timișoara, parents encountered so many barriers in this regard that they prevailed upon a Romani educator to organize an alternative educational program in her home. Located near the western border of Romania, Timișoara has large numbers of Romani families who migrated abroad in the early 1990s, principally to Western European countries, and who were forced to return home by the countries to which they had emigrated. In a number of instances, parents encountered resistance when, upon their return, they attempted to enroll their children in public school.

Having lost several years of schooling during their years abroad,<sup>215</sup> these children would have been older than most of their classmates if they had been allowed to register. Although this should not have prevented their enrollment, many were, their parents recalled, denied the right to register on the grounds that they were “too old.”<sup>216</sup> According to one mother, the teacher and principal of her son’s school at first said her son could not register because he had missed the first two weeks of class, and finally relented when she argued that her son would be much older than his classmates if he had to wait another year to begin school. Another mother reported that the principal of a local school rejected her seven-year-old Romani child without explanation, saying only “you must go to the other school.” A number of children lost a year of schooling because of paperwork: their parents, citizens of Romania, were required to track down birth certificates of the children, who had been born abroad.

These experiences took place against the backdrop of widespread discrimination against Romani children in Timișoara’s public schools. It has been a

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<sup>214</sup> Interviews, Plovdiv, Bulgaria, 19 May 1999.

<sup>215</sup> Although some of the children in question attended school while abroad (not a few of them thrived; among those who emigrated to Germany, many quickly mastered the German language), the local schools in Timișoara did not recognize their foreign schooling for purposes of placement.

<sup>216</sup> Interviews with Romani parents, Timișoara, Romania, 12-13 June 1999.

common experience for them to be directed to sit in the back row of classrooms, where they are ignored by teachers.<sup>217</sup> Accounts of physical assaults of Romani children by non-Romani classmates are not infrequent, and some report having been kicked or hit by teachers. When their parents have raised these problems with the school principal, they have encountered responses along the lines of “if your son was beaten, it must have been his fault.” After such experiences, some Romani children have been unwilling to return to school.

In the beginning of the school year 1999, the Romani educator found that children were being redirected to her home school program by a teacher from the nearby public school, despite the fact that she has been unsuccessful in repeated requests to local authorities for the use of classroom space.

### E. “Special Schools”

Perhaps no legally-sanctioned practice affecting Roma is more pernicious than the phenomenon of channeling Romani children to “special schools” - schools for the mentally disabled.

This section focuses on the illustrative case of the Czech Republic, but the practice of routing Romani children to classes for mentally disabled children within regular schools is also prevalent in the Slovak Republic and Hungary.<sup>218</sup> Although the practice is less prevalent in Bulgaria and Romania, in both of these countries Romani children appear to be disproportionately referred to such schools or classes.

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<sup>217</sup> This phenomenon is scarcely limited to the region of Central and Eastern Europe. Describing the educational experience of Romani and Traveller children in England and Wales, Donald Kenrick writes:

Within schools, prejudice against Romanies continues in many subtle and unsubtle ways. Children told researchers, during an investigation some years ago for a report for the European Community, that they had been left to draw at the back of the class, of exclusion from Christmas parties, even of not getting commemorative spoons on the occasion of Prince Charles’s marriage.

Donald Kenrick, “The education of Romanies and other Travellers in England and Wales,” in *Roma Rights*, Summer 1998, *supra* (note 201). A report published by the United Kingdom’s Office for Standards in Education (OFSTED) in March 1999 found that “the level of hostility faced by Gypsy Traveller children is probably greater than for any other minority ethnic group.” See “Government report finds Gypsy Travellers particularly hindered in UK schools,” *Roma Rights*, No. 2, *supra* (note 82).

<sup>218</sup> In the view of Hungary’s Parliamentary Commissioner for National and Ethnic Minority Rights, [t]he great number of Gypsy students in [special schools], which offer limited opportunities for higher education and integration into society, is not due to the intellectual deficiency of Gypsy students, but to discrimination, and is a sign of the pedagogical failure of the normal institutions of public education. Hungarian Parliamentary Commissioner on National and Ethnic Minority Rights, Report on Special Schools in Hungary, August 1999, Section 1 (*unofficial translation*) [hereafter, Report on Special Schools in Hungary]. The same source refers to a sociological study which estimated that in 1998 Gypsy students constituted 94 percent of the special school population in Borsod-Abaúj-Zemplén county (in eastern Hungary). See *id.* at Section 4.2.

A recent policy resolution by the Czech Government estimates that “approximately three-fourths of Romany children attend special schools for children with light mental defects, and that more than 50 percent (estimations are again close to three-fourths) of all pupils attending special schools are Romany children.”<sup>219</sup>

Sending Romani children to schools for the mentally disabled has effected a particularly degrading form of segregation - one that brands Romani children as mentally defective and consigns them to a life in which their brightest prospect is menial work. As one former special education teacher put it, graduating from such a school at best provided Romani children the opportunity to assist a carpenter; they could not even theoretically qualify as professional carpenters.<sup>220</sup> Until recently, Czech law generally prohibited children who completed such schools at the primary level from matriculating in mainstream secondary schools.<sup>221</sup> They were legally eligible to apply only to a technical training center or a practical school, which prepares students “for the performance of simple tasks.”<sup>222</sup> In October 1999, the Czech Chamber of Deputies – on the recommendation of the cabinet – approved an amendment to the School Act, by which graduates of special schools are granted equal access to secondary schools if they pass the entrance examinations.<sup>223</sup>

Many educational authorities in the Czech Republic concede that the overwhelming majority of Romani students who are sent to special schools are not mentally disabled. Why, then, do they end up there?

A key part of the answer lies in the role of psychological evaluations. Under Czech law, any of the following can recommend placing a child in a special school: “the pupil’s legal guardian, the school already attended by the pupil, an educational psychologists’ center, a health establishment, an organ for family and child care, an education center or a diagnostic institute of social care for mentally-handicapped youth.”<sup>224</sup> Both by law and in practice, psychologists play a key role in the process of referring children to schools for the mentally disabled.<sup>225</sup> As the ERRC has

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<sup>219</sup> Czech Republic, Government Policy Concept, *supra* (note 135), at p. 11.

<sup>220</sup> Interview, Ostrava, Czech Republic, 10 April 1999.

<sup>221</sup> The one qualification was that, pursuant to a 1995 decree of the Ministry of Schooling, Youth and Physical Education, students who were inappropriately sent to special schools in the 1970s and ‘80s could take a requalification course and, if they passed a requalification examination, they were eligible to take the entrance examination for mainstream secondary schools.

<sup>222</sup> 1997 Schools Law, Article 32a(1). Similarly, in the Slovak Republic children who complete the program at a primary-level special school can continue their education only at remedial technical schools that provide training for low-skilled labor. *See* Cahn et al., *supra* (note 201).

<sup>223</sup> Experience in Hungary, where legislation to similar effect was amended in 1992, shows that children completing remedial primary schools there in practice do not proceed to regular secondary schools. *See* Report on Special Schools in Hungary, *supra* (note 218), at Section VI.

<sup>224</sup> 1997 Special Schools Decree, Article 7(2).

<sup>225</sup> ERRC Report, *supra* (note 196), at pp. 42 and 49.

chronicled, the evaluation process is highly discretionary - allowing large scope for the influence of racial biases.<sup>226</sup>

Equally important, tests used to measure the intellectual ability of students are culturally-specific; they include questions whose frame of reference is that of the dominant society. Thus, Romani children may and often do get questions “wrong” because they simply lack familiarity with such concepts as “insurance companies” or “cutlery.”<sup>227</sup>

This phenomenon is not unique to the Czech Republic. Educational specialists in Hungary, where Romani children are frequently referred to special schools, describe testing processes there in which children are asked to answer questions that invoke concepts that are basic in Hungarian culture - and unknown in Romani culture.<sup>228</sup>

Similar problems in understanding stem from linguistic differences between Romani children and their teachers. In the Czech Republic, for example, educators sometimes refer Romani children to special schools because they appear unable to comprehend their teachers’ questions. But the impediment is not a mental impairment; rather, it is a linguistic barrier. As noted, many Roma children speak a Romani dialect at home, or their parents speak a significantly different version of the national language than that spoken at school. Even when a Romani child’s family ostensibly speaks the language in which public school is taught, vast cultural differences can make for profound gaps in communication. The ERRC describes this phenomenon:

[C]ommunication depends heavily on non-linguistic signals. Romani children, coming from Romani environments, often meet with non-Romani culture for the first time on their first day of school. Here they are confronted with the extremely alien figure of the (in almost all cases) non-Romani teacher. They do not understand this person and their almost completely alien system of signals and sounds. As a result, even in cases in which the home language of the Romani child at issue is Czech, there is a strong probability that the Romani child will not understand what is being said to her.<sup>229</sup>

Many teachers realize that Romani children perform poorly in school because of their deficient knowledge of the Czech language rather than because of a mental impairment. But, as one Czech educator explained, teachers “had no time to teach

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<sup>226</sup> See, e.g., *id.* at pp. 52 and 57.

<sup>227</sup> See *id.* at pp. 54-55.

<sup>228</sup> E.g., Interviews, Nagykanizsa, Hungary, 16 April 1999. See also Report on Special Schools in Hungary, *supra* (note 218), at Section 7.4.

<sup>229</sup> ERRC Report, *supra* (note 196), at p. 65.



them more, so it was easier to send them somewhere else.” In his words, while there may well be problems that lead school authorities and psychologists to route Romani children to special schools, “there is a different problem than their inability to be educated.”<sup>230</sup>

In addition to their deficient knowledge of the language of instruction, these problems often include difficulties adapting to a new environment. Behavioral patterns that others take for granted may be alien to a Romani child. One Czech teacher who has taught many Romani children offered an example: “Mostly they have no toys [at home], so they have no feeling of owning something. They have to learn certain new things of European culture.”<sup>231</sup> However, many teachers find it easier to refer the child to a special school than to take the time to educate her.<sup>232</sup>

By law, the consent of a child’s legal guardian is required before she can be enrolled in a special school in the Czech Republic.<sup>233</sup> In practice, according to the ERRRC, Romani parents are often pressured to consent or are misled about the consequences of their consent. Sometimes, the ERRRC has found, the requirement of parental consent has been disregarded.<sup>234</sup> Even when consent is freely given, it may signify above all resignation to a disturbing reality: knowing that their children will be isolated, neglected, and in all likelihood left behind in the regular schools, parents may readily follow the opinion of a psychologist that their children will receive more attention and support in a special school. Further, many Romani parents prefer to keep their children together. Thus, once they have placed their oldest child in a special school, parents may be more inclined to agree to send their younger children there as well.

The most compelling - though deeply flawed - argument made for referring Romani children to special schools is that, however inappropriate, this alternative may be the best option available in an imperfect system. Defenders of the practice argue that, if kept in regular schools, many Romani children will rapidly fall behind because of their comparatively weak language skills. In special schools, it is asserted, they will learn at their own pace and receive greater attention from their teachers.

In several countries, financial incentives operate to draw or keep students in special schools. In Hungary, schools receive a state financial quota for each student

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<sup>230</sup> Interview, Ostrava, the Czech Republic, 10 April 1999.

<sup>231</sup> *Id.*

<sup>232</sup> It is often difficult to separate linguistic barriers from perceived behavioral problems. Describing similar abuses in relation to special schools in Hungary, one educator explained that, although most of the country’s Gypsies speak Hungarian as their first language, the Hungarian they speak at home has a different grammatical structure than that spoken by ethnic Hungarians. When they begin school, their teachers often “conclude that these children are really stupid.” Further, because Gypsy children at first do not know how to speak to their teachers, the latter may perceive them as being “really impudent . . . , when in fact it’s just that the child has a different language structure.” Interview, Pécs, Hungary, 15 April 1999.

<sup>233</sup> 1997 Special Schools Decree, Article 7(1).

<sup>234</sup> ERRRC Report, *supra* (note 196), at pp. 42-46.

enrolled in special education in addition to the regular quota schools receive for each child.<sup>235</sup> Directors of special schools may therefore have a disincentive to recommend that their students be transferred to a regular school. In both Bulgaria and Romania, all costs associated with special education are covered by the State, providing an inducement for poor Romani parents to assent to their children's transfer to such schools.

While the question of how best to end the practice of channeling Romani children to special schools is complex, one step in the right direction can be readily taken in the short-term: States should eliminate financial incentives for schools and parents to transfer children to special schools. This is not to say that States should not provide supplemental financial support to assist children who need special educational programs. Rather, such support should be made available in a manner that does not skew placement decisions in favor of "special schools" for financial reasons.

In those States where Romani youth are disproportionately referred to schools for the mentally disabled, governments should commit themselves to abolishing this practice as a matter of the highest priority. Notably, the Czech Government has taken a first step in this direction: it has formally committed itself to ending abuse of the special schools.<sup>236</sup>

But if the urgency of ending this practice is manifest, the question of how best to do so is more complex. Most Romani children who were inappropriately sent to special schools would fare poorly if they were immediately transferred to regular schools, as the level of educational performance at special schools is significantly lower than that at regular schools.

In the view of some Romani activists in the Czech Republic, there should be a period of transition during which special schools that are, in the ERRC's terminology, "Romani ghettos" would be transformed into transitional Romani schools. During a period of several years, students at these schools would be prepared to make the transition back to normal schools. The obvious risk, however, is that these schools would continue to be special schools by another name.

What is needed, of course, is a program in which Romani students who have been inappropriately referred to special schools receive the support necessary to prepare them either to transfer to a regular school or to take an examination that

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<sup>235</sup> Describing the system in her country, one Hungarian teacher said that the special schools "get more money, but they don't provide more services. In most cases, they're worse than regular schools." Interview, Nagykanizsa, Hungary, 16 April 1999.

<sup>236</sup> Czech Republic, Government Policy Concept, *supra* (note 135), at p. 11. The government is also working to develop a new education law and is evaluating the testing practices that lead to inappropriate transfers of Romani children to special schools. Notably, the Czech Ministry of Education, Youth and Physical Education has recently introduced a "re-codification of the applied psychological tests, and retraining of the psychologists of pedagogical and psychological guidance centers for correct diagnostics of Romany children." Comments Prepared by the Czech Government, *supra* (note 66), at p. 2.

would enable them to obtain a diploma equivalent to that of a regular school.<sup>237</sup> But thoughtfully-designed phase-out programs are not enough: it is also necessary to address those aspects of mainstream education that prevent Roma from enjoying the same prospects for academic achievement that other children enjoy.

In this regard, States in which Romani children are inappropriately referred to special schools must be prepared to pursue far greater flexibility and innovation in their educational strategies than has heretofore been common.<sup>238</sup> It is not a solution to say that Romani children must adapt to the prevailing classroom environment; schools, too, must adapt.

It is encouraging to read in the Czech Government Policy Concept that a radical change in the present system of education for the Roma is envisaged. The Concept states:

The Government will create conditions for a change of educational system in order to ensure that Romany children will be as successful as the others. In order to achieve this goal we shall use methods of pulling down language barriers, preparatory classes, Romany language as supplementary teaching language, Romany assistants at schools, and, in particular, [an] individual approach to students. The system in which a large majority of Romany children pass through special schools and thus . . . are assigned to the last qualified work for their whole lives will be replaced by a system of flexible, permeable, equalizing classes at elementary schools with [a] smaller number of pupils than in normal classes.<sup>239</sup>

It is to be hoped that this new approach will soon be put into practice.

Above all, as argued already, racial biases must be eliminated from schools. But also, educators must become literate in the skills of multi-cultural teaching - an area in which significant strides have been made in recent decades.

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<sup>237</sup> In this regard it may be worth studying the experience of Spain. When the government began incorporating Gitano children into schools, they for a time attended bridge schools until they were prepared to enter regular schools.

<sup>238</sup> In this respect there are notable differences between the general approach of educational programs in Central and Eastern European countries on the one hand, and Western Europe on the other hand. The educational systems in the former tend to be rigorous and inflexible, placing heavy emphasis on memorization. Students who do not thrive in this setting tend to be streamed into programs with comparatively low aspirations; in the case of Romani students, these include in particular "special schools." See Claude Cahn et al., *supra* (note 201). In contrast, the general trend in Western Europe has been "towards diversified, flexible support measures, and no longer towards the development of parallel structures with their inherent risk of segregation." EC Report, *supra* (note 192), at p. 27.

<sup>239</sup> Czech Republic, Government Policy Concept, *supra* (note 135), at pp. 10-11.

An elementary school in Ostrava, the Premysl Pitter School, provides one model of how schools can more effectively respond to the distinct culture of its students while ensuring that they receive an education commensurate with their potential for academic achievement. The school, which is run by the Catholic organization Caritas, was founded in 1994 by several educators who had previously taught at special schools in Ostrava.<sup>240</sup> In their experience, many of the Romani students in special schools “shouldn’t be there.” These teachers were also concerned about the fact that, when these students graduate from a special school, “their possibilities are very limited.”<sup>241</sup> And so they established the Premysl Pitter School to provide quality education to students who might have difficulty in most schools but who would thrive given the proper pedagogical support. Although not restricted to Romani children, the Premysl Pitter School has a student body that is 95 percent Romani.

Teachers at Premysl Pitter seek to make the classroom a less alien place for Romani children. To this end, the school employs seven Roma assistants to work with the teachers.<sup>242</sup> Because this enables Romani children to see someone from their community in a position analogous to that of a teacher, “they receive [what is taught] better.” The Roma assistants also bridge the communication gap between Romani children and their teachers - an especially important function during the first year or two of schooling, before Romani children have been able to develop a strong command of the Czech language.<sup>243</sup>

The school also incorporates aspects of Romani culture, such as music and dance, in its programs. Another important aspect of its approach is that it welcomes Romani parents, some of whom come to the school every day while others come for special programs. This enables parents to develop a sense of confidence in the school environment.

The Premysl Pitter School employs a social worker, who helps maintain social contact between the school and students’ families which, in turn, further enhances parental confidence in the school. Equally important, the social worker is able to help families address problems that, if not resolved, could have a deleterious effect on the child’s education. The social worker has, for example, assisted families in addressing problems with their flats and with social benefits, as well as medical problems.<sup>244</sup>

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<sup>240</sup> Although founded by a church organization, the school receives most of its funding from the government.

<sup>241</sup> Interviews, Ostrava, Czech Republic, 10 April 1999.

<sup>242</sup> Few Czech Roma have the qualifications to become teachers themselves. The assistants employed by the Premysl Pitter school have to graduate from a ten-day course in psychology and pedagogy at the New School in Prague.

<sup>243</sup> The Czech government has launched a pilot project at ten schools to employ and evaluate the use of Roma teachers’ assistants.

<sup>244</sup> Variations on this model figure in a number of programs aimed at improving the educational prospects of Romani children in various OSCE participating States. Like any model, this one appears to have had positive results in some instances, but may not be the most appropriate model in others. The National Gypsy Council, an NGO in the United Kingdom, faults what it considers an otherwise positive program of providing education to Travellers because professionals in some areas

Finally, the Premysl Pitter School makes a concerted effort to overcome the language barrier that, in the view of the school's teachers, is the key problem confronting Romani students. In addition to the assistance provided by the Romani assistants, the school has a "zero class" - a pre-kindergarten class aimed at preparing children for kindergarten. This year, it has obtained permission from the government to offer an additional hour of Czech language instruction until the fourth year.

It is too soon to be able to measure whether these aspects of the school's program will enhance the long-term prospects of its students. What seems clear, though, is that its students - and their families - are more enthusiastic about school than many other Romani children in the region.

## **F. Programs Aimed at Improving Romani Education**

Issues relating to illiteracy and education of Roma have received substantial attention for many years within the European Commission, the Council of Europe, and many OSCE participating States. In recent years, there have been a rich variety of innovative projects aimed at addressing the problems noted above. A substantial number of pilot projects have been instituted with funding from the European Commission and various innovative projects have been supported by the Open Society Institute. While a comprehensive analysis of these initiatives is beyond the scope of this report, we note several dominant trends in this subsection.

### **1. Multi-Cultural Curricula and Training**

One point that has repeatedly been emphasized by Romani students and parents, as well as by many educators, is that Romani children's experience of exclusion in public schools is based not only on overt acts of discrimination, but also on the commonplace absence of their history and culture from the basic curriculum. Beginning school is said to be a profoundly unsettling experience for many Romani children, who feel as though they have been torn from a familiar and supportive environment and thrust into an alien and alienating world. That their own cultural experience is absent from the history, music, art and other forms of culture that are taught exacerbates their sense that they have entered a foreign universe - one in which they have no place.

This is a key reason why many support the introduction of material on Romani history and culture into the general curriculum. Not surprisingly, such material has figured prominently in educational programs initiated by Roma themselves. Further,

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"on occasion become somewhat over-involved in our community's affairs, to the extent that they find themselves becoming embroiled in site management issues. This can lead to far more problems being caused than the individuals themselves are trying to resolve, and our advice to such people is that they should concern themselves solely with the matters in hand, and not allow themselves to be drawn into any other issues . . . ." National Gypsy Council, "Practical Proposals for Gypsy/Traveller Reform", in Traveller Law Reform: TLAST and TLRU Conference and Consultation Report, 1997, p. 85.

the development of such material has been a key priority of educational initiatives supported by the European Commission and the Council of Europe.<sup>245</sup>

In the view of many Romani activists and non-Roma educators, the introduction of such material into school curricula is also an essential step toward combating racial prejudices against Roma. It is common wisdom that ignorance of minority groups is the taproot of racist stereotypes, and, indeed, the exclusion of Romani culture and history from the curricula of most public schools in OSCE participating States has allowed negative stereotypes to fill the resulting vacuum. It is for these reasons that previously-cited OSCE standards urge participating States to ensure that the history and culture of national minorities is reflected in school curricula.<sup>246</sup>

While a number of countries have introduced or are working to introduce such material into school curricula,<sup>247</sup> in many the efforts have been sporadic and incomplete. In Greece, for example, the teacher of one predominantly-Roma primary school reported that she had previously used, with effective results, a primer on the Greek language that was written from a Romani perspective. But when she recently tried to order this primer from the Ministry of Education, which had produced the book, she was told it was out of print. She is now working with others to create a new primer.<sup>248</sup> According to officials in Spain's Ministry of Education, the government began to include material about Gitano culture in educational material in the mid-1980s, but has not done enough. Although efforts in this regard have been made in Andalusia, the region with the highest concentration of Gitanos in Spain, the materials used there are supplements rather than a part of the core texts.<sup>249</sup>

There is also widespread consensus on the crucial need to provide teachers with training about Romani culture and history. An example of such an initiative is the opening of a Romany Culture Department at the Nitra University of Pedagogy in the Slovak Republic. The Department, which has an outpost in Spišská Nová Ves, has a special emphasis on training primary school teachers in areas that have a large proportion of Romani students. Such programs serve two important ends: some are designed principally to enable educators to teach their students about Romani culture

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<sup>245</sup> For a description of initiatives undertaken in this area by the European Parliament and Commission, including efforts to standardize various Romani dialects, *see* EC Report, *supra* (note 192), and various issues of "Interface", a newsletter published by the Gypsy Research Center at the Université René Descartes in Paris. For a summary of the Council of Europe's initiatives in this area, *see* Mirga, *supra* (note 198).

<sup>246</sup> The Czech Government Policy Concept states in this respect: "[K]nowledge of Romany culture and history, as well as the culture and history of other national minorities, will be included into the general education of all children." Government Policy Concept, *supra* (note 135), at p. 9.

<sup>247</sup> According to the Government of Macedonia, a First Reader and Grammar of the Roma language was prepared and published in 1995, and the Ministry of Education organizes courses on the Roma language for training staff for optional instruction in this language. During the 1997-98 academic year, optional instruction in Romani was offered in four primary schools in Skopje. "The Status of the Roma in the Republic of Macedonia," *supra* (note 65), at pp. 5-6

<sup>248</sup> Interview, Aspropyrgos, Greece, 22 May 1999.

<sup>249</sup> Interview, Madrid, Spain, 3 May 1999.

and history. Especially notable contributions in this regard have been made by the Council of Europe, which has prepared and updated a publication with this in mind.<sup>250</sup> Others have as their principal aim better equipping teachers to respond effectively to their Romani students. As noted, many teachers have either ignored their Romani students or transferred them to schools for mentally handicapped children because they lack multi-cultural teaching skills; these programs aim to address this failure. A key premise underlying some programs is that many teachers, biased themselves, are likely to communicate their own prejudices to other non-Romani students.

## 2. Romani Schools

Deeply concerned by public schools' failure to meet Romani children's educational needs, some Romani leaders have supported the establishment of Roma schools. In contrast to the segregated "Roma schools" established by public authorities, this model envisages schools created and administered by Roma themselves, ideally with State support.

The leading example of such a school - and a model that has inspired Romani activists in other countries - is the Gandhi Gimnázium in Pécs, Hungary, which began operating in February 1994.<sup>251</sup> The school is administered by the Gandhi Foundation, which was founded in 1992 by more than 30 individuals, some affiliated with NGOs, with the support of the Open Society Institute, and which became a public foundation in 1995.<sup>252</sup>

Its founders conceived of the Gandhi Gimnázium as a vehicle for fostering the development of a Gypsy intelligentsia through high-quality education aimed principally at Gypsy students.<sup>253</sup> The school's "most important aim is to educate a significant number of Romany professionals who are devoted to their people and who will be capable of reorganizing the disintegrated Gypsy communities." Its leaders "also consider it important to change the prevailing opinion that Gypsy children are

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<sup>250</sup> The updated edition is Liégeois, *supra* (note 20).

<sup>251</sup> In September 1998, a Romani Secondary School of Social Work, established by the Dr. Rajko Djuric Foundation, began teaching in the Czech town of Kolín. The principal objective of the school's founders is "to provide Romani youth with the sorely-needed educational tools to lead fulfilling, integrated careers in the context of the Czech Republic." To this end, the Kolín school seeks to provide "an education which is not only relevant to the Roma socio-cultural background, but also geared to [the students'] finding future employment in the field of assistance to the Romani community." Romani Secondary School of Social Work in Kolin, Project Application, p. 2 (undated).

In Slovakia, in the city of Košice, the government has supported the establishment of a secondary art school with Romany as the language of instruction. Office of the Deputy Prime Minister for Human Rights, Minorities and Regional Development of the Slovak Republic, Comments Prepared by the Slovak Government, 29 October 1999, p. 1 (*on file with the Office of the OSCE High Commissioner on National Minorities*), [hereafter, Comments Prepared by the Slovak Government].

<sup>252</sup> Government Decision 1068/1995 (VII.12).

<sup>253</sup> As of April 1999, 214 students were enrolled in the Gandhi school, of whom all but three were Gypsies.

less teachable and less capable of reaching educational success.”<sup>254</sup> To these ends, the gimnázium seeks to prepare students to attend university. But while providing education of the highest academic standards, the Gandhi Gimnázium also offers a program that fosters pride in students’ ethnic identity. Although the language of instruction is Hungarian, the curriculum includes courses in the Lovári and Beás languages, and features various courses in Romani history and culture.

The very establishment of the Gandhi Gimnázium is, in the eyes of its supporters, a powerful symbol of Gypsy achievement. As one of its founders explained, during the Communist period, “if a Gypsy finished vocational school, it was really something.” To go to a gimnázium – a far more academically demanding form of secondary school and one which, unlike trade schools, can lead to university – was beyond Hungarian Gypsies’ imagination.

But while the Gandhi Gimnázium has inspired many Hungarian Gypsies and Romani leaders outside Hungary, its path has been anything but easy. Some of the difficulties the school has encountered fall into the realm of inevitable growing pains. More than half of the school’s first class, which is due to graduate in 2000, has dropped out.<sup>255</sup> Still, measured against national rates, for even half the class to graduate represents significant progress. The dropout rate has declined from year to year – suggesting that the school administration has effectively adapted its methodology to the special needs of its students.

Further, initially some parents were reluctant to allow their children to leave home – often in a small village – to attend boarding school in Pécs. The Gandhi pedagogical program takes these concerns into consideration. School administrators establish early contact with parents, visiting the homes and schools of prospective students to explain the school’s objectives and methodology and to answer their questions. This contact is maintained through regular parent-teacher meetings at the school after the student has enrolled. The school also provides material and logistical support for students to return home for a long weekend every second week. In recent years, as the reputation and standing of the school has grown, parents’ fears of sending their children into an unknown and untested environment have diminished. For many Gypsy parents, the Gandhi school represents their only possibility for sending their children to secondary school.

Perhaps the most significant challenges have been financial. To this day, the Gimnázium has obtained less than half the funding its administrators seek and has been unable to finish constructing its physical facilities. Preoccupied with fund-raising, its administrators can spend far less time on issues of pedagogy than they would like. The Gandhi Gimnázium is, to be sure, a comparatively expensive school – like the Premysl Pitter School in Ostrava, the Czech Republic, it employs a social

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<sup>254</sup> These quotations are from an untitled and undated two-page fact sheet provided by the headmaster of the Gandhi school.

<sup>255</sup> There have been serious debates within the school administration over the most effective means of recruiting students. Some have advocated accepting students based on their disadvantaged social circumstances, in the hope that, with the support of the school, these children would thrive. Others have argued for the stricter policy now employed by the school, by which students are admitted on the basis of their performance in primary school and on aptitude tests.



worker to assist students' families across a broad range of concerns and covers all of its students' educational costs, including transportation to the school. In the view of its administrators, however, this is not the only cause of their financial challenges: some question whether Gypsy youth need a state-of-the-art gimnázium like the Gandhi school.

Others have questioned the very premise of the Gandhi Gimnázium, apparently suggesting that it is a form of segregation. There are, in fact, a range of views among Roma leaders, educators and parents about the most desirable means of addressing various educational problems described in this section. This is, of course, hardly surprising given the complexity of these issues and the diversity of experiences among Roma. But there should be no questioning the basic principle that Roma, like other national minorities, are entitled to establish their own educational institutions. As noted earlier, this principle has been recognized within the OSCE Human Dimension, and is also enshrined in Hungarian law.<sup>256</sup>

It is too early to know whether the Gandhi Gimnázium will ultimately prove an effective alternative to the more problematic models of education typically available to Romani youth. Surely, though, it deserves the opportunity to try to realize the estimable objectives of its founders. As its late principal, János Bogdán, believed, the school may already have registered significant successes: "By its very existence, [the Gandhi Gimnázium] has stimulated local schools in the region to change, because more attention has been focused on them by our search for talented Gypsy students. Moreover, it has created a competitive atmosphere in which Gypsy students have some possibility held out to them - a focus for their ambitions."<sup>257</sup> Other observers have noted that the school generates positive secondary effects as well. In addition to providing education directly to Gypsy students, the school also "educates" the broader population: people living in Pécs who may have been hostile to having the school placed in their neighborhood can observe that Romani children are capable of achievement, and that having a Roma school in the city can also be a source of pride. Recently, Pécs was honored with a UNESCO award for multiculturalism.

While the Gandhi School is something of a path-setter in the field of education of Roma children in Hungary, a number of other private institutions have been established in Hungary over the past decade, aimed at improving secondary education opportunities for Roma children.<sup>258</sup> They do not all cater exclusively for Roma students, but were established in settlements where the proportion of the Roma population is known to be high. These programs are essentially grass-roots initiatives which have evolved in response to the existence of locally experienced demands and needs not being met by the public education system. A feature of many of these institutions is that they provide special educational activities in addition to traditional teaching.

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<sup>256</sup> See Section V.C, *infra*, for discussion of Hungary's Act LXXVII of 1993 on the Rights of National and Ethnic Minorities.

<sup>257</sup> János Bogdán, *quoted in* Human Rights Watch/Helsinki *supra* (note 211), at p. 74.

<sup>258</sup> For a detailed description and evaluation of the various initiatives, see Hegyesi-Orsós, *supra* (note 206).

Many of these initiatives cater for pupils across the age spectrum from early teens to mid-twenties, in an attempt to meet the needs of Romani children who never entered or who dropped out of secondary education. As a result, the age of children is on average more advanced in these schools than in other secondary schools educating non-Roma pupils. The Kalyi Jag School, for instance, provides a two-year education for 14-25 year-olds who finished primary school but are not involved in public education or are unqualified. The aim is to prepare pupils to continue studying in secondary schools that lead to the final secondary examination. The aim of the “Roma Chance” Alternative Vocational Foundation School, Secondary School and Students’ Hostel is to give professional qualification to disadvantaged Roma and non-Roma pupils alike.

Some institutions work with a small family-like staff; in others, the ratio of teachers to pupils is quite high. In addition, the use of Roma pedagogical assistants as well as technical staff members, social workers and psychologists have been found useful and in some cases indispensable. The benefits of employing qualified teachers sensitive to the needs of Roma pupils, and the need for qualified Roma teachers has been highlighted by these institutions. Moreover, efforts to develop good communications with parents are also found to be helpful in ensuring that children, once enrolled, continue with their education.

While the aims and programs of these institutions vary, depending on local needs, they all share a common characteristic which is to provide education and essential practical skills in a stimulating, supportive and non-threatening environment.

### **3. Romani Teachers’ Assistants and Mediators**

In a substantial number of countries, schools have hired Roma assistants.<sup>259</sup> This approach has often been undertaken at the initiative of Romani NGOs, and in some cases has received government support. One of the key ideas underlying this approach is that Roma assistants can help bridge communication gaps - both linguistic and cultural - between Romani students and parents on the one hand, and teachers on the other. Further, their involvement in the teaching process can alleviate the alienation of Romani students, who rarely find Roma in positions of authority at the schools they attend. Ideally, of course, there should be more Romani teachers as well as teachers’ assistants. But the problems relating to educational achievement addressed in this section make for a marked deficit in the pool of Roma teachers. Until greater headway is made in this area, Romani teachers’ assistants can play an invaluable role.

A related model, which is sometimes combined with that of teachers’ assistants, is that of Roma mediators - Roma who serve as a liaison between schools and Roma communities. This approach is based in part on the premise that the divide between schools and Romani communities cannot be bridged solely in the classroom; it is also necessary for schools to interact with Romani communities.

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<sup>259</sup> Such programs exist in Austria, Bulgaria, the Czech Republic, Hungary, the FYROM, the Slovak Republic and Ukraine. See Cahn et al., *supra* (note 201).

The headmaster of a Bulgarian school whose student body is 90 percent Romani explained the role that such mediators play at his school. “It is normal,” he explained, “for a Bulgarian teacher who doesn’t know much about Roma culture and values to be in conflict with Roma parents.” He offered two “typical” examples. First, Bulgarian teachers often interact with Romani parents in what he termed an authoritarian manner - which, he said, tends to enlarge the distance between Romani communities and the school. He gave the specific example of a teacher suggesting to Romani parents that they should not have so many children, “which communicates that they do not value the Roma value system.” Second, teachers often celebrate Bulgarian holidays while disregarding important Romani holidays.<sup>260</sup>

In Finland, the teaching of the Romani language started in primary schools in 1989. Since 1995 legislation has provided the possibility for teaching the Romani language also in secondary schools.<sup>261</sup> According to Finland’s Advisory Board on Romani Affairs, the position of Romani children has improved in those schools which have availed themselves of this opportunity, largely because of the presence of Romani teachers in the school. As the Board notes in a recent report: “the teacher of the Romani language often also acts as an intermediary between children’s homes and the school, making at the same time the attitude of children and their parents towards learning at school more positive.”<sup>262</sup>

As with any initiative that is sound in principle, however, the use of Roma mediators can be ineffectual if not implemented properly. The experiences of some Gitano mediators in Spain may exemplify the risks in this regard.

Ten years ago the Spanish government initiated its program of hiring Gitanos to serve as liaisons between public schools and Gitano families. The principal aim of these liaisons has been to help increase levels of school attendance by Gitano children. One of the most important laboratories for this program is the region of Andalusia, where almost half of Spain’s Gitanos live. To the government’s credit, regional authorities recognized that educational initiatives would not succeed without the active involvement of the Gitano community itself. It thus engaged the Federation

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<sup>260</sup> Interview, Sofia, Bulgaria, 18 May 1999.

<sup>261</sup> As a result of total reform of the school legislation which took effect at the beginning of 1999, the Act on Basic Schools lays down that the language of instruction of a school must be either Finnish or Swedish, but the language of instruction may also be in Sami, Romani or sign language. The Act on Upper Secondary Schools contains similar provisions. The purpose of the reform of school legislation was to standardise education and strengthen the status of the rights of minorities. The Finnish Advisory Board on Romani Affairs reports that school attendance of Romani children clearly improved after the reform; *see* Paper submitted by the Advisory Board on Romani Affairs, Finland, *supra* (note 203). The school legislation concerning teaching of the native language establishes that pupils in primary, upper secondary and vocational schools who have the Sami, Romani, sign, or another immigrant language as their native tongue may receive instruction in their native language for a minimum of two hours per week or the whole instruction may be given in the native language to the extent possible. However, the legislation does not oblige municipalities to arrange teaching in the Romani language. *See* Government Resolution 1449/95 and 1450/95, 1995. According to government figures, in 1998, some 220 of the approximately 1500-1700 Romani pupils of school age received instruction in the Romani language.

<sup>262</sup> *Id.*, at p. 10.

of Roma Associations in Andalucia (FARA) to identify Gitanos who could serve as liaisons with Gitano families.

At one level, the program has been a notable success: when it began, some 90 percent of the region's Gitanos did not attend school at all. Now, the level of non-registration has dropped to seventeen percent in some areas of Andalucia.<sup>263</sup> But the program has been less successful in reducing the drop-out rate of Gitanos: the government's efforts have succeeded in getting Gitano children to school, but not in keeping them there for very long.

Many Gitano activists have enthusiastically supported the mediator program in principle. Committed to advancing the educational prospects of Romani youth, some highly-educated Gitanos enlisted as mediators. But some became disenchanted and resigned in frustration.

In the view of two former mediators, the principal problem with the program as implemented was that authorities placed overriding importance on the sheer numbers of Gitanos enrolled in school. Although these former mediators wholeheartedly embraced the challenge of trying to convince Gitano parents of the value of education, they say they felt pressure to apply coercion to this end: government authorities threatened to terminate parents' social welfare benefits if they did not send their children to school, and it fell to the Gitano mediators to communicate this. In the view of the two former mediators, the coercive approach ultimately backfired: while it increased Gitano enrollment in schools in the short-term, it reinforced many parents' sense that school was something imposed from outside.<sup>264</sup> That the mediators' role was effectively confined to "controlling for how many days kids were missing from school" undermined the value of their involvement.<sup>265</sup>

But these two former mediators fault the government less for using unproductive strategies to increase Gitano enrollment than for failing to follow through with effective programs in the classroom. Like many other educators and advocates, these two believe that substantial efforts should be made to include the Gitano experience in school curricula and program activities. Beyond their specific concerns relating to program design, these two educators regret that their supervisors did not seem to value their insights concerning the effectiveness of the methods they were employing.

It is difficult to know how representative these mediators' experience is: while their role was largely confined to that of attendance police, other Gitanos who have collaborated with government authorities have helped develop more substantive initiatives.<sup>266</sup> But their experience highlights the importance of ensuring that Romani

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<sup>263</sup> These figures were provided by regional authorities in Andalucia. Interview, Department of Social Affairs, Sevilla, Spain, 6 May 1999.

<sup>264</sup> Interviews, Sevilla, Spain, 6 May 1999.

<sup>265</sup> *Id.*

<sup>266</sup> For example, FARA organized summer camps for Gitano children to help ensure, in one member's words, that the children "wouldn't lose their good habits" over the summer break. In addition, she and other Gitanos who had attained university-level degrees organized meetings with

participation in Roma programs is meaningful. To the extent that it failed to draw upon the insights of these two mediators, the government lost the opportunity to benefit from a valuable resource.

While the use of Roma mediators and teachers' assistants is increasingly common, a current initiative by the Romanian government represents a new variation on this model. On 1 March 1999, the Ministry of Education adopted a decision to appoint a Roma Inspector in each of Romania's forty-one counties. While it remains to be seen how this policy will be implemented, the basic approach is salutary. In particular, it is noteworthy that Roma are to be involved at the level of governance where the impact of educational policy is most keenly felt.

#### **4. Pre-School and Kindergarten Classes**

As suggested earlier, a recurring factor contributing to the difficulties Romani children encounter in school is that many begin with a poor command of the language of instruction. In some countries, such as the Czech Republic and Slovakia, many Romani children speak a Romani dialect at home and thus begin school with a substantial disadvantage. Even when they speak the national language at home, many Romani children speak a different version than that of the majority. Further, profound cultural differences - reflected in such basic matters as spatial conceptions - produce major barriers to comprehension.

The resulting problems are compounded by the fact that most Romani children who attend elementary school do not begin until the mandatory age of attendance, which in many OSCE participating States is seven years.<sup>267</sup> Although many countries provide kindergarten classes, it is still relatively uncommon for Romani children to enroll. Thus, they often begin the first grade that much further behind their classmates who attended kindergarten.

In this area, the diagnosis of the problem suggests its own solution: enrollment of Romani children in preschool programs that improve their proficiency in the language of instruction and, more generally, acculturate them to the classroom.<sup>268</sup> Many recent initiatives in the area of Romani education have, in fact, included the

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Gitano families to try to convince them, above all with the persuasive power of their own accomplishments, that it is possible for Gitanos to succeed in school and to do well after graduation. Through force of example, they hoped to enlarge Gitano children's sense of the possible. As one Gitana attorney explained, "When the program began, half the boys would say they wanted to be flamenco dancers because that was the largest accomplishment they could imagine." According to this attorney, since the program began the number of Gitanos attending university has increased appreciably. Interview, Madrid, Spain, 3 May 1999.

<sup>267</sup> In Bulgaria, primary school begins at the age of eight; preparatory school is available for one year beginning at age seven for children who do not speak Bulgarian. Pre-school programs are offered for children who are five to six years old.

<sup>268</sup> However salutary in principle, not all preparatory classes merit unqualified support. Several preparatory classes offered in the Czech Republic are reportedly attached to special schools for the mentally disabled. In these circumstances, the risk that children are being prepared for failure speaks for itself.

development of such classes.<sup>269</sup> A substantial number of these programs have been developed with support from sources other than the government, including the Open Society Institute, the PHARE Program of the European Commission and various Dutch foundations, such as the Netherlands Organisation for International Development Co-operation (NOVIB).

Because the programs examined are only a few years old, it is not yet possible to assess their success. Nonetheless, several programs seem to have been designed and implemented in a fashion that augurs well for their success. For example:

- Two years ago the Roma Foundation, a civic organization based in Plovdiv, Bulgaria, developed a summer preparatory class for six-year-old children to teach them the Bulgarian language. One notable feature of the Foundation's program is that its members continue to monitor children's progress once they begin school. The same Foundation has also helped Romani families meet the financial costs of sending their children to kindergarten. While the basic costs of kindergarten are free in Bulgaria, parents must pay for children's meals and, starting this year, will also have to pay for textbooks. Although the Foundation initially covered these costs for poor families outright, it recently decided to require families to "reimburse" these costs by helping to clean the neighborhood. In this way, they sought to enhance parents' sense of initiative, responsibility and commitment.
- With the support of the Open Society Foundation, a kindergarten located near a garbage dump on the outskirts of Bucharest, Romania, has recently developed innovative programs for its predominantly Romani students.<sup>270</sup> Several aspects of this program are noteworthy. First, a fundamental feature of the program is its efforts to engage the children's parents, most of whom are poor and illiterate (according to the school's headmistress, more than half of them make a living by foraging for bottles in the local garbage dump). Both the kindergarten's social mediator and its teacher's assistant are parents of children enrolled in the school. Other Romani parents help supervise children in their various classroom activities, and there is a parents' room at the school. Second, while a key goal of the school is to improve the children's Romanian language skills, Romani culture is featured prominently in its programs. For example, the teacher's assistant teaches the Romani language, and her husband, a folk musician, has performed for the children. Third, the kindergarten's programs are based on the principle of individualization. The school is set up with several activity areas, and children are encouraged each day to select the activity area in which they will concentrate that day. Their teachers respect each students' own development pace, and downplay competition between students. Above all, the headmistress's approach to her students is based on the overarching premise of respect and compassion.

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<sup>269</sup> See, e.g. Slovak Government Strategy, *supra* (note 138); and Hungarian Government Decision 1047/1999 (V.5.) *supra* (note 137). Both programs envisage pre-school and/or kindergarten programs for Romani children.

<sup>270</sup> In Romania, children are by law supposed to attend one year of kindergarten, which they can do either at the ages of five to six or six to seven. Although the basic class is free, the State does not pay for various kindergarten-related costs, such as those relating to meals.

## 5. Extra-Curricular Support Programs

In recent years, a raft of innovative programs have been initiated with the aim of providing extra-curricular support to Romani students. Notably, many of the most impressive programs of this kind have been developed by Romani individuals and NGOs - a testament both to the keen motivation of many Romani leaders and parents to enhance their communities' educational prospects and to the value of Romani participation in programs for Roma.

- As noted earlier, the racial barriers that many Romani children encountered in the Romanian city of Timișoara led many parents to prevail upon a Romani educator, Professor Letitia Mark, to establish an educational program in her home. With funding from the Open Society Foundation, the Gypsy Women's Association inaugurated this program in June 1997.<sup>271</sup> The program's main activity is tutoring Romani children, many of whose parents are illiterate and thus unable to help their children with homework. The most striking quality of the students who participate in this program is their keen motivation and intelligence. Even so, but for the program in Professor Mark's home, many would have dropped out of school in the face of racist treatment by teachers and fellow students. Other aspects of the program are targeted at older children who dropped out of school some time ago and are functionally illiterate. Some of these teenagers are preparing to take equivalency exams that will enable them to obtain a diploma.
- In Spain, the Federation of Roma Associations in Andalucia (FARA) has, with government support, developed a range of educational and other programs. For example, the Extremadura branch provides after-school tutoring to Gitano children. The program alternates tutoring sessions with after-school classes in guitar-playing and other aspects of Gitano culture. This is, in the words of one of the program's founders, "a gift for the children," which helps sustain their motivation.<sup>272</sup>
- Also in Spain, the government has a program involving "support teachers" who provide compensatory education at centers that are based in normal schools. According to officials at Spain's Ministry of Education, students who participate in this program spend most of their time in the classroom with other students, and the balance of their time with teachers at the support centers. It is not possible to assess the efficacy of this program, as the government has not yet undertaken any evaluation of it.<sup>273</sup>

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<sup>271</sup> The reason the program is located in Professor Mark's home is that the Open Society Foundation generally does not provide funding for buildings, and, although municipal authorities have in principle agreed to make two classrooms available, they had not yet done so as of mid-September 1999.

<sup>272</sup> Interview, Madrid, Spain, 5 May 1999.

<sup>273</sup> Interview, Madrid, Spain, 3 May 1999. The system of support teachers described by these officials is now undertaken pursuant to Royal Decree No. 299/1996 on Equal Opportunity in Education, but a program on compensatory education was first instituted in Spain pursuant to Royal Decree No. 1174/83 of 1983.

- A number of other governments, including those of Ireland and Greece, provide “booster” or other programs for children who need additional support in regular schools. The Hungarian government supports a program in which Gypsy students who attend regular schools live in specialized dormitories, which offer them various support programs aimed at improving their educational performance and reinforcing their Romani identity.

## **G. Higher Education**

As noted earlier, the percentage of Roma who matriculate in university is minuscule. Even so, the achievements of those who have graduated from university is a testament to the potential efficacy of efforts to increase Romani participation in higher education. Among the younger generation of Roma leaders, some attended university with the assistance of government programs aimed at enabling Roma to obtain advanced degrees. These range from the use of quotas to the provision of scholarships.

An example of the former approach is a Romanian policy pursuant to which the government has set aside places for Roma students at public universities since 1993. The program started with ten reserved spaces for Romani students at a university for social work in Bucharest; in 1999, the program had expanded to potentially cover some 150-200 Romani students. The system does not necessarily ensure that every reserved place will be filled; applicants must still pass a qualifying exam. But it does make it more likely that Romani students will attend university.

Another approach has been that of providing special training and/or scholarships to enable Romani students to qualify for and attend university. According to the Hungarian Government, 1,115 Roma secondary school students received scholarships in 1998 and, in past years, the State-funded Public Foundation supported 200-300 Roma students attending institutions of higher education.<sup>274</sup> A different model is the American University in Bulgaria, sponsored by the Open Society Foundation, Sofia, which for several years funded approximately 30 Romani students to attend a one-year program at the university. Participants in the program studied English, computer skills, and other subjects thought helpful in preparing them for university.

Here, as in other areas, there are a range of views about the most effective approach toward increasing the numbers of Romani students at university level. But there is wide agreement on the importance of this goal. Beyond qualifying Roma graduates for professional employment, their graduation from university is seen by many activists as critical to the emergence and effective leadership of a Romani elite. In addition, many believe that, as role models, Romani university graduates can help inculcate among younger Roma positive attitudes toward academic accomplishment as well as self-confidence in their own potential for achievement.

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<sup>274</sup> Office for National and Ethnic Minorities, “Measures taken by the State with a view to improving the situation of the Roma,” p. 4 (undated).



## H. Conclusions and Recommendations

As has been clearly demonstrated by a series of Council for Cultural Co-operation seminars within the Council of Europe framework, efforts to improve the educational situation of Romani children need to be placed in the wider socio-economic context.<sup>275</sup> The fact that the issue of schooling for children is linked with other factors needs to be taken into account by States when developing approaches to improve Roma educational opportunities.

Improving access to schools and opportunities for academic achievement by Roma are crucial to the advancement of Romani communities' broader prospects. While the most effective policies in this regard should be developed in each country based upon its distinct circumstances and, in particular, the input of its Romani communities, several policies are generally relevant:

- National governments must make concerted efforts to eradicate manifestations of anti-Roma discrimination in schools. To this end, governments should ensure that teachers and other education professionals receive adequate training in multicultural education, and that national law includes adequate provisions banning discrimination in the sphere of education and providing effective remedies.<sup>276</sup>
- Governments should make concerted efforts to eradicate practices that tend toward segregated schooling of Romani children. In particular, in countries where there is evidence that Romani children are disproportionately referred to schools or classes for mentally disabled students, governments should, as a matter of the highest priority, take appropriate steps to eradicate this practice. Among the measures governments may undertake in this regard, they should ensure that their laws and policies do not provide financial incentives to consign Romani children to such programs. Instead, more resources should be devoted to programs that enable Romani children to succeed in regular schools.
- Among the more promising approaches in this regard, governments may wish to consider supporting pre-school programs that help prepare Romani children for primary school, as well as support programs that provide appropriate support to Romani children while they are attending regular schools. Governments may also wish to consider hiring Roma teachers' assistants.
- Special consideration should be given to the educational situation of Romani women. Romani women should be involved in the design and implementation of programs that will encourage continuing education also for those women for whom formal schooling has been discontinued.

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<sup>275</sup> Mirga, *supra* (note 198).

<sup>276</sup> The last point merits special emphasis. In some OSCE participating States, national law prohibits discrimination but provides no sanctions for breaches. *See, e.g.* Report by the Parliamentary Commissioner for National and Ethnic Minority Rights regarding the comprehensive survey of the education of minorities in Hungary (1998) (discussing paragraph 4(7) of the Act.gen.ed).

- A keystone of educational programs aimed at enhancing Romani children's access to education and academic achievement should be flexibility—though not, of course, at the expense of setting high standards.
- To ensure that the dignity of all children is fully respected in schools, governments should ensure that educational texts include material on Romani history and culture, especially in countries with substantial Romani populations.
- Governments should adopt programs that would ensure that the costs of meals, textbooks and similar costs related to education are covered with respect to children whose parents cannot afford to pay these costs.

## V. LIVING CONDITIONS

A comprehensive treatment of issues relating to the living conditions of Romani populations throughout the OSCE region is beyond the scope of this study. This section focuses on conditions of housing and health care, especially discrimination against Roma with regard to access to and enjoyment of housing and health, and including the particular needs and situation of women.

### A. OSCE and Other International Standards

As already noted in Section II of this report, numerous CSCE/OSCE instruments, as well as international treaties that have been widely ratified by OSCE participating States, prohibit discrimination in the enjoyment of fundamental rights. Among these instruments, several explicitly recognize the rights to housing and health.<sup>277</sup> For example:

- The Report of the Geneva Meeting recognizes that the undertaking of participating States, set forth in paragraph 31 of the Copenhagen Document, to ensure full equality in the exercise and enjoyment of fundamental rights entails a commitment to “take the necessary measures to prevent discrimination against individuals, particularly in respect of employment, *housing* and education, on the grounds of belonging or not to a national minority.” (Emphasis added.)
- Article 2 of the Universal Declaration provides, in part: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 25(1) provides, in part: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...”
- Pursuant to Article 2(2) of the ICESCR, States Parties undertake to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 11(1) provides, in part: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate . . . housing, and to the continuous improvement of living conditions.” Article 12 provides in greater detail as follows:
  1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
  2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

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<sup>277</sup>For overviews, relevant international law and jurisprudence, see Scott Leckie, “The Right to Housing”, in Asbjorn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*, Kluwer Academic Publishers, The Hague, 1995, pp. 107-124; and Katarina Tomaševski, “Health Rights”, in *id.*, pp. 125-142.

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - (b) The improvement of all aspects of environmental and industrial hygiene;
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.
- Pursuant to Articles 24(1) of the Children's Convention "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services." Article 24(2) outlines the areas in which States Parties should take measures in order to pursue full implementation of this right, specifically:
  - (a) to diminish infant and child mortality;
  - (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
  - (c) to combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
  - (d) to ensure appropriate prenatal and post-natal health care for mothers;
  - (e) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;
  - (f) to develop preventive health care, guidance for parents and family planning education and services.

Article 27 provides that:

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual and moral and social development.
  3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
- The 1961 European Social Charter, in Article 11, also provides that "With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or indirectly or in co-operation with public or private organisations, to take appropriate measures designed *inter alia*:
    1. to remove as far as possible the causes of ill-health;
    2. to provide advisory and educational facilities for the promotion of health and encouragement of individual responsibility in matters of health;
    3. to prevent as far as possible epidemic, endemic and other diseases."
  - In the context of evaluating specific needs, including cultural elements of housing, Article 8 of the European Convention on Human Rights may be relevant insofar as it provides for respect for private and family life, home and correspondence.
  - Article 12 of Convention on Elimination of Discrimination against Women provides that:
    1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
    2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connexion with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 14(2) with regard to the particular problems faced by women in rural areas further provides that State Parties shall ensure to such women the right:

- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

- Article 5 of the Race Convention provides, in pertinent part, that “States Parties undertake to prohibit and eliminate racial discrimination and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of . . . (e)(iii) the right to housing; (iv) the right to public health, medical care, social security and social services...”

## B. Housing

As has been noted throughout this report, the broad diversity among groups encompassed in the designation “Roma” renders virtually all general statements problematic. This is no less true with respect to issues of accommodation than other concerns addressed in this report. For purposes of the present analysis, two distinctions are especially pertinent.

The first is between Roma who are highly assimilated in national communities and those who are not. The problems addressed in this section pertain principally to the latter. In light of the gravity of housing-related problems confronting poor Romani communities,<sup>278</sup> this section focuses upon their concerns.

Another key distinction is between nomadic and semi-nomadic Roma on the one hand, and sedentary Roma on the other.<sup>279</sup> Although nomadism has been central to Romani history and culture, a majority of Roma are now sedentary. This is especially true in respect of Central and Eastern Europe, where Romani communities were subjected to policies of forced sedentarization until relatively recently.<sup>280</sup>

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<sup>278</sup> A study by the Council of Europe notes: “There is evidence . . . that confirms that the housing of the poor Roma is worse than the most destitute among the dominant society.” Vladimir Macura, *Housing, Urban Planning and Poverty: Problems Faced by Roma/Gypsy Communities with Particular Reference to Central and Eastern Europe*, Council of Europe Doc. MG-S-ROM (99) 1, Strasbourg, 22 February 1999, p. 16.

<sup>279</sup> This report uses the term “nomadic” and “semi-nomadic” to refer to individuals for whom travel is a feature of their lifestyle, and not to those who have migrated across borders in response to major political or economic upheavals in their countries of habitual residence. These distinctions are somewhat imprecise, as the latter set of circumstances may have the effect of reviving nomadism among populations whose ancestors were nomadic but who have in more recent periods become sedentarized by virtue of policies of forced settlement.

<sup>280</sup> While nomadism has, in the past, also been banned in many Western European States (*see* Section I C, *supra*), those laws were abolished in the West following World War II. *See* European Committee on Migration, *The Situation of Gypsies (Roma and Sinti) in Europe*, Council of Europe Doc. CDMG (95) 11 final, Strasbourg 1995, p. 5, paragraph 8. Although assessments are imprecise, by one estimation only 20 percent of the contemporary Roma population is nomadic, while another 20 percent is semi-nomadic, moving seasonally; the remaining 60 percent is sedentary. *See id.* at p. 4, paragraph 5, *citing* Liégeois, *supra* (note 20).

It must be emphasized that whether an individual is nomadic, semi-nomadic or sedentary should, like other aspects of his or her ethnic identity, be solely a matter of personal choice. The policies of some OSCE participating States have at times breached this principle, either by making a determination of a group's fundamental lifestyle that is inconsistent with its members' choices or by making it virtually impossible for individuals to pursue the lifestyle that expresses their group identity.

Beyond the discriminatory aspect of practices addressed in this Section, several practices described herein are incompatible with the right to adequate housing ensured by the ICESCR, a convention that has been ratified by 141 States Parties. The Committee on Economic, Social and Cultural Rights, the body that monitors compliance with the ICESCR, has made clear that the concept of "adequacy" in the right to adequate housing means "the right to live somewhere in security, peace and dignity."<sup>281</sup> This entails, *inter alia*, "a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats"<sup>282</sup> as well as the availability of "certain facilities essential for health, security, comfort and nutrition."<sup>283</sup> "Adequacy" also has a cultural dimension: "The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing."<sup>284</sup>

## 1. The Case of Sedentary Roma

As a foundation for our analysis of specific issues addressed in this section, it may be useful briefly to summarize the broader housing concerns of sedentary Roma. A study published by the Council of Europe provides a succinct overview:

Accommodation remains one of the most serious aspects of the current situation, particularly in certain States: lack of water and electricity, unhealthy dwellings, damp, lack of the most basic sanitary services (i.e. rubbish collection), pollution, overcrowding, quagmire conditions in winter as a result of non-existent surfacing/footpaths, the need to build shelters out of salvaged materials resulting in shantytown appearances to which officials sometimes react by bulldozing what little people have (even though the dwellings may, thanks to extraordinary efforts, be perfectly acceptable on the inside): all of this is characterised by conflict with the environment, increasing ghettoisation, and lack of management at local level . . . .<sup>285</sup>

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<sup>281</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 4: The right to adequate housing, UN Doc. E/1992/23, paragraph 7.

<sup>282</sup> *Id.*, at paragraph 8(a).

<sup>283</sup> *Id.*, at paragraph 8(b).

<sup>284</sup> *Id.*, at paragraph 8(g).

<sup>285</sup> Liégeois, *supra* (note 20).

The author concludes: "Accommodation is a question on which a maximum of effort should be concentrated: improved health, education and scholastic success, economic and cultural development all depend to a great degree on improved accommodation."<sup>286</sup>

Although housing concerns of Roma did not begin with the collapse of Communism in Central and Eastern European countries - nor is this the only region where serious problems are to be found - the broader political and economic transitions in those countries have had a profound impact on Roma housing. As economic conditions deteriorated in a number of countries in Central and Eastern Europe, some Roma sold their homes and moved into already crowded flats of relatives. Illegal tenancies, long ignored by Communist authorities, were often no longer tolerated. Many Roma were evicted from previously state-owned apartments when the property was restored to its prior owners or was sold to private owners. And when state-owned co-operatives were closed down, many Roma lost their jobs and, in consequence, the living quarters that had been linked to their employment.

The dispossessed were typically hard-pressed to find alternative accommodations: the shattered economies of several Central and Eastern European countries meant, among other things, that there were scant public resources to replenish dwindling housing stocks or maintain existing structures. Frequently Roma were unable to find landlords willing to rent to them; as government officials in many countries readily concede, many non-Roma are loath to have Roma as neighbors. Many Roma who lost their homes were unable in any event to afford housing that was theoretically available.

In these circumstances, many Roma moved into unoccupied property. Their resulting lack of settled status has left these Roma vulnerable to eviction. The cumulative effect has been that many Roma live in dilapidated and overcrowded accommodations, frequently without lawful entitlement, while others have no homes at all.

Another effect of these Romani families' unauthorized settlement has been to intensify public antipathy toward Roma. As more Roma have occupied abandoned property, many non-Roma have pressed local officials to remove the illegal occupants; in some instances, Roma have been decreed unwelcome by municipal ordinances. How the question of accommodation is addressed thus has significant implications for inter-group relations.

To this brief overview, one further observation may be added: in virtually every country with substantial Romani communities, non-Roma recount instances in which Romani families who were provided flats in apartment buildings engaged in conduct thought to be inappropriate or destructive. However, a number of recurring housing problems are partly attributable, or at any rate have been exacerbated, by public authorities' past failures to take account of the specific culture of the Romani communities for whom housing programs were designed or who were included among the beneficiaries of public housing programs.

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<sup>286</sup> *Id.*



## a) Relocation of Roma

In a number of countries, local authorities have sought to address recent problems relating to housing, including the phenomena of illegal settlements and non-payment of rent, by relocating large numbers of Romani families from town centers to concentrations on the outskirts of town. A notable example is the Lunik IX settlement in a suburb of Košice, Slovakia.<sup>287</sup> The controversy surrounding this settlement has received substantial attention in other reports; the facts are therefore only briefly summarized here.

In April 1995, the city government of Košice adopted Resolution No. 55, pursuant to which it decided to relocate individuals who were not paying their rent, using apartments illegally, “unadaptable,” or homeless into the district of Lunik IX.<sup>288</sup> Although the resolution does not mention Roma as such, critics believe that it was aimed at Košice’s Romani residents.

Whether the policy is discriminatory has been disputed. Various government officials, including the former Mayor of Košice (now the President of the Slovak Republic), say that the policy of removing residents to Lunik IX is not directed to Roma as such; only those Roma - and, they say, non-Roma - who do not pay their rent or who engage in destructive behavior are transferred to Lunik IX.<sup>289</sup> Others maintain that only Roma are relocated in Lunik IX and that when non-Roma fail to pay their rent, they are not transferred to Lunik IX. Critics maintain that the Košice government’s policy is to transfer virtually all Roma who do not pay their rent to Lunik IX, thereby deliberately concentrating as many Roma as possible in this high-rise ghetto outside the city center.<sup>290</sup> The issue of Resolution No. 55 is currently the subject of a prosecutorial investigation initiated by the Deputy Prime Minister for Human Rights, Minorities and Regional Development.<sup>291</sup>

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<sup>287</sup> Another highly-publicized resettlement of Romani families occurred in the municipality of Madrid, Spain in the early 1990s. In anticipation of a major construction project, municipal authorities removed some two hundred and fifty families living in the San Blas district. Apparently the non-Gitano members of this area were rehoused in high-rise apartments, but the Gitano families were relocated to a piece of unused municipal land in Cañada Real, outside Madrid. The Gitano families’ shacks were bulldozed on the morning of 9 May 1994, and the residents were taken to Cañada Real, where virtually no preparations had been made for their arrival. The families were given some building materials (though no tools), with which they were expected to build their own accommodations. Among other concerns, the site of this settlement appears to pose substantial health risks to the residents; it is located adjacent to a pig farm and a refuse incinerating plant. See Dominique Rosenberg, Report on a Study Visit to Valdemingómez (Madrid) 21-23 April 1997, Specialist Group on Roma/Gypsies, Council of Europe Doc. MG-S-ROM (97) 8 rev., Strasbourg 1997, pp. 15-19.

<sup>288</sup> Lunik IX was not originally intended to be a Roma settlement. When it was constructed in the early 1980s, it was intended to be a complex for members of the army and police and their families. The previous mayor of Lunik IX told a Council of Europe delegation that the first decision to relocate Roma who were not taking proper care of their flats to Lunik IX was made in the 1980s.

<sup>289</sup> This position was asserted in a meeting with officials of Košice on 15 March 1999.

<sup>290</sup> There is also some dispute about whether it is the policy and practice of municipal officials to facilitate the movement of non-Roma out of Lunik IX.

<sup>291</sup> Comments Prepared by the Slovak Government, *supra* (note 251), at p. 2.

Whatever the true facts in this regard, it appears that the policy embodied in Resolution 55 was designed principally with Roma in mind.<sup>292</sup> Municipal officials told a delegation from the High Commissioner's office that a major impetus for the relocation program was that non-Roma had been complaining of Roma living in the city center, saying: "If you don't take them away, there will be problems."<sup>293</sup> According to city officials, these Roma not only created problems in the eyes of non-Roma residents, but Roma children in the streets of the old town center were, they believed, a deterrent to tourism.

In February 1998, city representatives reportedly explained to another delegation that their plans with respect to Roma in Košice were "based on thorough knowledge of situations in other Roma areas in Eastern Slovakia" and that the "overall concept is based on the presumption that the scattering of Romas throughout Košice during the last decades is not natural, that they should live together."<sup>294</sup> It is precisely this premise that Romani members of Lunik IX's municipal council find discriminatory.

In their view, rather than moving Roma who had defaulted on their rent elsewhere into flats in Lunik IX, those flats should have been offered to young people in Lunik IX. This would have relieved overcrowding (many young couples have to remain in flats with their parents as they wait for other flats to become available).<sup>295</sup> In this and other respects, the Romani officials of Lunik IX expressed their frustration not only with the substance of the relocation policy, but at the manner in which it was being implemented - that is, without consulting them, thereby denying them the opportunity to shape a policy that would have a profound impact on their community.

The housing quandary faced by municipal officials in Košice was, to be sure, a daunting one. How to deal with large numbers of poor citizens who have defaulted in their rental payments presents difficult issues under the best circumstances, and formidable challenges when the national economy is under considerable stress. But however difficult the challenges, surely the solution is not to create Roma ghettos: this is a prescription for more serious problems in the not-too-distant future.

The views articulated by municipal authorities in Košice to justify their Lunik IX policy - that "Roma want to live together" - also exemplify a common assumption, voiced by municipal officials in various European countries. While some

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<sup>292</sup> In December 1995, representatives of the Košice City Council told a Council of Europe Working Group of a project to remove almost the entire Romani population to Lunik IX, 70 percent of whose population was already Roma. Council of Europe, Newsletter: Activities on Roma/Gypsies, Number 4, Strasbourg, 15 January 1996.

<sup>293</sup> Meeting, Košice, the Slovak Republic, 15 March 1999.

<sup>294</sup> Slovak Helsinki Committee Report, Shortened Version of reports from Fact-Finding Missions to Various Regions of Slovakia Conducted in 1998, p. 3. According to this report, city officials reasoned that transferring Roma to Lunik IX would enable them "to live according to their belief[s] and help them return to their 'natural way of life' . . ." *Id.*, at p. 4.

<sup>295</sup> Meeting, Košice, Slovak Republic, 14 March 1999.

Roma of course wish to live with others, too often this generalization has been used to justify segregationist housing plans, often against the wishes of the diverse Romani communities who have been made to live together.

## **b) Exclusion of Roma Families from Municipalities**

Romani residents have been excluded or expelled from numerous municipalities throughout Europe. In some instances, their exclusion has been effected through formal policy; in others, Roma have been expelled by lawless force.<sup>296</sup>

An example of the former occurred when a man identified by the Legal Defence Bureau for National and Ethnic Minorities (NEKI) as “Attila R., a Rom inhabitant of Gy. village in Heves County,” Hungary, sought to purchase from municipal authorities an empty building plot on Ady Street.<sup>297</sup> On 29 July 1997, his request was turned down on the basis that the local government had no empty building plots at its disposal. According to NEKI, however, the same authorities had assigned four building plots on Ady Street to another purchaser that same week. On 28 August 1998, a request to purchase another building plot submitted by a Romani couple likewise was rejected. These prospective purchasers were compelled by virtue of the government’s decision to continue to live in their parents’ “already crowded houses.”<sup>298</sup> After reviewing patterns of land allocation in this village, NEKI, a non-governmental organization, concluded that “[t]he local government appears to have unlawfully prevented Roma villagers from exercising their right to freedom of movement and to choose their place of residence, even though they possessed sufficient financial resources to purchase land.”<sup>299</sup>

Other examples of exclusionary practices include two municipal council resolutions adopted by the eastern Slovak villages of Nagov and Rokytovce banning Romani families from settling in or even entering the villages. The resolutions, adopted in 1997,<sup>300</sup> capped a ten-year campaign by local authorities and non-Romani citizens to “get rid of local Romanies,” in the words of the mayor of one of the towns.<sup>301</sup> In both cases, the resolutions prevented Roma from returning to the municipalities where they had been legally registered since 1980 after they lost their jobs - and the housing that came with them - in a nearby state co-operative.

On 12 March 1999, after unsuccessful efforts to find redress in Slovak courts, three Romani individuals filed an application before the European Court of Human

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<sup>296</sup> The latter phenomenon is addressed in sub-section D, *infra*.

<sup>297</sup> NEKI, Legal Defence Bureau for National and Ethnic Minorities, White Booklet 1998, Másság Foundation, Budapest, p. 52.

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*, at p. 53.

<sup>300</sup> The original resolution adopted by the Municipal Council of Nagov on 16 July 1997 was modified on 10 September 1998.

<sup>301</sup> “Two Slovak villages scrap anti-Romany decrees”, CTK, 19 April 1999.

Rights alleging that these municipal resolutions constituted acts of discrimination based on race in violation of several provisions of the European Convention on Human Rights. In the meantime, the Slovak Republic's Deputy Prime Minister for Human Rights, Minorities, and Regional Development and the Chairman of the Parliamentary Committee on Human Rights and National Minorities, as well as the chief prosecutor, intervened with local authorities. In mid-April 1999, municipal authorities in both Nagov and Rokytovce announced that they had lifted the decrees banning Roma from settling or entering them.<sup>302</sup>

While the Romani families excluded from Nagov and Rokytovce had a longstanding claim to residence in those communities, other Roma have, for a variety of reasons, found themselves in search of a new community in which they can establish homes. In these circumstances, the Roma have often encountered wholesale rejection by prospective communities.

An example is a community of impoverished Roma families that, for the past two years, has lived in what were meant to be temporary accommodations in the Czech city of Ostrava. In the summer of 1997, floods forced these families to evacuate their homes in the mining district of Hrušov, municipality of Slezska Ostrava, where a majority of residents were Roma. In the immediate aftermath of the floods, most of the Romani families were evacuated to a local school and then to containers in what was intended to be a short-term relocation. Originally twenty-seven families were moved to the site where the containers were located (within Slezska Ostrava); as of August 1999, all but six of the original families were still there.<sup>303</sup>

The city of Ostrava has twenty-three municipalities; reportedly none of these was willing to accept the evacuees from Hrušov. Municipal authorities in Ostrava are said to be constructing forty-eight new flats, but the displaced Roma from Hrušov will not be able to afford them.

Concerned about the plight of these families, a group of students at the local university and several others formed an organization, Life Together, to work with the families. This organization developed a plan to build new housing on a site in the municipal district of Slezska Ostrava that had been purchased by Ostrava's City Hall. Under this plan, the new homes would be occupied by both non-Roma and Romani families,<sup>304</sup> and the prospective tenants would work together in constructing their

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<sup>302</sup> *Id.* For a detailed account of the incidents surrounding the two villages' adoption of these decrees, see *Application of Demeterova et al. v. Slovak Republic*, European Court of Human Rights. The case was filed on behalf of the three Romani applicants by the ERRC and local counsel in the Slovak Republic.

<sup>303</sup> Most of the remaining families were relocated, reportedly against their will, to the district of Hrušov. Over-mining has caused a number of tunnels to collapse in Hrušov which has, in turn, caused some houses to sink some metres. Following the floods, municipal authorities declared the region unfit for housing and effectively stopped maintenance services. As of July 1999, approximately 165 families were still living in Hrušov.

<sup>304</sup> A Rom involved in the project explained the view underlying this aspect of the plan—in brief, that it is undesirable to concentrate Roma together because this increases their social isolation, disregards significant differences among Romani groups and tends to be done in contravention of the residents' own preferences. Interview, Ostrava, the Czech Republic, 10 April 1999.

homes. This aspect of the plan would, they hoped, advance the dual aims of re-establishing skills on the part of long-unemployed individuals and enhancing inter-communal relations.

Although the municipal council approved the plan to develop the proposed village on its property in Slezska Ostrava, the city government was unwilling to take further steps necessary to secure funding for the construction project. Specifically, it has been unwilling to request state subsidies that are available to finance a portion of the costs of the construction project. Funds for reconstruction and building of new homes for victims of the 1997 floods were available until the end of May 1999, but the municipal authorities declined to apply. Apparently, these funds were available only if the municipality undertook to cover the balance of the project costs if they were unable to secure those costs from other sources. And with a reported debt of some 90 million Czech crowns, the city was disinclined to assume this risk.

In April 1999, Petr Uhl, the Czech Government's Commissioner on Human Rights, made a commitment to seek to include in the government's budget for the year 2000 twenty million Czech crowns (approximately 600,000 US dollars) for the proposed housing project in Slezska Ostrava. Due to the continued unwillingness of local authorities to apply for the funds, a Catholic church-affiliated NGO, Caritas, indicated its readiness to serve as a guarantor, and on 22 September 1999, the Czech Cabinet approved a subsidy of 16.5 million Czech crowns for the project.<sup>305</sup>

The above case highlights the key role of local authorities in addressing problems of Romani communities. Although the Commissioner for Human Rights made clear the interest of the national government in supporting a rehousing project for the Romani families from Hrušov, local authorities were, for some time, able to prevent the project from advancing any further.

### **c) Encampments**

As elaborated below, a key issue in many European countries is the adequacy of halting sites for nomadic and semi-nomadic Roma. But as a recent analysis of Roma in Italy by the ERRC makes clear, Roma may also be at risk of being subjected to housing policies that inappropriately presume them to be nomadic. In a submission to the Committee on the Elimination of Racial Discrimination, the ERRC summarized its concerns:

Alone among all population groups, Roma in Italy - be they immigrant Roma... or "Italian" Roma and Sinti - are almost invariably segregated into inhuman and degrading camps located far from most city centers, thoroughfares and public services. Government housing policy deliberately and systematically segregates Roma from the rest of the population on the false and racist assumption that Roma are "nomads" by nature, who wish to live in

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<sup>305</sup> Office of the Government of the Czech Republic, Resolution No. 987, 22 September 1999. In addition to this government subsidy, the City of Ostrava has donated a plot of land worth approximately 5.5 million CZK.

camps rather than houses or apartments. The entirely predictable result of such intentional racial segregation... is the marginalisation of Roma from mainstream political, economic and social life, and the denial of equality in public spheres from housing to criminal justice, education and employment.

Regional laws adopted in ten of the twenty regions in Italy in the late 1980s and early 1990s aimed openly at what was commonly referred to as “the protection of nomadic cultures” through the construction of camp sites for Roma. Most camps are surrounded by a wall or fence....<sup>306</sup>

The approach described by the ERRC exemplifies a further variation on a common trend in Europe - housing policies that relegate Roma to segregated communities apart from the rest of society. To the extent they are applied in a fashion that treats Roma who do not wish to pursue a nomadic lifestyle as nomads, the regional laws described in the quoted passage are also incompatible with the right of national minorities to express their cultural identity.

#### **d) An Alternative Model: Integrated Housing in Kremnica**

The Slezska Ostrava proposal was inspired by a housing project developed in the central Slovak town of Kremnica under the joint sponsorship of the Dutch foundation SPOLU and a local partner, the Foundation for the Support of Social Housing.<sup>307</sup> The initial phase of the project provided new homes for nine families who were financially unable to purchase a flat, including families that receive social welfare.

Although the principal aim of the project was to improve the living conditions of poor Romani families in Kremnica, non-Roma were also included as beneficiaries. This decision was made to avoid placing the majority population in what it might perceive as a “negative position” with respect to the housing program, and also helped foster a sense of community among the Romani and non-Romani families who participated in the project.<sup>308</sup> Nonetheless, the project encountered resistance among some non-Romani residents of Kremnica, and substantial public-education efforts were undertaken to overcome their opposition.

The project was based on the premise “that designing houses according to basic standards will help in the development of socially dependent families and such

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<sup>306</sup> Written Comments of the ERRC Concerning Italy for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 54<sup>th</sup> Session, 8-9 March 1999 (footnotes omitted). Beyond the problems noted above, a large number of these camps lack basic sanitary facilities, according to the ERRC report.

<sup>307</sup> The Kremnica project, in turn, had been inspired by a housing project in Kiskunhalás, Hungary. Like the Kremnica project, the Kiskunhalás houses were constructed through the “do it yourself” method, but with the support of state grants.

<sup>308</sup> Interview, Kremnica, Slovak Republic, 12 March 1999.

housing will be a motivating factor for the selected families and for other families living in unsuitable conditions.”<sup>309</sup> To realize this objective, it was thought necessary that the construction work be carried out by the future tenants. The Kremnica branch of the State Office of Labour paid for the employment of the long-term unemployed workers involved in constructing the housing.

Land for the development was provided by the municipal government, and the Foundation for the Support of Social Housing owns the houses.<sup>310</sup> The Foundation provided loans to the tenants to finance equipment for the interior of the houses, which they were obliged to repay on a monthly basis. While these loans assured a minimum standard for interior conditions, tenants were able to equip their apartments in light of their personal needs and preferences.

For the Romani tenants, the housing provided a long-sought opportunity to provide a secure, stable and otherwise suitable home for their families. One of the tenants, a factory worker, had previously lived in a two-room apartment with his wife and four children. After the roof of this home was burned down by unknown assailants, the family moved into a single room. This home, too, was attacked, by a group of skinheads who had come to Kremnica from a nearby town. When this Rom moved into another two-room apartment, the neighbors wrote a petition to municipal authorities saying they did not want to live near Roma.<sup>311</sup>

Although the project envisaged providing homes for twenty-five families, funding has not been available to proceed beyond the initial nine-family settlement. Thus the successes of the Kremnica project have to be measured in comparatively modest terms. Even so, the project provides an instructive example of how a town that faces severe housing problems among a segment of its Romani community - if on a comparatively small scale - can address those problems in a constructive fashion.

One notable aspect of the Kremnica project is the leadership provided by the town's non-Romani mayor, Miroslav Nározny. Like authorities in other municipalities, Mayor Nározny was confronted with the phenomenon of unemployed Roma illegally occupying property in the town center. Like other municipal authorities confronted with the question of how to address this situation, he was presented with proposals to remove the illegal occupants outside of town - literally and proverbially out of sight. In his view, though, this approach “is not the solution.”<sup>312</sup> Instead, social housing projects should be developed so that they can

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<sup>309</sup> Foundation for Pluralism and Democracy in Central and Eastern European Countries, “The Social Housing Project in Kremnica in the Framework of the SPOLU-Project”, Final Report, SPOLU International Foundation, Kremnica/Amsterdam, August 1997, p. 2.

<sup>310</sup> The land contributed by municipal authorities was worth US\$22,500. The town also paid infrastructure costs (US\$140,000) and costs relating to technical documentation (US\$9,000). The Dutch development agency SPOLU contributed construction costs (US\$140,000), as well as technical assistance. The Office of Labour and other Dutch organizations contributed a total of US\$50,000.

<sup>311</sup> Interview, Kremnica, the Slovak Republic, 12 March 1999.

<sup>312</sup> *Id.*

serve as a positive example, motivating others to emulate the initiative and industry demonstrated by those who participated in the Kremnica project while fostering co-operation between Roma and non-Roma.

The phase of the project that has been completed serves as a positive model in other respects as well. Tenants participate in administration of the housing project, and are actively engaged in addressing larger issues of community relations in Kremnica. The housing project is administered by the board of the Foundation for the Support of Social Housing, one of whose members is a Romani tenant in the newly-constructed housing. A Roma Working Group, whose members include tenants of the project, plays a key role in mediating between Roma and non-Romani communities in situations involving tensions and potential conflicts.<sup>313</sup> In this respect and others, the Kremnica project exemplifies the impact of housing policies on broader issues of inter-communal relations.

The Kremnica project also sought to address a phenomenon of recurring importance: the syndrome of dependency inculcated by some policies of social housing. Those selected to participate in this project participated in designing and constructing the flats, and entered into a contractual relationship with the Foundation for the Support of Social Housing that set forth their rights and responsibilities. In the view of Romani families now living in the Kremnica development, the project design and implementation afforded them an opportunity to assume responsibility for their lives.

This has not, of course, inoculated tenants against the hazards of a weak economy. Two of the tenants have lost their jobs recently, making it impossible to meet their monthly rent obligations. But the project itself worked with the families to find a constructive solution. Based on discussions with the president of the Foundation for the Support of Social Housing in Kremnica, it was agreed that the unemployed tenants would work for the Foundation on construction or reconstruction projects. These families are motivated to look for jobs and to fulfil their obligations according to the contract with the Housing Foundation which, in turn, is working with them to enhance their prospects. As the Kremnica project shows, while housing projects can scarcely solve all problems affecting Romani tenants, they can be designed in a fashion aimed at enhancing their prospects in other realms.

## 2. Halting Sites

For those Roma who maintain a traditional nomadic or semi-nomadic lifestyle, the availability of legal and suitable parking sites is a paramount need and, indeed, a precondition to the maintenance of their group identity. Many Western European countries where the incidence of nomadism is comparatively high have regulations encouraging or requiring relevant authorities to maintain camping sites.<sup>314</sup> For example, France's 1990 Besson Act requires every municipality with more than 5,000 inhabitants to maintain sites where nomadic groups can either stop or stay.

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<sup>313</sup> For discussion of the Mayor's and Working Group's response to skinhead violence several years ago, *see* Section II.D., *infra*.

<sup>314</sup> *See* European Committee on Migration, *supra* (note 280), at p. 10, paragraph 35.



But this law and others, including legislation in The Netherlands and Northern Ireland, also make it illegal to park on unauthorized sites.<sup>315</sup> (The latter law criminalizes unauthorized parking of caravans only when done by “any person being a traveller.”<sup>316</sup>) Typically, even in countries that encourage or advise local authorities to maintain parking sites, the number and size of available sites is insufficient in light of the need. The effect is to place nomadic Roma in the position of breaking the law - in some countries, committing a crime - if they park in an unauthorized location, even though authorized sites may not be available.<sup>317</sup> Often, too, sanitation and other basic facilities provided on public sites are inadequate.

Beyond basic housing concerns, the lack of legal parking sites typically entails an interlocking set of social and civil problems. Gypsies who cannot find lawful halting sites are, for example, hard-pressed to keep their children in school. In France and other countries, moreover, difficulties establishing lawful residence - even semi-permanent residence - may effectively disenfranchise nomadic groups and disqualify them for social benefits.<sup>318</sup>

The following sub-section examines in some depth the legal framework and practice concerning caravan sites in the United Kingdom. Issues relating to halting sites there exemplify problems that recur in a number of Western European countries, and to this extent the situation in the United Kingdom is illustrative of broader concerns.

### • Gypsies and Travellers in the United Kingdom

The lack of adequate halting sites is a relatively recent problem in the United Kingdom. In the words of Mr. Justice (now Lord Justice) Sedley:

For centuries the commons of England provided lawful stopping places for people whose way of life was or had become nomadic. Enough common land had survived the centuries of enclosure to make this way of life sustainable, but by section 23 of the Caravan Sites and Control of Development Act 1960 local authorities were given power to close the commons to travellers. This they proceeded to do with great energy, but made no use of the concomitant powers given to them by section 24 of the same Act to open caravan sites to compensate for

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<sup>315</sup> In The Netherlands, the right to park in designated sites is limited to those whose ancestors lived in caravans. *See id.* at p. 10, n. 18.

<sup>316</sup> The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, Article 9(1).

<sup>317</sup> For examples of this situation in Ireland, *see* Roma Rights, No. 2, *supra* (note 82), at pp 15-16, and Roma Rights, No. 3, ERRC, Budapest, 1999, p. 21.

<sup>318</sup> *See* Section V.D.5., *infra*.

the closure of the commons.<sup>319</sup>

Responding to the resulting scarcity of caravan sites, Parliament passed the Caravan Sites Act 1968 with the principal aim of transforming into a duty the discretionary power of local authorities to create such sites. Section 6(1) required local authorities “to exercise their powers . . . so far as may be necessary to provide adequate accommodation for gipsies residing in or resorting to their area”, and the Secretary of State could direct local authorities to provide caravan sites where it appeared to him necessary.<sup>320</sup> Parliament’s aim in enacting this law was, in the words of a British judge, “that there should be sufficient sites to accommodate the whole of the gipsy community within the law . . . .”<sup>321</sup>

In exchange for ensuring that all Gypsies could find lawful caravan sites, the law made it a crime for Gypsies - but no one else - to station caravans in unauthorized areas pursuant to a system of “designation.”<sup>322</sup> The distinction between Gypsies and others has since been eliminated from U.K. law. At the time, if the Secretary of State was satisfied under the 1968 law that a local authority had made adequate provision for the accommodation of Gypsies - or that it was not necessary or expedient to do so - he could “designate” the relevant district or county.<sup>323</sup> Some achieved this status without providing any caravan sites; most did so despite their

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<sup>319</sup> R. v. Lincolnshire CC ex parte Atkinson (September 1995, transcript at Annex 1), *quoted in* Memorial of the Applicant, Buckley v. United Kingdom, App. No. 20348/92, European Court of Human Rights, p. 8.

In comments to the OSCE High Commissioner on National Minorities, the British Government provided a somewhat different interpretation of past law, as follows:

Before the advent of town and country planning, commons were only ‘lawful’ stopping places in the sense that camping on them was not a criminal offence. It was, and is, a trespass, and the landowner is entitled to apply to the Court for an order for the removal of trespassers, including camping Roma. It is, however, a feature of common land that the landowner may not be known, or may not have sufficient interest to commence Court proceedings to remove trespassers. This can lead to difficulties with enforcement under town and country planning legislation. Powers of control by order were accordingly given to the local authorities by the Caravan Sites and Control of Development Act 1960. The extent to which those powers were used is likely to indicate the extent of the nuisance caused by unauthorised camping on commons.

Foreign and Commonwealth Office of The Government of The United Kingdom, Comments Prepared by the UK Government, 27 October 1999, p. 1 (*on file with the Office of the OSCE High Commissioner on National Minorities*) [hereafter, Comments Prepared by the UK Government].

<sup>320</sup> Caravan Sites Act 1968, Section 9.

<sup>321</sup> R v Hereford and Worcester CC ex parte Smith (1988), transcript, pp. 24-25, *quoted in id.*

<sup>322</sup> Section 10(1) made it an offense “for any person being a gipsy to station a caravan for the purpose of residing for any period” on specified categories of land in “designated” areas. The British Government acknowledged that “the powers that flow from designation” under this act “are severely discriminatory against one group of people,” but concluded that “their use is justifiable” on the basis — and only on the basis — “that the duty of the responsible local authority with regard to that group has been fully implemented.” Circular No. 57/78: Accommodation for Gypsies: Report by Sir John Cripps, Section 5.10(a), 15 August 1978.

<sup>323</sup> Caravan Sites Act 1968, Section 12.

failure to provide sufficient sites. Upon designation it became a criminal offense for a Gypsy to station a caravan within the designated area with the intention of living in it for any period of time, on the highway, on any other unoccupied land or on any occupied land without the consent of the occupier.<sup>324</sup>

Local authorities proved highly reluctant to establish caravan sites, and the Secretary of State rarely used his authority to direct them to do so.<sup>325</sup> A study undertaken by Sir John Cripps at the Government's behest, completed in July 1976, found that

provision exists for only one-quarter of the estimated total number of gypsy families with no sites of their own. Three-quarters of them are still without the possibility of finding a legal abode . . . Only when they are travelling on the road can they remain within the law: when they stop for the night they have no alternative but to break the law.<sup>326</sup>

Nevertheless, the 1968 Act achieved substantial - if still inadequate - results. Perhaps spurred by legal actions seeking to compel action under the 1968 law, local authorities established more than 300 new caravan sites over the 24-year period when the Caravan Sites Act 1968 was in effect.<sup>327</sup>

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<sup>324</sup> *Id.*, Section 10. For purposes of the law, "gipsies" were defined as "persons of nomadic habit of life, whatever their race or origin, but [the term] does not include members of an organised group of travelling showmen, or of persons engaged in travelling circuses, travelling together as such." (Section 16.) In *R. v. South Hams District Council ex parte Gibb (and others)*, [1994] 3 W.L.R. 1151 (CA), the Court of Appeal, confronted with the question whether a New Traveller was entitled to claim a right to a site under the 1968 Act, held that the term "Gypsy" should be narrowly construed. See Luke Clements and Philip Elkin, *Human Rights Bill – Gypsies and Other Travellers*, (forthcoming), p. 2.

<sup>325</sup> Lord Avebury, "Forward", in Rachel Morris & Luke Clements (eds.) *Gaining Ground: Law Reform for Gypsies and Travellers*, Traveller Law Research Unit, Cardiff Law School, University of Hertfordshire Press 1999, pp. xiii-xix, at p. xiv.

<sup>326</sup> Sir John Cripps, *Accommodation for Gypsies: A Report on the Working of the Caravan Sites Act 1968*, HMSO, London, 1977, p. 9 [hereafter, Cripps Report]. Sir John Cripps noted that a key reason why it was taking longer than expected to achieve the aims of the 1968 law was the determined opposition locally to every proposal to establish a caravan site. "It is not possible," he wrote, "to overstate the intensity of feeling, bordering on the phrenetic, aroused by a proposal to establish a site for gypsies in almost any reasonable location." *Id.* at p. 12. (It should be noted that, according to British attorneys who have represented numerous Gypsies in cases involving rights under the 1968 law, once sites were actually established the pattern has been for local opposition to abate.)

<sup>327</sup> The simultaneous growth in demand for sites meant that a number of Gypsies – by a 1994 Government estimate 4,000 caravans - continued to halt on unauthorized sites, but this should not obscure the more positive accomplishments of the law. In the assessment of Lord Avebury, one of the original sponsors of the Caravan Sites Act 1968, "[t]he number of mobile homes on unauthorised sites began to decline, in spite of a rapid increase in the size of the traveller population . . ." In his view, if the law and the system it established had continued in effect, "unauthorised encampments would have virtually disappeared within [another] ten years." Lord Avebury, *supra* (note 325), at p. xv. Indeed, the British Government takes the view that "[h]aving regard to the number of families originally considered to need accommodation . . . the 1968 Act was very successful, and achieved far more in the way of site provision than it set out to achieve." Comments Prepared by the UK Government, *supra* (note 319) at p. 1.

In 1994 the British Government nonetheless successfully pressed for repeal of the Caravan Sites Act 1968, explaining:

That system has been in operation for 24 years, and the fact is that levels of unauthorised camping - in terms of numbers of gypsy caravans on unauthorised sites . . . - have hardly changed since then  
 . . . The Government had to decide to do something. . . .  
 The conclusion we reached . . . was that local authority site provision was not likely ever to meet that apparently growing demand for sites . . . . [I]t is the Government's view that public provision has now reached a satisfactory level and that further provision should be made by the gypsies themselves through the planning system.<sup>328</sup>

The provisions of the Caravan Sites Act 1968 summarized above were repealed by Section 80(1) of the Criminal Justice and Public Order Act 1994 ("CJPOA"). Local authorities are no longer statutorily required to provide adequate sites for Gypsies, although councils still have statutory power to establish caravan sites.<sup>329</sup>

While eliminating local authorities' duty to provide adequate caravan sites, the CJPOA 1994 enlarged the circumstances in which unauthorized parking may be determined illegal. Section 77(1) of the CJPOA 1994 gives local authorities the power to direct unauthorized campers to move;<sup>330</sup> for these purposes, unauthorized campers are persons who appear to be "for the time being residing in a vehicle or vehicles" on any land forming part of the highway, any other unoccupied land, or any occupied land without the consent of the occupier. Failure to comply with such a direction as soon as practicable or re-entry upon the land within three months is an offence.<sup>331</sup>

Under current law, Gypsies have three options for lawful<sup>332</sup> camping: parking on public caravan sites - which the Government acknowledges to be insufficient;

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<sup>328</sup> Official Report, House of Lords, 11 July, 1994, col 1 541-2, *quoted in* Lord Avebury, *supra* (note 325).

<sup>329</sup> Caravan Sites and Control of Development Act 1960, Section 24. Exercise of this power was, however, rendered even less likely than before by the repeal, pursuant to Section 80(5) of the CJPOA 1994, of a law authorizing the national government to pay 100 percent grants to local authorities in respect of capital expenditures relating to the provision of Gypsy caravan sites. Local Government, Planning and Land Act 1980, Section 70.

<sup>330</sup> The United Kingdom Government notes that DOE Circular 18/94, "Gypsy Sites Policy and Unauthorised Camping" and the DETR/Home Office good practice guidance "Managing Unauthorised Camping" both advise local authorities to make "necessary health and other checks" before giving unauthorized campers a direction to leave. Comments Prepared by the UK Government, *supra* (note 319), at p. 2.

<sup>331</sup> CJPOA 1994, Section 77(3). Local authorities can apply to a magistrates' court for an order authorizing them to remove caravans parked in contravention of such a direction. CJPOA 1994, Section 78.

<sup>332</sup> Of course, Gypsies may also choose to camp on unauthorized sites. However, it is then up to the discretion of the local authorities to 'tolerate' the camping or not. As noted above, under CJPOA

parking on occupied land with the consent of the occupier; and parking on property owned by the campers themselves. The British Government has issued guidance to local authorities aimed at encouraging the last approach.<sup>333</sup> In practice, however, and notwithstanding official recognition of their special situation and needs, many Gypsies have encountered formidable obstacles to obtaining the requisite permission to park their caravans on their own property.

Under United Kingdom law, one is not entitled to park a caravan on property merely by virtue of owning it; planning permission is required for carrying out any development of land.<sup>334</sup> For these purposes, a change in land use for the stationing of caravans can constitute a development.<sup>335</sup> An application for planning permission must be made to the local planning authority, which is required to make its determination in accordance with the local development plan unless material considerations indicate otherwise.<sup>336</sup> If a development is carried out without the required planning permission, the local authority can issue an “enforcement notice” if it considers it expedient to do so having regard to the provisions of the development plan and to any other material considerations.<sup>337</sup>

This scheme allows wide play for the exercise of discretion - and that discretion has repeatedly been exercised to the detriment of Gypsies. A 1986 report published by the Department of the Environment described the prospects of applying for planning permission for a Gypsy site as “a daunting one laced with many opportunities for failure.”<sup>338</sup> In 1991, the last year in which the success of application

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1994, if local authorities direct the unauthorized camper to leave, he/she commits a criminal offence by failing to comply.

<sup>333</sup> In light of the 1994 legislation, the Government issued Circular 1/94 (5 January 1994), which advised councils:

In order to encourage private site provision, local planning authorities should offer advice and practical help with planning procedures to gypsies who wish to acquire their own land for development. . . . The aim should be as far as possible to help gypsies to help themselves, to allow them to secure the kind of sites they need, and thus help avoid breaches of planning control.

Circular 1/94, p. 5, paragraph 20.

<sup>334</sup> Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991 (“the 1990 Act”), Section 57.

<sup>335</sup> *Restormel Borough Council v. Secretary of State for the Environment and Rabey* [1982] *Journal of Planning law* 785; *John Davies v. Secretary of State for the Environment and South Hertfordshire District Council* [1989] *Journal of Planning Law* 601.

<sup>336</sup> 1990 Act, Section 54A.

<sup>337</sup> *Id.*, Section 172(1).

<sup>338</sup> *Quoted in* Memorial of the Applicant, *Buckley v. United Kingdom*, *supra* (note 319), at p. 14. Ten years earlier, Sir John Cripps summarized the plight of Gypsies who had applied for planning permission to park caravans on their own property: “The fact is that a gypsy wishing to provide for the needs of himself and members of his family finds it almost impossible to obtain planning permission, as a long list of refusals testifies. Meanwhile the remorseless and often fast-moving tide of urban

rates was evaluated, it was ascertained that 90 percent of applications by Gypsies for planning permission were denied. In contrast, 80 percent of all planning applications were granted during the same period.<sup>339</sup> It is to be noted that, as a category, Gypsy planning applications are relatively unique insofar as they typically request permission to park caravans in areas or sites which are subject to restriction by local planning authorities. As such, virtually all Gypsy planning applications are highly contentious.<sup>340</sup> Nonetheless, the fact remains that there is inadequate provision or availability of authorized halting sites (private or public), which the high rate of denial of planning permission only exacerbates. Moreover, there are indications that the situation has deteriorated since 1994. One recent study of Gypsies and the planning system concludes:

...since 1994 the pace of authorised (public and private) provision has decreased to approximately 250 caravans per year from 320. The current rate of yearly increase in authorised provision accounts only for the reduction of the same number of caravans on unauthorised sites. Evidently, since Circular 1/94 has been introduced, the pace of private site provision has not increased sufficiently to counterbalance decreases in public site provision . . .<sup>341</sup>

In the face of these difficulties, the itinerant life style which has typified the Gypsies is under threat. As Justice Henry observed when he cited the need for the policy embodied in Britain's Caravan Sites Act 1968 (now abandoned) of making adequate provision for caravan sites: "If there are not sufficient sites where gypsies may lawfully stop, then they will be without the law whenever and wherever they stop. This will result either in them being harried from place to place, or in them being allowed to remain where they should not lawfully be."<sup>342</sup>

### 3. Evictions and Disenfranchisement

The UN Committee on Economic, Social and Cultural Rights in interpreting Article 11(1) of the ICESCR regarding the right to housing has emphasized in particular that "instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law."<sup>343</sup>

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development has overtaken many traditional stopping places close to industrial areas." Cripps Report, *supra* (note 326), at p. 5.

<sup>339</sup> HL Hansard 7 June 1994, col 1198 and 1132.

<sup>340</sup> The experience of Gypsies seeking planning permission (and being denied) is typified in two cases which have been considered or are presently under consideration by the organs of the European Convention on Human Rights: *Buckley v. United Kingdom*, No. 23/1995/529/615; and *Chapman v. United Kingdom*, App. No. 27238/95.

<sup>341</sup> Toby Williams, "Private Gypsy Site Provision", ACERT, Harlow, Essex, 1999, p. vii.

<sup>342</sup> *R. v. Hereford and Worcester CC ex parte Smith* (1988) transcript, pp. 24-25.

<sup>343</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 4: the right to adequate housing, *supra* (note 281), at paragraph 18.

While not all involuntary evictions violate the ICESCR, they generally are incompatible with the right to adequate housing when individuals are removed against their will from the homes they occupy “without the provision of, and access to, appropriate forms of legal or other protection.”<sup>344</sup> The Committee has also admonished that evictions “should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State Party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”<sup>345</sup>

As noted, a major consequence of the various housing quandaries recounted above is that many Roma live in conditions that are not legally sanctioned. Their lack of settled legal status can have profoundly deleterious implications for virtually every aspect of life, ranging from children’s ability to attend school to adults’ ability to vote. In some countries and under certain conditions, illegal occupancy can expose Roma to criminal sanctions. In many European countries, entire communities have been vulnerable to eviction. In these circumstances, pervasive discrimination against Roma has often served to block any community from accepting the displaced Roma.

The experience of Romani communities in several Greek sites exemplifies this phenomenon. In the summer of 1998, the Mayor of Evosmos, Thessalonika ordered the eviction of approximately 3,500 Roma from a location some had occupied for 30 years. Apparently eviction orders had been initiated in 1997, but their implementation was deferred because no alternative site was offered. After a local NGO, DROM, threatened to sue the local prefecture, it decided to relocate the Roma to the site of a former military barracks that had been offered by the Ministry of Defense. According to representatives of DROM, this decision was taken in June 1997, but no progress was made in preparing the site for more than a year - a fact DROM attributes to the opposition of local mayors.<sup>346</sup> In the meantime, the Roma were evicted in the summer of 1998,<sup>347</sup> and eventually settled alongside the Gallikos River. The national government is in the process of preparing the infrastructure for the new site. Original plans to begin initial stages of relocation in September 1999 have been postponed until March 2000.<sup>348</sup>

On 16 February 1999, authorities in Aspropyrgos, a town approximately 30 kilometers southwest of Athens, set fire to the homes of several Roma families in the

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<sup>344</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 7: The right to adequate housing (Article 11.1 of the Covenant): forced evictions, 1997, paragraph 4.

<sup>345</sup> *Id.*, at paragraph 17.

<sup>346</sup> See U.S. Department of State, Greece Country Report on Human Rights Practices for 1998, February 1999.

<sup>347</sup> According to representatives of DROM and Roma interviewed by our delegation, police came to the Romani settlement and threatened to impose fines if the residents did not leave within 24 hours. Interviews, Thessalonika, Greece, 23 May 1999.

<sup>348</sup> Interview, Athens, Greece, 24 May 1999.

illegal settlement of Nea Zoi.<sup>349</sup> Approximately 100 Romani families lived in Nea Zoi, where some have lived for close to ten years. On the morning of 16 February, half a dozen municipal authorities, including the Deputy Mayor, and approximately twelve local police entered Nea Zoi. They reportedly announced that five of the barracks had to be evacuated as they were to be destroyed immediately. These were razed by bulldozers and the remnants were later set on fire. Residents say that they were told the remaining barracks would also be destroyed as they, too, had been built illegally. The Mayor of Aspropyrgos reportedly claimed that many non-Roma residents had signed a petition calling for the Roma to leave the area.<sup>350</sup>

This action followed a period of unsuccessful efforts to reach a generally acceptable plan for the Romani families in the Nea Zoi site. In 1997, local authorities reportedly urged the settlers to move to the Ano Liosia camp in an adjacent municipality, but did not offer to provide housing there. The Roma refused, claiming that the proposed site, which was next to a garbage dump, had worse conditions than their present location. In addition, their children would be farther away from the school that some of them attended. The Mayor reportedly said that there were no sites in Aspropyrgos available for a new Roma settlement. Despite efforts by national authorities to provide a suitable relocation site, bureaucratic delays had prevented implementation of this plan.<sup>351</sup>

After the five barracks were razed, four of the five families rebuilt shacks on the sites of their former homes. Although local authorities had threatened to destroy any new homes built on the site of those that had been razed, they refrained from doing so, apparently in response to pressure from NGOs and a member of the Greek Parliament who had taken up the case of the Nea Zoi Roma.

As of December 1999, it had not been possible to find a suitable site to relocate Roma families. The Ministry of Agriculture agreed to provide to the prefecture a site that it owns for this purpose, but the prefect reportedly refused to sign the official request for the land, apparently fearing the reaction of local mayors. Despite efforts by an advisor to the Prime Minister to resolve this impasse, no resolution has been possible.<sup>352</sup>

The experience of these and other Roma settlements in Greece highlights a problem that has salience in many countries: the effectiveness of any policy vis-à-vis Roma can turn upon the co-operation of multiple layers of government. Thus, even an enlightened approach by some national officials can be and often is thwarted by recalcitrant local authorities. But responsibility for inadequate policy implementation

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<sup>349</sup> There have been conflicting accounts concerning the nature and timing of notice to these residents. The female head of one of the households that was burned told our delegation that her family had received notice that her home would be demolished one day before the raid. Interview, Aspropyrgos, Greece, 22 May 1999.

<sup>350</sup> See Activity Report of the GHM Roma Office, Greek Helsinki Monitor Report to ERRC No. 54: 9/4/1999, February 1999.

<sup>351</sup> *Id.*

<sup>352</sup> Greek Helsinki Monitor, telephone interview, December 1999.



cannot be laid solely at the doorstep of local authorities. In some countries that have undertaken initiatives to develop comprehensive Roma policies, national officials appointed to implement those policies operate without adequate support at the most senior levels of government. In order to be effective, public servants require the support of national leaders and local officials.

## C. Health

### 1. Overview

Inadequate attention and resources have been devoted to the pressing health concerns of Romani communities. The resulting dearth of information about specific patterns of health-related problems among Roma in turn contributes to scant allocation of vital public resources to address these problems.

Nonetheless, those studies which have been carried out demonstrate that the sub-standard living conditions endured by many Roma across the OSCE region result in a number of health-related problems, including lower than average life expectancy,<sup>353</sup> higher than average infant mortality rates,<sup>354</sup> and high levels of malnutrition and disease. Health patterns among Roma are also negatively influenced by high levels of poverty, low levels of education, and limited access to health care and services. Discriminatory and prejudicial attitudes are one of the key factors in the marginalization and sometimes exclusion of many Roma from public health campaigns and programs; lack of practical access to health care generates specific concerns for Romani women.

Statistics from many countries show that the incidence of certain types of environment-related illnesses is typically several times higher for Roma than for the general population.<sup>355</sup> Communicable diseases such as tuberculosis (TB), hepatitis, poliomyelitis, and measles are all reported to be prevalent amongst Roma communities in various States.<sup>356</sup> The last reported cases of poliomyelitis in Bulgaria, the FYROM and Romania, for example, all occurred in Romani communities. Romani children, in particular, are also susceptible to dermatological problems such as scabies and impetigo which are more easily communicated in unsanitary conditions.

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<sup>353</sup> A 1992 UNICEF analysis of demographic indicators among the Roma population in a number of Central and Eastern European and Western European States concluded that: "figures [with regard to life expectancy] provoke even greater cause for concern in view of the similarities which may be seen in different country contexts where political and economic systems, socio-cultural and geographic environments as well as historical backgrounds vary widely." Sandro Costarelli, "Gypsy Children in Europe: an overview", in Costarelli (ed.), *supra* (note 199), pp. 35-52, at p. 40-41.

<sup>354</sup> *Id.*, at p. 42.

<sup>355</sup> ní Shuinéar, *supra* (note 199), at p. 20.

<sup>356</sup> Lajos Puporka and Zsolt Zádori, "The Health Status of Romas in Hungary", NGO Studies No. 2, World Bank Regional Office in Hungary, Roma Press Centre, 1999, p. 39. A 1998 Croatian Health Ministry investigation into the sanitary and epidemiological conditions under which Roma live found that in a number of counties these conditions were inadequate. Report of Croatia under the Framework Convention for the Protection of National Minorities, Council of Europe Doc. ACFC/SR (99) 5 of 16 March 1999, pp. 49-52.

While the number of cases of TB is generally on the increase, both in Western Europe and Central and Eastern Europe, it is the most socially and economically disadvantaged groups, such as Roma, who are most at risk, not only in terms of infection rate, but also in terms of recovery<sup>357</sup>. In 1990 in Bulgaria the morbidity rates for TB among Romani children was 60 per 1000 compared with 22 per 1000 for the national average, and in former Czechoslovakia the rate was more than double the national average.<sup>358</sup>

Sedentary, crowded living conditions also contribute to the high incidence, in many Romani communities, of smoking, alcohol and drug addiction.<sup>359</sup> The burden of dealing with the health consequences of these problems is borne disproportionately by Romani women, both as mothers and as the primary health-care providers within the family.

Frequently, the perception within non-Roma society is that Roma are more exposed to infections than other groups and that, consequently, they are responsible for spreading epidemics.<sup>360</sup> This perception must be countered by efforts to ensure that discriminatory attitudes in society which hold Roma responsible for spreading disease and view the illnesses that afflict Roma as being exclusively their responsibility are combated. Health problems related to the social condition of Roma, such as the prevalence of communicable diseases, must be regarded as a matter of public health.

## **2. Causal factors**

### **a) Inadequate living conditions**

The infrastructure available to Romani communities is often disastrous. Romani settlements in rural areas are frequently either isolated or located on the outskirts of a town or village, with limited access to public amenities such as water supply, sewage systems, electric power or gas supply, and access roads. Roma living in urban areas are often relegated to particular districts or neighborhoods, usually characterized by slum-like conditions, poor or non-existent public services, and severe overcrowding.<sup>361</sup>

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<sup>357</sup> It is significant that an informal survey carried out 15 years ago in Hungary found that there was not a great difference in terms of infection rate between the Roma and non-Roma communities, but that the Roma patients were in a much graver and neglected condition. Puporka and Zádori, *supra* (note 356), at p. 39.

<sup>358</sup> Pierre Claquin (MD), *The Health of Roma Children in the CEE/CIS and the Baltic States*, DRAFT, 1997, p. 11.

<sup>359</sup> *See, e.g.* Puporka and Zádori, *supra* (note 356), at p. 44.

<sup>360</sup> The World Bank report on the health status of Roma living in Hungary notes that, although statistics are unavailable when epidemics are reported, it is usually mentioned if a high proportion of those affected are Roma. Puporka and Zádori, *supra* (note 356), at p. 35.

<sup>361</sup> A 1993 study for the Hungarian Ministry of Welfare, for example, concluded that the level of overcrowding in a sample of 674 households (both urban and rural) "is unacceptable in physical and mental terms." Pál Bálanky, *Survey of Gypsy Families*, Family Protection Department, Family, Child and Youth Policy Directorate, Ministry of Welfare, 1993, pp. 28-42, *cited in*, Puporka and Zádori, *supra* (note 356), at 29.

The following examples are fairly typical, and others could easily be drawn from many OSCE countries. In a recent policy pronouncement, the Slovak Government noted that “Romany settlements have substandard municipal hygiene, [and a] polluted and devastated environment. Potable water supply is missing.”<sup>362</sup> Those communities that lack running water inevitably suffer from water-borne diseases and poor hygiene. Assessing the situation of one Romani settlement in northeastern Croatia, one international official recently noted:

[In the Gypsy settlement] close to 200 individuals live in a state of poverty. They only have one well of unclean water and no telephone line. The settlement is about 500 meters from the village. In case of emergency, they have to walk on a long and difficult dirt road to get help.<sup>363</sup>

Moreover, Romani neighborhoods are often located close to rubbish dumps or contaminated industrial sites, which creates environmental health problems. A 1999 World Bank study on the health status of Roma in Hungary refers to one Roma settlement in Ózd where many Roma survive by collecting and selling metal refuse from an industrial waste site; a number of Roma have lost their lives when dump pits suddenly collapse.<sup>364</sup> Recent publications in the United Kingdom<sup>365</sup> and Ireland<sup>366</sup> highlight the concerns of Gypsies and Travellers with regard to the condition and location of Traveller’s sites (both official and unofficial), and specifically inadequate provision of services, including fresh water.

## **b) Unemployment**

The high rate of unemployment among Roma noted earlier in this report, in addition to contributing to an ever-greater degree of social exclusion, marginalization and poverty, also has a dramatic and direct impact on health conditions. The relationship between poverty and health is well established;<sup>367</sup> the effects of poverty are pervasive, but are perhaps nowhere more immediately apparent than with respect to diet. One comparative study conducted by UNICEF in 1992 found that under-nutrition was of major concern for Roma in Italy, the former Yugoslavia, France and

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<sup>362</sup> Slovak Government Strategy, *supra* (note 138), at p. 15.

<sup>363</sup> Special Report of the OSCE Mission to Croatia, Field Office Baranja, 25 February 2000, p. 1.

<sup>364</sup> Puporka and Zádori, *supra* (note 356), at 27.

<sup>365</sup> Rachel Morris and Luke Clements, Disability, Social Care, Health and Travellers, Traveller Law Research Unit, Cardiff Law School, 1999, p. 57; Morris and Clements (eds.) *Gaining Ground: Law Reform for Gypsies and Travellers*, *supra* (note 325), at p. 48.

<sup>366</sup> *See, e.g.* Roma Rights, No. 3, *supra* (note 366), at p. 21.

<sup>367</sup> As noted in a report prepared for the Council of Europe, “If we divide the population into social groups according to their educational level and socio-economic category, we almost invariably observe a better state of health in the better off groups.” Hermess, J. *quoted in*: François-Paul Debionne, “Introductory Report: Obstacles to the availability of health care for the poorest”, Conference on Health and Citizenship: Care for the Poorest in Europe, Council of Europe, CLRAE, Conf. Santé (96) Intr.1, Strasbourg, 1996, p. 9.

the former Czechoslovakia, and that the poor diet of Roma children leads to chronic health problems in later life.<sup>368</sup>

Moreover, the type of employment in which Roma are often engaged can itself entail health risks. In the 1960s and 70s, large numbers of Roma in Central and Eastern European countries faced occupational health hazards as semi-skilled or unskilled laborers in heavy industry. Today, Roma throughout Europe are faced with an increasingly tight labor market, and often accept “black-market jobs” as seasonal or day-laborers, thus foregoing health and/or social insurance. Others are legally employed in areas, such as city sewer maintenance, street-cleaning, or municipal refuse collection, which require - but do not always receive - special public health measures. Médecins du Monde, an NGO working in Greece, systematically vaccinates Roma against rabies because of the hazards of their work in these areas;<sup>369</sup> the existence of this program suggests that the situation is not being addressed by the public health system.

Roma who become ill under such uncertain working conditions are trapped in a vicious circle: lacking insurance and/or working papers or registration, it is difficult to gain access to and pay for health care after an accident or an illness; with ill-health, it is difficult to look for and secure employment.

### c) Education

As noted previously, lack of education or vocational qualifications is one factor affecting the employability of many Roma. Education is therefore recognized as key in improving access to employment and improving the living conditions for Roma. Some studies suggest an even more direct relationship between education and health; a World Bank report on the health status of Roma in Hungary concluded that individuals with a higher education degree are likely to live up to twenty years longer than persons who are illiterate.<sup>370</sup> Reportedly, programs ostensibly focused on raising general levels of education have proven effective in improving health conditions as well.<sup>371</sup> In this context, the Council of Europe’s *Recommendation of the Committee of Ministers to Member States on the Education of Roma/Gypsy Children in Europe* explicitly recognizes the need for comprehensive educational initiatives which acknowledge the link between education and economic, social and cultural factors.<sup>372</sup>

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<sup>368</sup> Costarelli, *supra* (note 353), at p. 56.

<sup>369</sup> Rromani CRISS and UNICEF Romania, “Improving Primary Health Care: Public Health and Socio-Cultural Research with Rroma Communities in Romania”, Primary Health and Public Health, a Cultural Research Project with Rroma Communities in Romania, April-May, Bucharest, 1998, Section 4.b

<sup>370</sup> Puporka and Zádori, *supra* (note 356), at p. 22

<sup>371</sup> For example, a recent submission to CERD from the Spanish Government cited the positive impact on the health of Gitano women and their families of the Gitanos Development program, which included social programs to support education. Thirteenth Periodic Report of Spain to the Committee on the Elimination of Racial Discrimination, *supra* (note 58), at paragraph 57.

<sup>372</sup> Recommendation of the Committee of Ministers to Member States on the Education of Roma/Gypsy Children in Europe, Council for Cultural Cooperation, Council of Europe, Recommendation No R (2000) 4, Adopted 3 February 2000.

Considering the high level of isolation and marginalization of many Romani communities, targeted health education programs could play a particularly important role in improving their health conditions. There is a demonstrable need for public health initiatives to inform Roma communities about available health services and how to utilize them, as well as about specific issues such as immunization. Preventive immunization is not actively sought by many Romani communities, and vaccination coverage among Romani children in many countries has been low. One recent study conducted in Romania found that Romani parents refuse vaccination for their children due to a mistrust of injections, and fear that the vaccine will spread the illness;<sup>373</sup> another, in Hungary, found that illiteracy was a determining factor, as parents were not able to read relevant public health notices. Clearly, more effective distribution of health-related information is warranted. On the other hand, immunization policies which have concentrated effort on reaching Romani families have posted positive results.<sup>374</sup>

Other health issues, such as the spread of and protection against the HIV virus and other diseases transmitted sexually or through intravenous drug use - known to be on the increase amongst Roma in some States - would also benefit from preventive educational efforts. Recent research undertaken in Bulgaria, for example, revealed an increase in the spread of Hepatitis B and C infection amongst Roma intravenous drug users and warns of enormous health and social costs for the Roma population if preventive efforts to avert the possibility of an epidemic, followed by an epidemic wave of HIV, are not urgently implemented.<sup>375</sup>

Given the large gap that must often be bridged between the perspective of public health officials and institutions and Romani communities (see below), the training and employment of Roma as consultants in the development of health education policies, and as mediators in the implementation of these policies, is likely to have a positive impact on their effectiveness.<sup>376</sup> Because the burden of childcare and meeting the basic needs of the whole family falls almost exclusively on women, they are often the principal point of contact between Romani communities and school, health and social services.<sup>377</sup> Health-care training for Romani women, therefore, could play a particularly important role in facilitating communications between public health workers and Romani communities.

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<sup>373</sup> Rromani CRISS and UNICEF Romania, *supra* (note 369), at Section 4.b.

<sup>374</sup> One such example is the former Czechoslovakia, where immunization of Romani children was close to the national average. Claquin, *supra* (note 358), at p. 11.

<sup>375</sup> Gueorgui Popov and Gueorgui Vassilev, "The Relation Between Personal Characteristics, Modes of Initiation and Risky Injecting Behaviour and Hepatitis B (HBV) and Hepatitis C (HCV) Infections Among Roma Minority Heroin Users in Varna – Bulgaria", Groups of Epidemiologists: Project Proposal, Cooperation group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group), Council of Europe Doc. P-PG/Epid (98) 15, Strasbourg, 1998.

<sup>376</sup> See, e.g. Rromani CRISS and UNICEF Romania, *supra* (note 369); USAID/Bucharest, Target: Poor and Rroma/Gypsy Women and Children in Romania, Bucharest, August 1997.

<sup>377</sup> Bitu, *supra* (note 67), at p. 10.

#### d) Discrimination and Exclusion

Access to health care for many Roma is also limited - and sometimes precluded - by discriminatory and prejudicial attitudes.

Cultural differences can raise barriers between Romani communities and health care institutions. Roma who are not proficient in the majority language are at an automatic disadvantage in accessing health care; even where language as such is not a problem, vastly differing perceptions and expectations regarding health care on the part of Roma and health care workers often make communication difficult. Some culturally-determined behaviors, such as standing watch over a sick patient, can directly conflict with institutional culture.<sup>378</sup> Such misunderstandings contribute, over time, to a cycle of mutual mistrust and antagonism - and to qualitatively worse care for Roma than for the general population. A study by UNICEF/Romani CRISS in Romania concluded that “an unequal and discriminatory sociology [is] practiced by health care institutions and medical staff”, and that “this inequality exists at all levels, from the dispensary to the hospital.”<sup>379</sup>

Some innovative health programs have sought to bridge the gap by employing mediators. A Médecins sans Frontières (MSF) program in Romania provides Roma with “escorts” on their first visit to the health center, to provide reassurance and support in familiarizing themselves with the health care system, and in establishing an initial relationship with doctors and other health care workers.<sup>380</sup> As noted above, Romani mediators can also play a positive role in constructing co-operative relations between Romani communities and key health institutions and practitioners.<sup>381</sup> Likewise, programs to educate health care workers about the situation, background and cultural attitudes of Roma could also be beneficial.

Other Roma are excluded from public health care by virtue of the fact that they lack birth certificates, identification cards, or other official proofs of registered residence. The Romanian daily *Ziua* reported on 7 September 1999 that Roma without either the means to pay for health services directly or proof of state medical insurance had been banned from the Iasi County Hospital. State health services are provided for all citizens who are employed and pay social security benefits, and for those who are officially registered with the State as unemployed. Apparently, many Roma in the area are not registered with the government and therefore, in the eyes of the local Fund for Social Security and Health, were not eligible for state health care.<sup>382</sup>

Some Romani communities also experience practical problems accessing health care due to their relative isolation. For example, public transportation does not serve

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<sup>378</sup> ní Shuinéar, *supra* (note 199), at p. 20.

<sup>379</sup> Rromani CRISS and UNICEF Romania, *supra* (note 369), at Section 5.a.

<sup>380</sup> USAID/Bucharest, *supra* (note 376), at p. 27.

<sup>381</sup> Report on the international conference organized by Association of Roma Women in Romania, *supra* (note 205).

<sup>382</sup> Roma Rights, No. 4, *supra* (note 133), at pp. 13-14.

many Romani settlements; when public transportation is available, many Roma can not afford to pay fares. Some isolated communities do not have doctors or nurses in residence, and are not regularly visited by public health care workers because of poor roads. The consequence is that many Roma seek health care only under the most urgent conditions.

States should focus sustained effort to see that no group is systematically or even inadvertently excluded from public health care services. Where special registration is required to access health care, it is the responsibility of public authorities to see that all segments of the population receive relevant information and adequate opportunity.

### 3. Women's Health Issues

The demography of Romani populations is characterized by high fertility and infant mortality rates (IMR). Romani women tend to marry and start families earlier and have more children, often at short birth intervals, compared to other sectors of the population. The young age of mothers and the number of pregnancies implicate not only the health of the mother, but the health prospects of the new generation as well.<sup>383</sup> Low birth-weight, linked with early and multiple pregnancies, is common.<sup>384</sup> The comparatively low nutritional status and weight of many Romani mothers<sup>385</sup> also increases the risk of low birth weight, as well as having serious implications for lactating mothers and their infants.

Available country evidence indicates that there was a general improvement in infant mortality rates between 1960 and 1989 for Roma populations in Europe. Nonetheless, the IMR for the Roma population in, e.g., the former Czechoslovakia in 1991 was over twice the national average<sup>386</sup> and in Hungary it is almost double the national average.<sup>387</sup> The 1989 rate in Bulgaria was even more alarming: 240 per 1000 for Roma compared to a national average of 40 per 1000<sup>388</sup>, i.e. a 600 percent greater risk for Roma infants. Child mortality rates are similarly higher for Roma populations living in Western European States. In the United Kingdom, for example, the rate was 1,500 percent higher than the national average in 1983.<sup>389</sup>

A key factor influencing the trend in fertility rates among Romani populations is a lack of education and information with regard to contraceptive practices. According

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<sup>383</sup> See Corinne Packer, *The Right to Reproductive Choice*, The Institute for Human Rights at Åbo Akademi University, Turku/Åbo, 1996, pp. 5-6. See also, Debionne, *supra* (note 367), at p. 8.

<sup>384</sup> In Romania, for example, Roma women are two or three times more likely to give birth to a child with low birth-weight. Rromani CRISS and UNICEF Romania, *supra* (note 369), at Section 5.b.

<sup>385</sup> The weight of women living on settlement lots in Hungary, for example, was found to be lower than for Roma not living on such. Puporka. and Zádori, *supra* (note 356), at p. 32.

<sup>386</sup> Claquin, *supra* (note 358), at p. 9.

<sup>387</sup> Puporka, L. and Zádori, Z., *supra* (note 356), at p. 31.

<sup>388</sup> Claquin, *supra* (note 358), at p. 9.

<sup>389</sup> Costarelli, *supra* (note 353), at p. 42.

to the studies available, knowledge of contraception varies between Romani women in different communities;<sup>390</sup> in general, however, knowledge among Romani women has been found to be poor in comparison to other sectors of the population. Access to an affordable supply of contraception is another major factor in determining the contraceptive practices of Romani women.<sup>391</sup>

Women's choice of contraceptive method may also be determined by factors related to traditional gender roles in Romani culture and, specifically, to spousal relationships. MSF in Romania found that many Roma women preferred the intra-uterine device as the best modern contraceptive, because it did not require the collaboration of their husbands. Indeed, one of the lessons learned from the MSF experience was the need to bring men into discussions regarding contraceptive efforts at an early stage in order to ensure their co-operation in family planning efforts.<sup>392</sup>

In the absence of access to and/or knowledge of contraceptive measures, abortion is reported to be prevalent among Romani women in some countries as a form of "contraception".<sup>393</sup> High numbers of abortions not only increase the risk of gynecological illness for the woman, they jeopardize the success of future pregnancies. From the aspect of the unborn child, one of the most serious factors is a negative obstetric pathological history, including artificial and spontaneous abortions.<sup>394</sup>

Reproductive health education for Romani women is important not only with regard to contraception, but also in relation to hygiene and nutritional practices which impact on the health and development of the child, both before and after birth. The evaluation of a joint UNICEF/Rromani CRISS local primary health care project in Balta Arsa, Romania, for example, revealed that Roma women tended to be unaware of the need to modify their lifestyle during pregnancy, including in terms of food,

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<sup>390</sup> Médecins Sans Frontières in Romania, for example, reported that in the outlying villages in which they worked, women knew nothing of modern contraception. USAID, by contrast, found that the women they spoke to from communities situated no more than 60 km from a major city expressed opinions and preferences with regard to pregnancy, abortion and contraception. USAID/Bucharest, *supra* (note 376), at p. 28.

<sup>391</sup> An evaluation of the joint UNICEF/Romania CRISS local primary health care project in Balta Arsa, Romania, for example, found many women found the costs of contraception to be prohibitive. Joyce Schoon, "Improving Primary Health Care: Public Health and Socio-Cultural Research with Rroma Communities in Romania", Description and Evaluation of the local primary health care projects in Romania, Collaboration UNICEF and Rromani CRISS, Bucharest, May 1998, at para 5.2.

<sup>392</sup> USAID/Bucharest, *supra* (note 376), at p. 27. *See also* Report on the international conference organized by Association of Roma Women in Romania, *supra* (note 205).

<sup>393</sup> The UNICEF/Romani CRISS study reports that abortion is the number one "contraceptive method" among Roma women in Romania, as well as among non-Roma. Rromani CRISS and UNICEF Romania, *supra* (note 369), at Section 5.b. The experience of Médecins Sans Frontières in Romania reaffirms that the traditional family planning method after failed traditional methods is abortion. USAID/Bucharest, *supra* (note 376), at p. 27.

<sup>394</sup> One Hungarian survey, conducted in Szabolcs-Szatmár county determined that despite a significant reduction at the beginning of the 1980's, obstetric pathological history can be observed in pregnant Roma women, twice as often as non-Romas. Puporka and Zádori, *supra* (note 356), at p. 32.



vitamin intake, physical effort and work.<sup>395</sup> In this context, the high incidence of smoking among Romani women is also significant.<sup>396</sup> Apart from obvious impacts on the health of the mother, smoking during pregnancy can increase the risk of infant mortality.

Romani women are less likely than others to seek prenatal and antenatal care - a trend which is influenced by those factors affecting access to health care generally, such as a lack of funds or mistrust of non-Roma medical institutions, as outlined above. In addition, women may not prioritize their own need to seek medical care and support. Studies suggest that many Romani women do not conceive of their own health as being a significant factor in making decisions.<sup>397</sup>

Projects aimed at promoting women's understanding of and access to reproductive health care are being developed in a number of Central and Eastern European countries within the EC PHARE/LIEN programme.<sup>398</sup> A project initiated in the FYROM, for example, aims to improve Roma living standards in terms of health, hygiene and family planning through developing employment opportunities.<sup>399</sup> In Slovakia a team of partner NGOs are setting up a course in hygiene and child development for mothers.<sup>400</sup>

In planning public health initiatives it should be recalled that family planning and reproductive health are sensitive issues, particularly in the light of allegations that at various periods in the past the Roma populations of some countries have been induced to accept sterilization.<sup>401</sup> Romani women leaders emphasize that public health initiatives should focus on providing women and their families with information and choices (including access to contraceptive measures if desired) rather than seeking to impose a particular solution.<sup>402</sup>

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<sup>395</sup> Schoon, *supra* (note 391), at para 5.2.

<sup>396</sup> A survey in Szabolcs-Szatmár County, Hungary at the turn of the 1970s and 1980s, found that 63 percent of all women giving birth were smokers. Puporka and Zádori, *supra* (note 356), at p. 44.

<sup>397</sup> It is telling that in discussions with Roma women undertaken in the context of a USAID study in Romania, emphasis on the women's own health met with a lukewarm reaction. Consequently, in developing a strategy to encourage women to take contraceptive precautions it was felt that it would be more effective to emphasise the positive impacts on their children, rather than on the women themselves. USAID/Bucharest, *supra* (note 376), at p. 28.

<sup>398</sup> "The Phare/LIEN Programme", Interface 34, Gypsy Research Centre, Université René Descartes, Paris, May 1999, pp. 3-6, at p. 3.

<sup>399</sup> *Id.*, at p. 4 [FYROM – Contract no. 97 – (1008)].

<sup>400</sup> *Id.*, at p. 6 [Slovakia – Contract no. 97 – (1002)].

<sup>401</sup> While there does not seem to be any evidence of such practices in any OSCE State at present, the Council of Europe Specialist Group on Roma/Gypsies has noted the urgent need to assemble more information on this subject. Council of Europe Specialist Group on Roma/Gypsies, Fifth Meeting Report, Council of Europe Doc. MG-S-ROM (98) 5, Strasbourg, 1998, at paragraph 7.

<sup>402</sup> Report on the international conference organized by Association of Roma Women in Romania, *supra* (note 205).

## **D. Conclusions and Recommendations**

### **1. Housing**

It is clear that the housing needs of many Romani communities in OSCE participating States merit concerted attention and a commitment of substantial resources by governments. Among other measures reflecting this commitment, it is hoped that governments will agree to guarantee loans that may be available from international organizations and financial institutions for housing projects. In the short term, it may also be productive to conduct feasibility studies on specific housing projects. The experience developed in the course of such projects may stimulate local and national authorities to implement larger housing projects.

OSCE participating States are encouraged to review their regulatory systems with a view toward eliminating requirements that serve to block housing programs from moving forward even when sufficient funding may be available. As with other areas of public policy that have a significant impact on Romani communities, policies aimed at addressing their housing needs are most likely to be effective if the intended beneficiaries are meaningfully involved in the design of these policies. Wherever relevant and possible, it is also desirable to involve the intended beneficiaries of housing projects in the construction of new units and in the rehabilitation of existing stock. Romani involvement in the design of housing and their meaningful engagement in its construction and maintenance can help advance their integration in society and avoid or reverse patterns of dependency associated with some public housing programs.

Without prejudice to the free choice of particular Romani communities to live with other Roma, governments should ensure that housing policies do not foster segregation; one approach that may be productive is to provide financial incentives for housing projects whose intended beneficiaries include a mix of Roma and non-Roma. Governments must, at the very least, ensure that Roma are not victims of discrimination in respect of housing. Where legislation does not yet exist, OSCE participating States should enact laws that prohibit discrimination in housing and provide effective remedies for violations.

In view of the extreme insecurity many Roma now experience in respect of housing, governments should also endeavor to regularize the legal status of Roma who now live in circumstances of unsettled legality.

### **2. Health**

The particularly dire health status of many Romani communities is of fundamental importance for Roma and for the OSCE States in which they live; urgent attention and action is required. Policies aimed at improving this situation need to be developed in concert with members of Roma communities, including Romani women.

Governments are encouraged to undertake necessary research to ascertain the full health status of Romani populations, to identify socio-economic, political and cultural factors impacting on their condition, and to develop public health programs in response to identified needs. Some States have already recognized the need for

research into the health situation of Roma as a basis for developing comprehensive health policies.<sup>403</sup>

Of immediate concern is the need to address the high incidence of disease and malnutrition among Romani communities. It is essential that efforts to address these problems are regarded as part of a wider concern for public health.

In order to ensure that Roma enjoy equal access to public health care, efforts should be made to ensure that discrimination in the provision of health services is eliminated at all levels. Education initiatives which inform medical staff about Roma culture and health care expectations can be useful in this regard. It is essential that Roma are informed about the availability of services and that obstacles to access are removed. In addition, governments need to ensure that sufficient health services exist in areas that are largely populated by Roma and that other obstacles, such as lack of local infrastructure or prohibitive costs of medication, are overcome.

### **3. Women's Health Issues**

The improvement of access to information and services with regard to reproductive health care requires special attention from OSCE States. In the context of discussions on both health and education, it is extremely important that Romani women receive appropriate information and training; this will give them the capability to organize themselves, train and assist others, and enhance their capacity as intermediaries between Roma communities and health-care providers.<sup>404</sup>

Issues of women's health need to be mainstreamed into general public health policies as well as programs designed specifically for the benefit of Roma. These issues are of overriding importance to the health and welfare of Romani populations in general.

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<sup>403</sup> The Hungarian Government, for example, has proposed that: "In the interest of the improvement of the health conditions of the Roma population, with the purpose of eliminating the practices bringing about negative discrimination, which occur during the use of medical services, a research program shall be launched to explore the indicators of the Roma population's health conditions, the relationship of the institutions providing medical services, and the residents affected." Hungarian Government Decision No. 1047/1999 (V.5), *supra* (note 137) at p. 12. In addition, a number of European Commission supported projects in the field of health are being developed in Central and Eastern European countries (including Albania, Bulgaria, FYROM, Hungary, Romania and Slovakia) within the framework of the PHARE/LIEN Program. See "The Phare/LIEN Programme", *supra* (note 398).

<sup>404</sup> See Report on the international conference organized by Association of Roma Women in Romania, *supra* (note 205).

## VI. POLITICAL PARTICIPATION

Policies and laws aimed at improving the situation of Roma will no doubt fail without the active participation of Roma in the identification and analysis of specific problems, the design and elaboration of programs and projects and, ultimately, their implementation. This means that, in accordance with OSCE standards, Roma must enjoy some form of effective participation in political decision-making processes.

Like other minorities, Roma face special challenges in their efforts to participate in the fundamental promise of democracy - the right to govern themselves. In some respects, these challenges have been especially acute for Roma. Discrimination against Roma within OSCE participating States contributes substantially to their poor representation in national political offices; in some countries, Roma are so reviled that even concerned government officials have sometimes hesitated to address their problems lest this cost them popular support. Anti-Roma discrimination has engendered a pervasive sense of alienation among Roma from the political life of their countries; some traditional Romani leaders have remained aloof from national political processes.

Others, however, are eager to find their place in national and local political processes. Today, a principal focus of their efforts in this regard is the development and implementation of national policies on Roma - a process now underway in several OSCE participating States. The importance of Roma participation in these processes speaks for itself; the challenges to their meaningful participation remain considerable. Although governments generally acknowledge the importance of Roma participation, many are unaccustomed to engaging Roma as partners. For their part, many Romani leaders who are committed to participating in the development and implementation of policies have expressed the desire for programs that would enable them to hone their expertise and skills in this arena.

While principal responsibility for meeting these challenges lies with national governments and political communities, international organizations can play a helpful role. A notable example in this regard has been that of the European Commission which has encouraged some EU candidate countries to ensure that Roma participate meaningfully in the development of national Roma policies in the context of the EU accession process.<sup>405</sup> International actors can also make a substantial contribution by sponsoring programs aimed at assisting Roma in acquiring the expertise and skills necessary to participate effectively in political processes. As the following analysis makes clear, Roma who have participated in well-designed programs of this nature have made notable contributions in the arenas of policy-making and governance.

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<sup>405</sup> The European Commission has identified the situation of Roma in several candidate countries as an area in which improvements are necessary for those countries to satisfy the EU's political criteria for accession. It has also provided financial support to several of these countries to assist them in making the necessary improvements.

## A. OSCE and Other International Standards

The right to participate in public life has long been assured by international law, and its underlying principles are core values of the OSCE. But if the principle of self-governance is well established, transforming the ideals of democracy into daily practice has presented special challenges in multiethnic societies.

In recent years, as concerns relating to ethnic minorities have moved into the foreground of international attention, the question of how to ensure their participation in public life while respecting their cultural specificity has received growing attention. States have repeatedly affirmed the right of all citizens to participate in public affairs without discrimination, but have recognized that this alone may not ensure the meaningful participation of minorities in decision-making processes. Recent instruments have therefore emphasized in particular the need to assure effective participation of persons belonging to minorities in decisions-making processes, in particular with regard to matters which especially affect them.

This emphasis is evident, for example, in the Copenhagen Document, which affirms that:

35) The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities.

The Report of the Geneva Meeting further elaborates this principle:

Respecting the right of persons belonging to national minorities to effective participation in public affairs, the participating States consider that when issues relating to the situation of national minorities are discussed within their countries, they themselves should have the effective opportunity to be involved, in accordance with the decision-making procedures of each State. They further consider that appropriate democratic participation of persons belonging to national minorities or their representatives in decision-making or consultative bodies constitutes an important element of effective participation in public affairs.

The Geneva Meeting also affirmed that “The participating States will create conditions for persons belonging to national minorities to have equal opportunity to be effectively involved in the public life, economic activities, and building of their societies.” In this context, participating States noted positive results have been obtained in some States by, inter alia:

- advisory and decision-making bodies in which minorities are represented, in particular with regard to education, culture and religion;
- elected bodies and assemblies of national minority

- affairs;
- local and autonomous administration, as well as autonomy on a territorial basis, including the existence of consultative, legislative and elected bodies chosen through free and periodic elections;
- self-administration by a national minority of aspects concerning its identity in situations where autonomy on a territorial basis does not apply;
- decentralised or local forms of government;

Article 15 of the Council of Europe's Framework Convention similarly provides:

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

At the universal level, the principal instrument addressing the implications of democratic principles for minorities is the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, which was adopted by the UN General Assembly in 1992. Article 2 provides, in part:

2. Persons belonging to [national or ethnic, religious and linguistic] minorities have the right to participate effectively in cultural, religious, social, economic and public life.

3. Persons belonging to [national or ethnic, religious and linguistic] minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

The question of how States can ensure the meaningful participation of minorities in public life was the subject of a meeting of internationally recognized independent experts in Lund, Sweden, in May 1999, which culminated in adoption of the Lund Recommendations on the Effective Participation of National Minorities in Public Life.<sup>406</sup> The first paragraph expresses the central tenet underlying the Lund Recommendations:

#### I. General Principles

1) Effective participation of national minorities in public life is an essential component of a peaceful and democratic society. Experience in Europe and elsewhere has shown that, in order to promote such participation, governments often need to establish

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<sup>406</sup> For the full text of the Lund Recommendations, *see* OSCE doc. RC.GAL/36/99.

specific arrangements for national minorities. [The aim of such arrangements should be] to facilitate the inclusion of minorities within the State and enable minorities to maintain their own identity and characteristics, thereby promoting the good governance and integrity of the State.

Although frequently reiterated, it bears repeating that no single formula for achieving these aims is appropriate to all countries and circumstances. For this reason, the Lund Recommendations take the approach of identifying a range of alternatives that governments might consider utilizing to ensure that opportunities exist for minorities to have an effective voice at central, regional and local levels of government.<sup>407</sup> A Special Rapporteur of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities took much the same approach in his recommendations:

*Effective political participation*

17) While it is essential that members of different groups, majority and minority, be given opportunities for effective participation in the political organs of society in ways which avoid obstruction of necessary decision-making, no single formula exists which is appropriate to all minority situations. The basic requirement is that everyone shall have the right and opportunity, without discrimination, to take part in the conduct of public affairs. To avoid this leading to majoritarian neglect of the concerns of minorities, or to a veto by minorities in areas where it would not be justified, various possibilities exist. It is recommended that States and minorities explore the following options, as appropriate to their particular situation:

- (a) Advisory and decision-making bodies in which minorities are represented, in particular with regard to education, culture and religion;
- (b) Elected bodies and assemblies (“parliaments”) of national or ethnic, religious and linguistic minorities;
- (c) Self-administration (functional autonomy, cultural autonomy) on a non-territorial basis by a minority of matters which are essential to its particular identity, such as the development of its language or its religious rites;
- (d) Decentralized or local forms of government or autonomous arrangements on a territorial and democratic basis, including consultative, legislative and executive

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<sup>407</sup> See in particular Lund Recommendations II & III.

bodies chosen through free and periodic elections without discrimination;

(e) Special measures to ensure minority representation in the legislature and other elected bodies of the national society, even when their numerical strength is too small to have representation under normal conditions. In proportional electoral systems minimum thresholds for representation might be waived when minorities are concerned.<sup>408</sup>

Consistent with the approach reflected in the above-mentioned instruments and recommendations, this report does not commend any single formula for ensuring the participation of Roma communities in public decision-making processes. Instead, sub-section C describes several models that have been adopted by OSCE participating States and notes some of the strengths and weaknesses that have been associated with each in the hope that this accumulating body of experience may be of value to societies that are considering establishing or revising their own minority-participation mechanisms. As a foundation for assessing these mechanisms, it is useful first to note some broad patterns pertaining to Roma participation in national political processes.

## **B. Patterns of Roma Political Participation**

Like other minorities that experience widespread prejudice, Roma are vastly under-represented in national office. The facts speak for themselves. For example, in the Czech Republic, where Roma constitute the largest minority, the 200-member Parliament has a single representative who identifies herself as a Rom. There is no representative in either the 150-member Slovak Parliament<sup>409</sup> or in Hungary's 386-member Parliament who identifies himself as a Rom. Only one individual identifying himself as a Rom serves in Bulgaria's National Assembly, and the only self-identified Rom who serves in the Romanian Parliament was elected, as a representative of a Romani association, to a reserved minority seat.<sup>410</sup>

In some countries in Central and Eastern Europe, levels of Roma representation in national parliaments are lower now than several years ago. For example, seven candidates who identified themselves as Romani were elected to Parliament in the June 1990 elections in Czechoslovakia; as noted above, only one self-identified

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<sup>408</sup> Report on constructive national arrangements for minorities by Special Rapporteur Asbjørn Eide, UN Doc. E/CN.4/Sub.2/1993/34/Add.4.

<sup>409</sup> The Slovak Government notes that a number of representatives of the fourteen Romani political parties in Slovakia were candidates on the lists of other political parties, but were not elected. Comments Prepared by the Slovak Government, *supra* (note 251), at p. 1.

<sup>410</sup> According to The National Office for Roma of the Government of Romania "there are (and there were always) much more Roma into the Parliament of Rumania, but they were elected not on an ethnic ticket, but on a 'regular' political party one [sic]." Office of the Department for the Protection of national Minorities of the Government of Romania, Comments Prepared by the National Office for Roma, 27 October 1999, p. 6 (*on file with the Office of the OSCE High Commissioner on National Minorities*), [hereafter, Comments Prepared by the National Office for Roma, Romania].



Romani candidate was elected to the Czech Parliament in the most recent national elections, while no individual identifying himself as a Rom serves in the Slovak Parliament.

The prospects for Romani political candidates are somewhat better at local levels of government - at least in districts where Romani voters constitute a majority - but here, too, the picture is one of significant under-representation. In countries where Roma constitute a significant minority, the number of Roma serving as members of local assemblies or as municipal mayors does not begin to correspond to their proportion of the total population.

The low esteem in which Roma are held within dominant societies is doubtless a key factor in the rejection of Romani candidates by non-Roma voters. But if anti-Roma bias on the part of non-Roma is the most important reason for under-representation of Roma in elective office, it is not the sole factor. Romani candidates are often defeated in local elections in districts where Roma constitute an overwhelming majority.

For example, in the southwestern Hungarian town of Siklónagyfalu, where Gypsies<sup>411</sup> constitute roughly 85 percent of the town's population of 403, a Gypsy who ran for Mayor lost the most recent election (by 20 votes) to the incumbent Mayor. With soaring unemployment in the area, local voters apparently believed they could ill-afford to take a chance on a candidate who had less experience than the alternative candidate and who lacked the incumbent Mayor's party connections. (The losing contender for Mayor was, however, elected Vice Mayor.) Other factors came into play in determining the outcome of elections to the Siklónagyfalu council. Only two Gypsies were elected to the six-person assembly. In the view of local Romani leaders, a key part of the explanation lies in the fact that too many Romani candidates contested local elections, thereby dividing the Roma vote. Both the identity of and votes for Romani candidates were, they said, substantially determined by family affiliation.

It is easier to describe the arithmetic that has cost Romani candidates their bids for public office than to explain the underlying dynamics, but the insights of two analysts, Andrzej Mirga and Nicolae Gheorghe, provide some perspective on the voting patterns of Roma in towns like Siklónagyfalu. Their analysis suggests that the electoral behavior of Siklónagyfalu's Gypsies is part of a broader historical process in which traditional Romani communities are beginning to participate in a fundamentally different culture - the political institutions of democratic States. As Mirga and Gheorghe have written, the political transitions in the region of Central and Eastern Europe that began ten years ago "brought to the Roma unprecedented opportunities to become active subjects of politics and policies directed toward them."

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<sup>411</sup> As noted earlier, this report uses the term "Roma" when referring collectively to Europe's Romani communities, but attempts to use the designation each specific group prefers when speaking of particular communities. The situation in Hungary presents its own peculiar challenges in this respect; apart from the fact that there are three major Romani linguistic groups in Hungary, there is no uniform approach even among those belonging to the same group. Many still identify themselves as "Cigány," which is typically translated into English as "Gypsy," but growing numbers appear to prefer "Roma" and this is the terminology now employed by Hungarian government officials. In this case, I have used "Gypsy" in deference to what still appears to be the preference of the majority.

In seeking to realize these opportunities, however, Roma faced peculiar challenges. Among others, Romani leaders have had to confront the daunting dilemma of how to participate effectively in national politics while preserving their unique cultural identity. Mirga and Gheorghe describe the resulting state of Romani politics:

The Roma are a traditional people, whose leadership has typically been vested in informal, but powerful, extended family structures . . . . [T]he relative absence of formal structures in the Romani community has been an obstacle to participation in the modern bureaucratic structures that increasingly characterize government and public administration. Thus, the community faces the challenge of building formal structures of representation and participation.

The present generation of Romani leaders comes from contrasting backgrounds . . . . On one side are those who have little or no formal education or training but have risen within traditional communities by virtue of their everyday struggles on behalf of their people. On the other side is a handful of mostly younger activists who are products of the majority education system and have emerged as successful professionals or politicians but at the same time have retained or rediscovered their Romani identity. . . .<sup>412</sup>

What implications do these insights have for current efforts to enhance Roma political participation? First, to the extent that the long exclusion of Roma from public service contributes to their poor performance in elections, training programs in public administration can be a valuable step toward reversing this pattern. Similarly, concerted efforts to recruit Roma in all levels of public administration can help ensure that Roma receive the experience voters seek in candidates for public office.

In view of the frequency with which government officials cite the fractious nature of Romani communities as a factor impeding their effective participation in policy-making processes,<sup>413</sup> this issue also merits brief comment here, and receives further attention in sub-section C. The first and most important point to be made is that Roma are, like any other group, entitled to political pluralism. To demand that Romani communities speak with a single voice is to expect more of them than other political groupings have been able or expected to achieve. In practice, moreover, some governments' insistence on finding what they consider a legitimate representative of "the" Roma community risks privileging one segment of Roma

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<sup>412</sup> Andrzej Mirga and Nicolae Gheorghe, "The Roma in the Twenty-First Century: A Policy Paper," Project on Ethnic Relations, Princeton, New Jersey, May 1997, pp. 5-6.

<sup>413</sup> See, e.g., "OSCE Roundtable on Roma and Sinti National Policies," RomNews Network Newsletter, 11 November 1998 (reporting that several speakers representing government delegations at OSCE Roundtable "stated that it would be useful if there was more unity among the Roma organizations and selected persons could be delegated to represent Roma interests at national level").

while excluding others from the political process. (Ironically, a by-product of this strategy may be to intensify divisiveness among Roma organizations.) The challenge is to find effective means of ensuring Roma the opportunity to participate in public life while respecting the diversity among Romani communities.<sup>414</sup>

### **C. Participation in Developing Roma Policies: Models in OSCE Participating States**

Beyond measures to provide Roma with the opportunity to participate in State and municipal institutions of government, principled and pragmatic considerations make clear the central importance of Roma involvement in developing policies for Roma communities. As a sobering roster of unsuccessful programs attests, policies developed for Roma without their involvement bear a high risk of failure.

Many such policies, designed by individuals with commendable intentions but little appreciation of Romani culture, have been inappropriate. Plainly, too, programs designed without Roma involvement are likely to lack legitimacy within the communities they are meant to serve; after centuries of being subjected to assimilationist policies, many Roma are understandably disposed to regard with skepticism Roma policies developed by non-Roma. By equal measure, the active engagement of Roma is essential if States are to avoid fostering or perpetuating a pattern of dependency.

In this context - and keeping in mind Article 7 of the Women's Convention which requires that "States parties shall take all appropriate measures to eliminate discrimination against women in the public life of the country..." - it is only logical to seek the participation of Romani women in the process of developing and implementing public policies concerning Roma, and the inclusion of Romani women's issues in national strategies concerning Roma. While a number of governments are in the process of designing and/or implementing policies towards their Roma populations, few of these include a specific gender component.<sup>415</sup>

With these considerations in mind, this sub-section examines a range of mechanisms aimed at ensuring Roma participation in the development of policies specially affecting their communities.

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<sup>414</sup> There are, to be sure, times when Roma interests are most likely to be advanced by presenting a common position on at least fundamental issues of national policy, as Romani leaders have recognized. Recent initiatives in Bulgaria and Romania, described in sub-section C, *infra*, provide models of effective consensus-building of this kind.

<sup>415</sup> One exception is the Bulgarian Framework Programme for the Roma community, which recognises the need to promote a culture of equality among Roma women for an adequate individual, social and economic participation in public life. *See also* section IV.C.4 of this report for a broader discussion of the Framework Programme. Another is the Spanish Programme for the Development of the Gypsy Population of the Autonomous Government of Andalusia, which emphasizes the situation of Gypsy women as a priority, includes detailed provisions with regard to women's rights in all areas of daily life, and a section on equal opportunities for women. *See Bitu, supra* (note 67), at p. 8. The same report also recognizes a number of promising initiatives taken at the local level in Slovakia, FYROM, Hungary and Romania, among others.

## 1. Autonomy Regimes: Minority Self-Government Councils (Hungary)

One of the most ambitious institutional programs for ensuring minority participation in aspects of public life that directly affect their interests was established in Hungary by Act LXXVII of 1993 on the Rights of National and Ethnic Minorities (“Act RNEM”).<sup>416</sup> Pursuant to procedures elaborated in the Act, minorities may (but are not required to) establish minority self-governments - councils that in most instances operate alongside the regular assembly - at both the national and local levels of government.<sup>417</sup>

The principal areas with respect to which the Act contemplates autonomy are culture and education.<sup>418</sup> Minority self-governments have the right to establish minority schools and other institutions,<sup>419</sup> and their consent must be obtained with respect to certain official decisions regarding language use and other matters that specifically affect the minorities they represent.<sup>420</sup> In some respects, the Act RNEM contemplates a consultative function for minority self-governments: local minority self-governments may forward to appropriate government officials (1) requests for information, (2) proposals, and (3) objections to practices or decisions thought to infringe the rights of the minorities they represent.<sup>421</sup>

Hungary’s experience to date with minority self-government has understandably inspired interest and study by other governments. As Hungarian officials readily acknowledge, however, several aspects of the minority self-government system as

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<sup>416</sup> The same law provides that minorities shall have the right, in a manner established in a separate law, to representation in Parliament, Act RNEM, Article 20(1). This provision is based upon Article 68 (3) of the Hungarian Constitution, which contemplates enactment of a law ensuring “representation for the national and ethnic minorities living in the territory of the country.” Despite this constitutional mandate, the Hungarian Parliament still has not adopted a law ensuring minority representation in Parliament. In 1998 Parliament debated but failed - by two votes - to pass such legislation. According to the Office for National and Ethnic Minorities, an ad hoc committee of the Parliamentary Committee for Human Rights and Religious Affairs is, in consultation with representatives of the national minority self-governments, preparing a proposed amendment to Act RNEM which would resolve this issue.

<sup>417</sup> Article 1(2) generally defines minorities entitled to the benefits of the Act as “every group of people that has been indigenous in the domain of the Hungarian Republic for at least one hundred years, is in numerical minority in comparison with the population of the State, its members are Hungarian citizens, and it is distinguished from the rest of the population by its own language, culture and traditions, and at the same time attests to a conscious connection that aims at the preservation of all these, also the expression and protection of the interests of their historically formed communities.” Article 61(1) provides: “According to this Act the following ethnic groups shall be considered indigenous in Hungary: the Bulgarian, Gypsy, Greek, Croatian, Polish, German, Armenian, Rumanian, Ruthenian, Serbian, Slovakian, Slovenian, and Ukranian.”

<sup>418</sup> The law’s assurance of the right of minority children to be educated in their mother tongue is not, however, dependent on the establishment of a minority self-government in the relevant school district. *See, generally*, Act RNEM, Article 43.

<sup>419</sup> *Id.*, Articles 27 and 49.

<sup>420</sup> *See, e.g., id.*, Articles 29 and 38.

<sup>421</sup> *Id.*, Article 26.

currently constituted have served to limit its effectiveness (and indeed the government is exploring ways of amending the law to address some of its deficiencies).

First, certain procedures governing the election of minority self-governments raise questions about their genuine representativeness. By law, all members of the relevant voting district are entitled to cast votes for a local minority self-government.<sup>422</sup> Thus, in a municipality in which ninety percent of the voters are ethnically Hungarian and ten percent are Gypsies ninety percent of the votes for the Gypsy self-government could be cast by ethnic Hungarians. Further, under current law the question of whether an individual belongs to a national or ethnic group is solely a matter of individual self-identity.<sup>423</sup> Accordingly, if an individual ordinarily considered to be German declared himself to be Gypsy and stood for election to a Gypsy self-government, his candidacy could not be challenged on this basis unless he later acknowledged his German identity.<sup>424</sup>

These aspects of Hungarian law are complex and interrelated. Consistent with the basic principle of free acceptance and declaration of one's membership in a national or ethnic group, Article 7(1) of the Act RNEM provides: "No one shall be obliged to make a declaration to the effect of belonging to a minority group." If the right to vote for candidates to a minority self-government were restricted to members of the minority group in question, voters would be required to register according to their national or ethnic identity - a breach, it is thought, of Article 7(1).

However understandable the concerns underlying these provisions, they can and sometimes do vitiate the effectiveness of minority self-governments. In response to several recent instances in which members of one national or ethnic group were elected to the "self"-government of another, Hungarian government officials are now re-examining the prohibition on registration and verification and may seek to amend the relevant law. However, they face a dilemma in doing so, since European historical experience indicates that efforts to register persons by ethnicity are fraught with practical difficulties and carry significant risks of serious abuse. It is for these reasons, *inter alia*, that paragraph 32 of the Copenhagen Document asserts: "To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such a choice."<sup>425</sup>

Another key source of problems stems from the fact that the law governing minority self-governments does not ensure adequate funding. The Act RNEM

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<sup>422</sup> Act LXII of 1994 on the Election of Members of Municipal Governments and Mayors, Article 50/B. The procedure for election members of national minority self-governments is set forth in Articles 31-34 of the Act RNEM.

<sup>423</sup> *See* Act RNEM, Article 7(1).

<sup>424</sup> This aspect of the law has been criticized by, among many others, Hungary's Parliamentary Commissioner for National and Ethnic Minority Rights. *See* "Ombudsman Criticizes Minority Law," Hungarian Radio, Budapest, in Hungarian 0540 gmt 18 February 1999.

<sup>425</sup> For treatment of this question of definition, including the notion of "belonging", *see* John Packer, "Problems in Defining Minorities", in Deirdre Fottrell and Bill Bowring (eds.), *Minority and Group Rights in the New Millennium*, Kluwer Law International, The Hague, 1999, pp. 223-274.

requires the State to “ensure according to the distribution made by the Parliament the functioning of national and ethnic minority self-governments,”<sup>426</sup> but no minimum level of resources is guaranteed. Similarly, local minority self-governments may request support from local assemblies, but the latter are not required to provide any specified level of resources.<sup>427</sup> As one Hungarian government official explained, local governments are not required to provide any particular amount of material support to minority self-governments; “what is required is co-operation.”<sup>428</sup>

The Act does require local governments to provide for the use of minority self-governments’ properties possessed by the former that are “necessary for the minority government to perform its duties and exercise its authority.”<sup>429</sup> In practice, however, many Gypsy self-governments operate without even office space - scarcely conditions conducive to effective representation.

The exercise of some fundamental powers of local minority self-governments, such as the right to establish institutions of public education, is contingent on “the resources available” to them.<sup>430</sup> Similarly, national minority self-governments are entitled to establish and maintain various cultural institutions, but are entitled only to “request budget assistance for these purposes.”<sup>431</sup> The 1998 report of the Hungarian Parliamentary Commissioner for National and Ethnic Minority Rights observed: “Knowing the present financial conditions of the self-governments of the minorities it is hard to imagine how any of them could take advantage of their right to found new institutions . . .”<sup>432</sup>

Not surprisingly, some believe that this system has raised expectations without assuring minimal resources or effective power necessary to meet them. At least initially, this phenomenon may have been partly due to misconceptions concerning the authority of minority councils, but inappropriate actions by municipal authorities compounded the problem. In some areas local authorities reportedly refused to provide social assistance to Gypsies once minority councils were established, referring applicants instead to the Gypsy self-government.<sup>433</sup>

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<sup>426</sup> Act RNEM, Article 55(2)(b). Pursuant to Article 63(4) of the Act RNEM, national minority self-governments were to be given a one-time grant of assets “for the purposes of guaranteeing their operational expenses.” This provision specifies the relevant breakdown of these grants, allocating the largest amount for the National Gypsy Self-Government.

<sup>427</sup> *Id.*, Article 27(3).

<sup>428</sup> Interview, Budapest, Hungary, 3 February 1999.

<sup>429</sup> Act RNEM, Article 59(1).

<sup>430</sup> *Id.*, Article 27(4).

<sup>431</sup> *Id.*, Article 49(2).

<sup>432</sup> Jenő Kaltenbach, Report by the Parliamentary Commissioner for National and Ethnic Minority Rights regarding the comprehensive survey of the education of minorities in Hungary, 1998, p. 7.

<sup>433</sup> See, e.g., Report of the Gypsy Self-government from Tarpa, Szabolcs-Szatmár County, to the National Gypsy Self-government, *quoted in* Timothy William Waters and Rachel Guglielmo, “Two Souls to Struggle With . . . The Failing Implementation of Hungary’s New Minorities Law and

Further, not a few Gypsies and independent analysts have voiced concern that the system of minority self-government is susceptible to manipulation. Perhaps the most persistent allegation in this regard is that the government can channel resources and support to favored Gypsy leaders. This perception, which pertains in particular to the National Gypsy Self-Government, was fueled by alleged irregularities surrounding the first elections under the Act RNEM.<sup>434</sup>

Possible irregularities aside, certain aspects of the process for electing the national Gypsy self-government may foster a result that favors a single bloc. The rules for electing members to minority self-governments adopted by the National Elections Board allow electors to vote for as many candidates as there are seats - a process that may favor a "winning bloc take all" result. During the first national elections, Lungo Drom candidates were elected to all 53 seats even though its candidates had won only 39 percent of local elections. This system may have special costs for Roma: those who do not belong to the elected slate are left to criticize from a marginalized position; the winning party is not compelled to share its power or resources. Some unelected candidates and independent analysts<sup>435</sup> suggest that members of the national Gypsy self-government should be elected on a proportional-representation basis, thereby better reflecting the diversity of Hungary's Gypsy communities.<sup>436</sup>

In broader perspective, many Roma are uneasy with an aspect of the self-government system that government officials often cite as one of its cardinal virtues: it establishes what the government considers its "legitimate negotiating partner" on issues of concern to Gypsies - the National Gypsy Self-Government.<sup>437</sup> Some Roma are concerned that this system does not reflect the diversity of interests among their communities. In apparent recognition of this concern, the government has established two new consultative bodies "[w]ith the aim of widening dialogue and consultation" between the Office for National and Ethnic Minorities and Gypsy communities. One comprises Gypsy artists, while the other comprises representatives of twelve leading Gypsy civil organizations.<sup>438</sup>

Another commonly-voiced critique of the Act RNEM is that it does not clearly delineate either the respective spheres of competence of the regular and minority self-

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Discrimination against Gypsies", in John S. Micgiel (ed.), *State and Nation Building in East Central Europe: Comparative Perspectives*, Colombia University, 1996, pp. 177-189.

<sup>434</sup> Waters and Guglielmo, *Id.*, at p. 184.

<sup>435</sup> See, e.g., Martin Kovats, *The political significance of the first National Gypsy Minority Self-Government, 1999* (forthcoming in the British Journal "Contemporary Politics", Summer 2000).

<sup>436</sup> See Project on Ethnic Relations, *Political Participation and the Roma in Hungary and Slovakia*, Princeton, New Jersey, 1999, p. 18.

<sup>437</sup> See Antal Heizer, Deputy President, Office for National and Ethnic Minorities of the Republic of Hungary, "State Policies toward the Romani Communities in Candidate Countries to the EU: Government and Romani Participation in Policy-Making: Hungary," 26 July 1999, Brussels, p. 8.

<sup>438</sup> *Id.*

governments or ensure constructive interaction between the two. Particularly when they were first established, some local Gypsy self-governments encountered resistance from local councils.<sup>439</sup>

Good relations are important for effective action of minority self-government. For example, in the absence of co-operation with local councils, members of some local Gypsy self-governments have been unable to obtain proposed curricula for minority education, even though the Act RNEM specifies that “local government decisions affecting also the education of people belonging to minorities require the consent of the minority self-government concerned.”<sup>440</sup> The leader of one Gypsy self-government explained his experience in this respect with understandable frustration: “The local minority self-government does not, in practice, have a right to see proposed programs concerning minority education; we only have the right to agree to the proposals.”<sup>441</sup>

In light of these problems, there has been debate about whether the self-government system is fundamentally well-conceived as a mechanism for ensuring Gypsies’ effective participation in government. But the assessments are not uniformly critical. The experiences of local Gypsy self-governments vary widely, and some problems have been alleviated as Gypsies have gained greater experience within the system of minority self-government. Further, a number of participants in the system praise it for providing an institutionalized channel of communication between the local and central levels of government.<sup>442</sup>

Against the criticism that the self-government system may have diverted Gypsies from contesting elections to the regular assemblies there is evidence - largely anecdotal - that their participation in self-governments might have provided some Gypsies both the practical experience and confidence to contest elections for non-minority councils and executive offices. In some municipalities, Gypsy political leaders have been elected to both the regular and minority self-governments, and they have often been able to enhance the effectiveness of the latter by serving, in effect, as the Gypsy council’s (and, therefore, indirectly the Gypsy community’s) representative to and on the municipal council.

Further, members of some local Gypsy self-governments have been successful in securing foundation funding for innovative projects.<sup>443</sup> In some cases, civic organizations operate alongside and in support of the local Gypsy council.

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<sup>439</sup> See Waters and Guglielmo, *supra* (note 433), at pp. 184-85.

<sup>440</sup> Act RNEM, Article 29(2).

<sup>441</sup> Interview, Babócsa, Hungary, 16 April 1999.

<sup>442</sup> Gypsy participation in the self-government system has risen: out of 1369 local minority self-governments established after the elections of October 1998, 759 were Gypsy self-governments, almost doubling the total number of Gypsy self-governments in Hungary; more than 3000 Gypsies now hold positions in minority self-governments. See Antal Heizer, *supra* (note 437), at p. 4.

<sup>443</sup> Article 58(2) of the Act RNEM allows minority self-governments to receive financial support from foundations, donations and other private sources as well as from the state budget and municipal governments.



The experience of the Gypsy self-government in the western Hungarian city of Nagykanizsa exemplifies the accomplishments that have been possible with effective leadership and adequate support. Among the noteworthy features of this council's approach has been its members' commitment to: 1) improving the educational prospects of Gypsy children through innovative programs developed by Gypsies themselves; and 2) working not only within the Gypsy community, but also with the majority, thereby fostering mutual understanding and respect.

In terms of identifiable factors that help explain why some Gypsy self-governments have been comparatively effective, some apparent trends are worth noting and may merit further study.

First, in Hungarian towns such as Nagykanizsa and Babócsa, where a highly developed Gypsy NGO culture existed before the Act RNEM came into effect, leaders of established Gypsy civic organizations quickly assumed leadership positions in the Gypsy (and regular) self-government bodies. Such experience may well be a precondition for effective use of the opportunities afforded by the minority self-government system.

Second, as noted earlier, some of the most impressive accomplishments on the part of local Gypsy political leaders have occurred in towns where those leaders have been elected to the regular municipal council as well as to the Gypsy self-government. Although the evidence is too slender to support any broad conclusions, it suggests that mechanisms for ensuring Roma participation are most likely to be effective if they are linked to the exercise of effective authority (which, in Hungary, is possessed by the regular councils and government authorities).

Third, some impressive leaders of local Gypsy self-governments have participated in training programs designed to provide basic skills in public administration to Gypsies and others lacking previous experience in this area.<sup>444</sup> One such program was organized by the European Union's PHARE Democracy Project.

Of course none of these variables is more important than the personal character of those who have initiated exemplary programs. While policy prescriptions cannot instill leadership where its seeds do not already exist, training programs and other forms of support can go a long way toward nurturing nascent leaders. Perhaps the principal lesson of the Hungarian experience has less to do with the particular model of minority self-government than with the ability of Roma to provide leadership when opportunities are presented.

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<sup>444</sup> The Hungarian Government's package of medium-term measures recognizes the importance of training for Gypsy minority self-government officials, tasking the Office for National and Ethnic Minorities with the development of training programs to help "local minority self-governments acquire appropriate knowledge regarding their rights in the sphere of minority education, and the ways of their enforcement." See Hungarian Government Decision No. 1047/1999 (V. 5), *supra* (note 137), at Section 6.5.

## 2. Consultative Bodies<sup>445</sup>

While Hungary's minority self-government councils operate in some respects as consultative bodies, this is the sole function contemplated with respect to several bodies established in some OSCE participating States. These consultative bodies typically operate at the national level and sometimes also operate at local levels of government. By their nature, consultative bodies generally do not have final decision-making authority. Instead, they are institutional vehicles for ensuring that the views of minorities, as expressed through designated representatives, help shape government policies in respect of minority interests.

The structure, powers and operation of consultative bodies vary widely. Several OSCE participating States have established a consultative body comprising representatives of all substantial minorities. For example, the presidents of Hungary's national minority self-governments collectively constitute a National Minorities Council, which is consulted by government ministries about proposed minority policies.<sup>446</sup> In the FYROM, two Romani representatives sit on the Council on Inter-Ethnic Relations, "which considers issues of the inter-ethnic relations in the State and gives opinions and proposals for their resolution."<sup>447</sup> In Romania, a government decision adopted in 1997 established a Council of National Minorities to advise the Department for the Protection of National Minorities on issues relating to minorities. The Council is composed of "representatives of all the organisations of the citizens belonging to the national minorities that were legally founded up to 27 September 1992."<sup>448</sup>

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<sup>445</sup> For a more comprehensive enumeration of consultative bodies for Roma in European countries, see Council of Europe, Meetings of National Consultative Bodies between Roma/Gypsies and Governments, Reports by Marcia Rooker and Angèle Postolle, Council of Europe Doc. MG-S-ROM (98) 15, Strasbourg, 1998.

<sup>446</sup> According to the Hungarian Government, the President of its Office for National and Ethnic Minorities meets on a monthly basis with the presidents of national minority self-governments. See Antal Heizer, *supra* (note 437), at p. 7. In 1999, the government also established an Inter-Ministerial Committee for Roma Affairs, which includes the President of the National Gypsy Self-Government alongside representatives of the relevant Ministries, and is tasked with coordination of the Government's Medium-Term package of policies for Gypsies. A separate Public Works Council, which includes representatives of the National Gypsy Self-Government and representatives of county assemblies in regions with large Gypsy populations, takes up questions of employment and housing. See *id.*, at p. 8.

<sup>447</sup> Ministry of Foreign Affairs, Former Yugoslav Republic of Macedonia, "The Status of the Roma in the Republic of Macedonia," *supra* (note 65), at p. 2.

<sup>448</sup> Government Decision 17/1997. The composition of the Council is tied to Romania's system of ensuring minority participation in Parliament, or, more specifically, in the Chamber of Deputies. Pursuant to Article 59(2) of the Romanian Constitution, "Organizations of citizens belonging to national minorities, which fail to obtain the number of votes for representation in Parliament, have the right to one Deputy seat each, under the terms of the electoral law. Citizens of a national minority are entitled to be represented by one organization only." The Council includes three members of each organization of citizens belonging to national minorities which has a representative in Parliament, and representatives of each organization set up before 27 September 1992 which "did not participate at the elections or if participated did not obtain a seat in the Parliament, when these are the unique organization of the national minority." Fact Sheet on "Institutional Framework for Protection of National Minorities" produced by the Department for Protection of National Minorities, Government of Romania, p. 2 (undated).

Another model is that of a consultative body comprising members of a specific minority (although not necessarily solely comprising members of the minority). For example, in France, a National Consultative Committee on Travellers was established in 1993. This body comprises ten ministerial representatives, ten elected officials and ten representatives of Roma associations.<sup>449</sup> In Finland, an Advisory Board on Romani Affairs, established in 1956, is composed of 18 members of whom half represent the Romani population and the other half are representatives of the central government. Among the main tasks of the Board, which operates on the central administrative level under the Ministry of Social Affairs and Health, are the following: to monitor Romani participation in society and Romani living conditions, to propose initiatives to improve the situation of the Romani minority, to promote Romani language and culture, and to act against racial discrimination.<sup>450</sup>

In some countries, these various models are combined. In the Czech Republic, for example, a Council for Nationalities serves as an advisory body on issues relating to minorities generally,<sup>451</sup> while an Inter-Ministerial Commission for Roma Community Affairs, established in 1997, plays a consultative role with respect to policies concerning Roma. Chaired by Petr Uhl, the government's Plenipotentiary for Human Rights, the Inter-Ministerial Commission has twelve Romani members and twelve non-Romani members who are deputy ministers of various government departments.<sup>452</sup> In the Slovak Republic, a Sub-Commission on Roma of the parliamentary Commission on Human Rights serves as an advisory body to the Parliament on Roma policy. In addition, in May 1999 the government established an Advisory Government Council on National Minorities and Ethnic Groups, which replaced the former Advisory Council on Minorities. The new Council, which is chaired by Deputy Prime Minister Pál Csáky, comprises fourteen representatives of minorities (including three representatives of the Romani minority), three government ministers, and several other government officials. Of the government officials

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One of the Council's principal functions is to allocate subsidies from the government's budgetary item for minorities. In practice, the NGOs whose representatives sit on the Council receive this funding. However, the Department for the Protection of National Minorities also oversees the distribution of additional funding for minorities through two separate state budget lines: "Common Projects and Programs" and the "National Campaign Against Racism, Anti-Semitism, Xenophobia, and Intolerance". See Comments of the National Office for Roma, Romania, *supra* (note 410), at pp. 8-9.

<sup>449</sup> European Committee on Migration, *supra* (note 280), at p. 23.

<sup>450</sup> See *id.*, p. 22. See also Ministry for Foreign Affairs of Finland, Comments Prepared by the Deputy Director General, 2 November 1999 (*on file with the Office of the OSCE High Commissioner on National Minorities*).

<sup>451</sup> The Statute of the Council for Nationalities describes the Council as "a consultative, law-initiating and co-ordinating body of the Government for matters of Government policies towards members of ethnic minorities in the Czech Republic"; Government decision No. 259 of 11 May 1994, Article I.

<sup>452</sup> A seventeen-member team of experts comprising seven Romani and ten non-Romani members was recently appointed to help develop the concept on government policy toward Roma contemplated in a government resolution adopted on 7 April 1999; see Czech Republic, Government Policy Concept, *supra* (note 135), Article II.1(a).

represented on the Council, only the chairman and vice-chairman have voting rights.<sup>453</sup>

### 3. Minority Consultative Commissions: The Spanish Model

An example of a permanent consultative body concerned with Roma policy is the Consultative Commission (CC) that advises the Spanish government in respect of its Gitano Development Programme (“GDP”), which was established in 1988 to promote equal opportunities for Spain’s Gitanos and to improve their social status. The Consultative Commission has ten members representing NGOs that focus on issues of concern to Gitano communities. Four of these operate at the national level while the remaining six each represent one of Spain’s autonomous communities, the principal administrative unit in Spain. Of the four Commission members representing national NGOs, two are not Gitanos themselves. The Commission is chaired by the Director General for Social Action for Children and the Family in the Ministry of Social and Labor Affairs, which is responsible for administering the GDP.

By virtually all assessments, the Spanish Consultative Commission has not been an ideal mechanism for ensuring meaningful Gitano participation in the GDP policy-making process.<sup>454</sup> One concern relates to the representativeness of members of the Commission. Members of the Spanish Consultative Commission are not elected by Gitano communities to represent them; the NGOs represented on the Commission were invited to participate by the government.<sup>455</sup> Some officials counter this criticism by expressing frustration at the resistance on the part of Gitano organizations to the government’s efforts to foster what one official called “federalization” - that is, greater formal co-operation among Gitano organizations.<sup>456</sup>

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<sup>453</sup> The previous government established an advisory body of Roma to assist in preparing a document entitled “Conceptual Objectives of the Slovak Government for the Solution of Romany Problems in the Current Social and Economic Conditions” (1997), which set forth that government’s policy on Roma.

<sup>454</sup> In the view of several government officials, one source of the Commission’s limitations relates to broader problems associated with the fact that the GDP itself is administered by a single ministry. In their view, placing formal responsibility for the program in one ministry makes it difficult to mobilize the participation of other ministries whose involvement is necessary to the success of the multi-dimensional GDP. In the view of some observers, the fact that the GDP is administered by the Ministry of Labor and Social Affairs in particular is also regrettable as, in their opinion, this reinforces public perceptions of Gitanos as a socially marginalized group, detracting from their identity as a cultural minority that has enriched Spanish culture.

<sup>455</sup> The Spanish Government acknowledges that “the Associations and Federations which form part of the [Consultative Commission] are representative of their respective members or their federal associations, although not representative – it is important to recognize – of the majority of the Gitano population.” Nonetheless, government officials maintain that the organizations which form part of the Commission are “those which have been best established and are representative in their respective territories.” Office of the Ministry of Foreign Affairs/ Office of Human Rights, Comments Prepared by the Spanish Government, 29 October 1999, p. 1 (*on file with the Office of the OSCE High Commissioner on National Minorities*), [hereafter, Comments Prepared by the Spanish Government].

<sup>456</sup> Interview, Madrid, Spain, 4 May 1999.

From their perspective, fragmentation among Gitano organizations in Spain makes it difficult for the government to determine the representativeness of any of its Gitano interlocutors.

The government has recently undertaken an initiative to address this concern by establishing, following a September 1999 meeting of the Consultative Commission, a working group to elaborate new criteria for CC membership. The working group is composed of government representatives and representatives of the Gitano NGOs which already form part of the Consultative Commission; its objective is, in the words of one government official, “to secure the maximum representation of Gitanos in this consultative organ.”<sup>457</sup>

One of the more troubling aspects of the Commission is that NGOs represented on the body are principal beneficiaries of project grants to NGOs made by the Ministry of Labor and Social Affairs under the GDP. Through this program, the implementation of which is the principal subject of the Consultative Commission’s advisory function, the national government distributes funding to NGOs in roughly the same amounts it distributes to autonomous communities. There is, of course, a conflict of interest: NGO representatives cannot be expected to dispense fully disinterested advice when decisions concerning the GDP are likely to affect their own funding prospects.

Further, the fact that the government provides substantial funding to NGOs may have contributed to what some observers characterize as a widespread sense of complacency among Spanish NGOs. The fact that NGOs in Spain readily receive state funding has, in the view of some observers, dampened their disposition to press the government to improve its policies respecting Gitanos. It is important to note that one NGO which has been highly critical of government policy, the Asociación Nacional Presencia Gitana, is represented on the Consultative Commission. The organization that receives the largest funds, Asociación Secretariado General Gitano (which is also represented on the Commission), has undertaken a range of valuable studies and other projects. A third organization, the Federación Unión Romani, has implemented numerous social and employment programs.<sup>458</sup>

In any case, governments seeking to devise effective means of securing Roma participation in decision-making processes should take care to avoid conflicts of interest, both actual and apparent.

#### **4. Ad Hoc Minority Consultative Commissions and Processes: Bulgaria and Romania**

One major distinction among consultative bodies is between, on the one hand, permanent institutional mechanisms along the lines of Spain’s Consultative Commission, and on the other hand, ad hoc bodies or processes designed to engage the participation of minority groups in the formulation and implementation of major policy initiatives. Examples of the latter have recently been established in Bulgaria

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<sup>457</sup> Comments Prepared by the Spanish Government, *supra* (note 455), at p. 2.

<sup>458</sup> *See id.*, at p. 2.

and Romania. In both countries, the development of a national Roma policy provided the context for the creation of a consultation process with Romani representatives.

#### **a) Bulgaria**

At a National Roundtable on 7 April 1999 co-sponsored by the Human Rights Project (HRP), a Bulgarian NGO that promotes the human rights of Roma, and the governmental National Council for Ethnic and Demographic Issues (NCEDI), representatives of the government and of the Roma community signed an agreement concerning a Framework Program for Equal Integration of Roma in Bulgarian Society. In many respects the hard work - transforming the broad principles of the Framework Program into government policy and practice - still lies ahead. Even so, the roundtable process has already produced a model of effective Roma participation in the development of national Roma policy.

For some time preceding this development the Bulgarian government and NGOs involved in developing the Framework document had been moving on separate tracks toward fashioning a national Roma policy. On its side, the HRP initiated a nation-wide process of consultation with Roma organizations to discuss the elements of a draft policy document. In the view of HRP's leaders, this approach allowed for the involvement of Roma at the grassroots level in the process of developing the final document; in their assessment, the very fact that the initiative had not come "as always from the government, but from a civil organization already known to people as defending human rights" helped inspire confidence in the initiative.<sup>459</sup>

NGO leaders who played a leading role in developing the Framework document believe that another major factor in their ability to obtain unified support lies in the instrument's overarching emphasis on the issue of discrimination. In their view, whatever differences Roma NGOs may have, they were readily able to agree upon the primacy of combating discrimination against Roma as a goal of national policy.

At the end of the nation-wide consultative process in the autumn of 1998, representatives of 75 Roma organizations signed the text of the NGO-drafted document, entitled a "Program for Equal Participation of Roma in Public Life of Bulgaria". In the meantime, the government was developing its own program. In the summer and autumn of 1998, the government publicized its agenda for integrating minorities, especially Roma, into state administration at both national and local levels. It also publicly embraced a newly established Roma organization that did not initially co-operate with the HRP initiative. In this setting, when the HRP presented its proposed Framework document to various government officials, it received no formal response.

The government and the NGO coalition took a first step toward reaching common accord at a roundtable on 3 October 1998. The government delegation to the meeting, which also included representatives of the Council of Europe and several international NGOs, was led by Vesselin Metodiev, Deputy Prime Minister of Bulgaria and Chairman of the NCEDI. At this meeting it was agreed that a working group representing Roma organizations would negotiate with the NCEDI with the aim

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<sup>459</sup> Interviews, Sofia, Bulgaria, 17 May 1999.

of agreeing upon a joint document. The first concrete result of this was that two documents were produced - one by the government, the other by the NGO working group. In the months that followed, the government engaged outside consultants - two Spanish Gitanos - to advise it on its Roma policy. In these and other respects, it was clear that there was still a substantial chasm to be bridged before the NGO coalition and government would be able to agree upon a common set of policy principles.

In late March 1999, the government for the first time indicated that it was prepared to accept the basic principles set forth in the document drafted by the coalition of Roma organizations. The Framework Program for Equal Integration of Roma in Bulgarian Society was signed by representatives of both the government and the Roma community at the 7 April 1999 Roundtable meeting. At a meeting on 22 April 1999, the Bulgarian Council of Ministers voted to endorse the Framework subject to certain amendments. Since then, specialized Roma working groups have met with government interlocutors to flesh out the details of programs based upon the Framework undertakings. For example, a Roma working group on educational issues has been working with officials in the Ministry of Education to fashion a plan for desegregating Roma schools, in accordance with the Framework document.

Adoption of the Framework Program has apparently stimulated the appointment of two Romani experts to government positions. Yosif Nunev, a Romani education specialist, has been appointed as an expert on implementation of the Program on the NCEDI of the Council of Ministers. Also since the Framework Program was endorsed, another Rom, Simeon Blagoev, was appointed to a position in the Ministry of Culture. The government reportedly has agreed in principle to appoint two Roma to work in the Ministry of Education, but as of late December 1999 this had not yet occurred.

Whether the Framework document will live up to its potential of course depends upon its implementation. Consistent with the recommendations offered at the conclusion of this section, regular governmental roundtable consultations with Roma organizations to review progress towards implementation would be appropriate. Effective realization of the Framework document will doubtless depend as much on the continuing initiative and sense of purpose by Roma organizations as on the government's political will and commitment of resources.

While it is thus premature to judge the Framework policy a success, the roundtable process leading to the government's endorsement of the policy stands as a model of effective Roma engagement in political processes. One of the notable features of the roundtable process is the degree to which diverse Roma organizations were able to forge consensus on major elements of policy.

## **b) Romania**

As in Bulgaria, Romani representatives now have a formal consultative role in the development of Roma policy in Romania. But the consultative process is still in its early stages and the effectiveness of Roma participation cannot yet be assessed.

To assist Romania in meeting the EU's accession criteria, including in particular the political criterion of protecting minorities, the European Commission made available to the Romanian government a PHARE grant totaling ECU 2 million. In August 1998 the government established an Inter-Ministerial Commission on National Minorities, chaired by the head of the Romanian Government's Department for the Protection of National Minorities (DPNM), to elaborate a national strategy. In November 1998, the government created a Sub-Commission for Roma Issues, which is co-chaired by the head of the DPNM's Office for Roma and a representative of the Working Group of Roma Associations (see below).<sup>460</sup>

This PHARE program is to be implemented in two stages. First the government must elaborate, in close partnership with Romani representatives, a national strategy to improve the situation of Roma. The second stage will entail the design and implementation of innovative pilot projects, again in close consultation with Roma representatives.

Some representatives of Romania's Roma community maintain that they were not consulted by government officials responsible for developing the initial EU proposal or terms of reference for the PHARE grant.<sup>461</sup> To address concerns about their exclusion from this process, representatives of thirty-six Roma NGOs met in Mangalia, Romania, on 22-23 January 1999,<sup>462</sup> and decided to form a Working Group to negotiate with the government on the elaboration of its national strategy. At this meeting eight Roma experts were elected to represent Roma on an ad hoc basis during a meeting with government officials that took place on 28-29 January 1999.

This meeting was organized and mediated by the U.S.-based Project on Ethnic Relations (PER), in the hope that it could contribute to the resolution of outstanding issues. At this meeting, which was also attended by representatives of the European Commission and the Council of Europe, the Roma negotiators proposed a plan for ensuring Roma participation in various stages of elaborating the national strategy.

At another meeting in Sibiu, Romania in February 1999, a broad coalition of Roma leaders elected a fifteen-member Working Group of Roma Associations<sup>463</sup> to represent them in further discussions with government representatives. This group, in turn, developed a list of twenty-seven Roma specialists in areas relevant to the national strategy, of whom eight would, they hoped, be able to participate in the meetings of the government's Sub-Commission on Roma Issues. In mid-March 1999, the government agreed to their participation in meetings of the Sub-Commission, and this commitment was formalized through a protocol signed by the Working Group and the DPNM on 3 May 1999.

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<sup>460</sup> See Comments of the National Office for Roma, Romania, *supra* (note 410), at p. 10.

<sup>461</sup> See Council of Europe Specialist Group on Roma/Gypsies, Meeting Report, Council of Europe Doc. MG-S-ROM (98) 17, Strasbourg 1998, paragraph 13.

<sup>462</sup> This meeting was supported by the Department for the Protection of National Minorities, through funding from the "National Campaign against Racism, Anti-Semitism, Xenophobia and Intolerance", as was the following meeting in Sibiu. Comments of the National Office for Roma, Romania, *supra* (note 410), at p. 11.

<sup>463</sup> This number was later increased to sixteen.



Roma representatives have participated in recent meetings of the Sub-Commission, whose other members include representatives from key government ministries.<sup>464</sup> As noted, this body has essentially advisory powers; it will make recommendations to the Inter-Ministerial Council, but it is the latter body that will make final decisions in respect of the elaboration and implementation of the government's national strategy on Roma. At this point, then, the role of Roma in the process of developing a national strategy is to advise a government advisory body.<sup>465</sup> While Roma representatives have thus succeeded in their efforts literally to get a seat at the Sub-Commission's table, the ultimate effectiveness of this consultative process will turn on the degree to which their views are reflected in Romania's national Roma policy.

In sum, in Romania as in Bulgaria, Roma participation in the process of government policy-making has required the concerted efforts of Roma civil society as well as the agreement of government interlocutors. While these two countries offer examples of effective Roma leadership and consensus-building, the experiences in both countries also underscore the barriers Roma confront in their efforts to participate in developing national policies for Roma.

The two examples also highlight the potentially crucial role of IGOs and NGOs in supporting Romani organizations' efforts to participate in developing Roma policies. As noted, in both countries observers from IGOs and international NGOs participated in crucial meetings between government and Roma interlocutors. Their role may have been instrumental in overcoming impasses that had temporarily blocked further progress in consultations between government and NGO interlocutors.

Above all, the leadership provided by Roma organizations in Bulgaria and Romania demonstrate the potential political clout those communities can mobilize when they forge common consensus on core issues of policy and principle, while demonstrating that unity on fundamental principles need not come at the cost of pluralism.

## **5. Governmental Departments and Offices**

Although not generally designed as institutional mechanisms for dialogue between government officials and Roma communities, government offices with responsibility for policies affecting Roma in principle should be important points of

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<sup>464</sup> Several Ministries are represented by Roma activists, or, in the words of a Romanian government official, by "individuals with a long history of activism in favour of Roma." Comments of the National Office for Roma, Romania, *supra* (note 410), at p. 10.

<sup>465</sup> According to Mr. Dan Oprescu, the Head of the National Office for Roma, since all decisions of the Sub-Commission are taken by a consensus of its governmental and non-governmental members, who are specialists on Roma issues, it represents "quite a powerful advisory mechanism", whose recommendations are not likely to be rejected by the Inter-Ministerial Commission. Comments of the National Office for Roma, Romania, *supra* (note 410), at pp. 11-12.

contact between the two in many countries.<sup>466</sup> Examples of such offices include the National Council for Ethnic and Demographic Issues in the Bulgarian Government, the Office for National and Ethnic Minorities of the Republic of Hungary,<sup>467</sup> and the National Office for Roma in the Romanian Government's Department for the Protection of National Minorities.

Similarly, some governments have appointed senior officials to positions concerned with minorities. Examples of these include the Government Plenipotentiary for Human Rights in the Czech Republic and the Deputy Prime Minister for Human Rights, Minorities and Regional Development in the Slovak Republic. Currently serving under the Slovak Deputy Prime Minister in a recently-established position is a Government Commissioner for Roma Issues, Vincent Danihel, who is a member of the Slovak Roma community. Appointed in March 1999, Mr. Danihel's role is to coordinate the government's Roma policies and to make recommendations on issues concerning Roma to appropriate ministries. Various substantive aspects of the programs administered by these offices and officials are addressed in other sections of this report. Here, it may be useful to note several general points concerning their creation or appointment.

First, with the exception of the Government Commissioner for Roma Issues in the Slovak Government, none of the officials mentioned above identifies himself as a Rom, nor is any of the offices mentioned above headed by a Romani official.<sup>468</sup> The immediate predecessor to the current head of the Romanian National Office on Roma and a previous President of Hungary's Office for National and Ethnic Minorities were both representatives of the Romani community in their respective countries, but neither post is currently filled by an individual who identifies himself as a Rom.<sup>469</sup> Government officials sometimes suggest that a key reason for this pattern is that Romani communities themselves are not disposed to co-operate with a Romani official. The claim is plainly overstated: the recent appointment of Nicolae Gheorghe, a prominent Romani leader, to the position of Adviser on Roma and Sinti Issues in the OSCE's Office for Democratic Institutions and Human Rights was widely praised among Roma (as well as among non-Roma). Nonetheless, it points up a genuine concern: it is difficult to identify a single individual who can represent the diverse communities of Roma. Still, governments routinely meet the challenge of appointing a single individual to represent other minority groups, or minorities collectively. Whatever the underlying reasons, governments' failure to do so with respect to Roma

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<sup>466</sup> Historically, many of these offices have tended to have scant direct contact with Romani communities. Often, when Roma have been consulted about policies developed by national offices, "it is only after policy guidelines are a *fait accompli*. . . ." Liégeois, *supra* (note 20), at p. 168.

<sup>467</sup> As noted earlier, the President of this office meets with presidents of the National Minority Self-Governments on a monthly basis. In addition, the Office includes a Deputy President specifically for Gypsy issues, and a General Department for Gypsy Affairs, in which several Gypsies are employed.

<sup>468</sup> As noted below, some governments have been more effective in recruiting Romani advisors in various public offices, particularly at local levels of government.

<sup>469</sup> In 1998, the Hungarian Government created the office of Deputy President for Gypsy Affairs within the office for National and Ethnic Minorities. However, the office remained vacant as of October 1999.

risks being interpreted as signifying doubt about whether Roma are qualified to provide leadership - even in matters of paramount concern to Romani communities.

A second general observation is that, with few exceptions, government offices tasked with responsibility for Roma policy characteristically enjoy thin support both materially and politically. They have also encountered opposition to policies designed to improve conditions of Roma within other departments of government and the parliament. Few have substantial staff or budgets. While the establishment of these offices and positions is thus a salutary step toward addressing Roma concerns, governments must make a far greater commitment of will and resources in support of these offices and the programs they have been charged to create and administer.

## **6. Participation at Local Levels of Government: Romani Advisors**

Several governments have sought to ensure Romani participation in public processes through the appointment of Roma advisors to government offices. As previously noted, for example, the Bulgarian government has recently appointed two Roma to government positions, while two other Roma appointed by a previous government continue to serve in Bulgaria's Ministry of Labor and Social Welfare. In Hungary, Roma are employed in the Office for National and Ethnic Minorities, the Ministry of Social Welfare and Family Affairs, the Prime Minister's Office, the Ministry of National Cultural Heritage, and the Ministry of Education. Two Romani expert consultants are employed by the Czech Government Office, and one each in the Ministries of Interior, Employment and Social Security, Education, and Foreign Affairs. But the Czech Government's principal efforts in this area have been aimed at local levels of administration. Through Resolution No. 686 of 29 October 1997, the Czech Government instituted a program pursuant to which District Offices in regions with substantial Roma populations are to appoint Roma advisors.<sup>470</sup>

Two aspects of this approach distinguish it from the models outlined above. First, while mechanisms described in preceding sections have been concerned principally with securing Roma input into the development of major programs and policies, these advisors play a key role in ensuring effective governance on a daily basis. Second, while the preceding sections focused on the development of national Roma policies, the Czech Government's program seeks to involve Roma at local levels of government. As one Czech Roma leader explained the program, it was established because "we realized that the problems of Roma citizens aren't solved in Prague." The main objective of the initiative, in his words, was "to see how the state system works and find a place for Roma in it - because it's also our state and we didn't see why Roma shouldn't be part of it."<sup>471</sup>

The effectiveness of Roma advisors varies considerably. Some municipalities have resisted even appointing Roma advisors, asserting that this position does not necessarily have to be filled by a Rom, while others have denigrated the advisors that they have grudgingly hired. But in some areas, Roma advisors have emerged as

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<sup>470</sup> Resolution No. 686 on the Report on the situation of the Romani community in the Czech Republic and on the present situation in the Romani community, 29 October 1997, Article III.2(f).

<sup>471</sup> Interview, Prague, the Czech Republic, 9 April 1999.

strong advocates for the interests of Romani communities. In one municipality, for example, the Roma advisor reportedly pressed successfully for the discharge of a teacher who had undressed and beaten a Romani child and of the school director who had failed to discipline the teacher. In some municipalities, the Roma advisor co-ordinates virtually all aspects of local administration that concern Roma; in others, he or she tends to act as a social worker for Roma.<sup>472</sup> Whatever the imperfections in implementation, the basic model embodied in the Czech policy represents an important advance. As has frequently been noted, it is at the local level that the impacts of government policies are most keenly felt.<sup>473</sup>

Another model worthy of consideration is that adopted by the Finnish Government. In 1996, on the recommendation of its Advisory Board on Romani Affairs, the Finnish Government launched a two-year pilot project to improve the participation of the Romani population at the regional level. New regional advisory boards were established to elaborate, in co-operation with regional authorities, development projects for the benefit of Romani communities at the regional and municipal level; implementation of these initiatives was funded by grants from the Ministry of Social Affairs and Health. The projects which were developed under this system dealt with a wide range of issues, including education, housing, employment, day-care and pre-school education of the Roma, social welfare and health care services available to Roma, discrimination, teaching of the Romani language and culture, related research, acquisition of teaching material, cultural activities, and the development of culture in general. The Advisory Board on Romani Affairs judges that the pilot project has produced a positive administrative model for co-operation between Roma and the majority population, and for “activating [the] resources of the Roma themselves for the development of society,” and is seeking to make the “pilot” regional advisory boards permanent.<sup>474</sup>

## 7. General Conclusions

As noted at the beginning of this section, the diversity among States’ political cultures and constituent communities makes it inappropriate to suppose that any particular formula for ensuring minority participation is universally valid. Still, it is possible to identify general benchmarks for assessing the effectiveness of such mechanisms (although some are relevant principally to particular mechanisms, such as consultative processes). These include:

- *Early involvement of Roma:* A recurring concern in many countries is that government ministries develop the broad outlines of Roma policy without any significant Roma input, and then present their policies to a Romani consultative body in the expectation of obtaining its blessing. In this setting, Romani

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<sup>472</sup> To ensure that there were adequate numbers of qualified candidates for these position, in 1997 the Romani Civic Initiative (ROI) established a program at the Social and Legal Academy in Prague to train people to be Romani advisors. (After the first year, the program was transferred from ROI to the Evangelic Academy.)

<sup>473</sup> As noted in Section III.F.3, the Romanian Government’s Ministry of Education has recently instituted a program of appointing Roma Inspectors in each county.

<sup>474</sup> Paper submitted by the Advisory Board on Romani Affairs, Finland, *supra* (note 203).

representatives who are in a position to raise legitimate concerns are placed in the position of being spoilers if they do so. In contrast, the early involvement of Romani communities in developing the broad outlines as well as specific contours of Roma policy, as in Bulgaria, is likely to ensure that they play an effective role.

- *Influence of Roma views on government policies:* An additional and basic gauge of whether consultation processes are more than proverbial window-dressing is the degree to which government policies are responsive to the views of Roma who participate in formal consultation processes.
- *Inclusiveness:* Mechanisms for securing Roma participation in shaping major policy initiatives are most likely to be legitimate and effective if they involve a broadly representative process. The contrasting experiences of Hungary, where a chief criticism of the national Gypsy self-government has related to its “winner-take-all” composition, and Bulgaria, where seventy-five Romani organizations reached consensus on the broad outlines of national policy, underscore the importance of this consideration.
- *Transparency:* Transparency is essential to both the legitimacy and effectiveness of consultative processes and other mechanisms for ensuring Roma participation in political processes. At a minimum, governments should ensure that representatives of Romani communities receive essential information about programs and proposals sufficiently in advance of decision-making deadlines to allow meaningful analysis and input by those representatives. It may also be desirable to maintain a publicly-available record of meetings between government and Romani interlocutors.
- *Participation of Roma outside formal meetings:* One key measure of the seriousness of consultative mechanisms is whether Roma and government interlocutors meet for substantive working sessions outside the parameters of regularly-scheduled formal meetings.
- *Meaningful participation of Roma at all levels of governance:* In view of the central importance of local administrations in realizing national Roma policies, Roma participation at these levels is essential to the effective implementation of such policies.
- *Involvement of Roma in implementation and evaluation:* Roma should be meaningfully involved not only in developing but also implementing and evaluating the success of programs aimed at improving the conditions of Romani communities. Their involvement in implementation and evaluation are closely related: Roma participation in implementation helps ensure that governments receive the type of continuous feedback that enables them to refine and adapt their programs as needed to achieve their aims.

While the foregoing benchmarks have obvious relevance to OSCE participating States, they may also be pertinent to regional and international organizations, as well as to private foundations that support programs aimed at improving the conditions of Romani communities. When such organizations and foundations provide financial support for Roma programs, it is hoped that they would use the opportunity to

communicate to the governments concerned the importance of Romani involvement in program design and implementation.

Another respect in which donors can make a constructive contribution is in the area of training. As Roma have become increasingly involved in policy-making processes, many have become acutely aware that their participation would be enhanced by greater expertise in this area. Well-designed training programs aimed at improving political, policy-making and public-administration skills could play a useful role in preparing Roma for these roles.<sup>475</sup>

In this context, it is important to further strengthen and encourage the development of Romani women's organizations and networks. OSCE bodies have specifically recommended that ongoing work on Roma/Sinti should have a gender component, and that governments should take positive action to increase the participation of Roma women in policy-making processes.<sup>476</sup> States and international organizations should consider providing financial support for projects carried out by and involving Roma women.

#### **D. Citizenship**

The most extreme form of political exclusion is, of course, denial of citizenship. The dissolutions during the past decade of the Soviet Union, the Socialist Federal Republic of Yugoslavia and Czechoslovakia have presented complex issues of citizenship in a number of successor States, exposing several groups to the possibility or experience of statelessness. The majority of successor States adopted a "zero option" approach, granting citizenship to all persons living in their territory at the time of its independence or of the relevant citizenship law's enactment; this follows the general international law principle that the population goes with the territory.<sup>477</sup> But in a few countries, successor States adopted restrictive laws and policies that excluded from automatic citizenship long-term residents who possessed citizenship in the predecessor State.

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<sup>475</sup> A non-governmental project aimed at preparing Roma for jobs in public administration, which is supported by the Open Society Foundation in Romania, is scheduled to begin its first training program in the Autumn of 1999.

<sup>476</sup> The OSCE Supplementary Human Dimension Meeting on Gender Issues, Vienna, June 1999, Final Report of the Meeting, Working Group II "Action in the Security Sphere – Focus in post-conflict rehabilitation", p. 7; and The OSCE Supplementary Human Dimension Meeting on Roma and Sinti Issues, September 1999, Report of the Meeting, Working Group I "Roma and Sinti policies from ideas to implementation: putting 'best practices' in the Human Dimension into operations"

<sup>477</sup> In the case of State succession (dismemberment in this specific case), the main criterion is that each affected person demonstrates a "substantial connection" with the territory in question and, if so demonstrated, then the change of nationality follows the change of sovereignty. See Ian Brownlie, *Principles of Public International Law*, fourth ed., Clarendon Press, Oxford, 1990, pp. 661-665.

## 1. The Czech Republic

The most significant example in terms of its impact on Roma is the Czech Law on Acquisition and Loss of Citizenship,<sup>478</sup> adopted in December 1992 when the former country of Czechoslovakia prepared to divide into the independent States of the Czech Republic and the Slovak Republic, and finally amended in 1999. Under this law, the initial body of citizens in the Czech Republic - those entitled to automatic citizenship as of 1 January 1993 - comprised persons who had been citizens of Czechoslovakia and were registered as having Czech nationality. This latter qualification referred to an internal designation of nationality established in 1968-1969, when Czechoslovakia became a federation of the Czech and Slovak Republics. Under the 1968-69 legislation, nationality was assigned principally on the basis of the federal republic in which a citizen of Czechoslovakia was born.<sup>479</sup> Under the law, the citizenship of someone born before 1 January 1954 was determined by their place of birth, while citizenship of those born after that date was determined by reference to the nationality of their parents.<sup>480</sup> These nationality designations had no legal significance internally in Czechoslovakia, nor were they relevant internationally.

When the two States attained independence, nationality designations became largely determinative of automatic citizenship in both the Czech Republic and the Slovak Republic. Under Act No. 40/1992 Coll., persons deemed to possess Slovak federal-level citizenship under the prior legislation are deemed Slovak nationals and hence ineligible for automatic citizenship in the newly independent Czech State, even if they had lived in the Czech part of Czechoslovakia for decades.

The burden of this provision fell disproportionately and heavily upon Roma communities. The vast majority of Roma residing in Czech territory had migrated there from Slovakia after the Second World War (virtually all Roma living in the Czech lands before the war were exterminated during the Holocaust). Tens of thousands of Roma were made stateless, either *de jure* or *de facto*, by virtue of this law.

Provisions establishing a right of option mitigated the exclusionary effects of the Czech and Slovak citizenship laws,<sup>481</sup> but the Czech law established preconditions that again had a disproportionately exclusionary effect on Roma. Applicants were required to document at least two years' continuous permanent residency in the Czech Republic as well as a clean criminal record during the previous five years. The

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<sup>478</sup> Law No. 40/1993.

<sup>479</sup> From 1918, when the Czechoslovak Republic was established, until 31 December 1968, there was only a single Czechoslovak citizenship. With the establishment of the federation on 1 January 1969, new legislation was adopted that established both federal citizenship (Act No. 165/68) and nationality in one of the two federal republics (Act No. 39/1969).

<sup>480</sup> Jirina Šiklová and Marta Miklušáková, *Citizenship of Roma after the split of Czechoslovakia: a social problem to be faced by other multinational states*, 1 *European Journal of Social Work*, 1998, p. 180.

<sup>481</sup> Pursuant to this right, Slovak nationals could opt to become citizens of the Czech Republic and Czech nationals could opt for citizenship in Slovakia for a period of one and one half years (i.e. until 30 June 1994).

former requirement proved particularly problematic for Roma, both because many Roma had never formally registered as permanent residents of the Czech Republic even if they had lived there for decades, and because many Czech Roma possess low levels of legal literacy.<sup>482</sup>

With many others, I expressed concern about the impact of this legislation on Czech Roma. During a September 1994 Human Dimension seminar on Roma, I urged the Czech government to amend its law:

In no case should new citizenship laws be drafted and implemented in such a way as to discriminate against legitimate claimants for citizenship, or even to withhold citizenship from possibly tens of thousands of life-long and long-term inhabitants of the state, most of whom are Roma. As a result, the status of these persons is essentially 'foreigner' in their own country. This would greatly undermine what I would consider to be in the long-term interest of the state: the unequivocal establishment of a loyal bond between the state and its inhabitants and the prospect that they would be able to participate fully in the political, economic, and social life of the state. I would strongly urge that the clearly negative impact of such legislation be considered, and that appropriate changes be made.<sup>483</sup>

An amendment to the Czech citizenship law that entered into effect in May 1996 enabled the Minister of the Interior on a discretionary basis to waive the clean-record requirement with respect to present or former Slovak citizens. But the amendment did not eliminate problems associated with the prior version. NGOs documented numerous cases in which Roma who reportedly satisfied even the restrictive conditions of the law "were arbitrarily denied citizenship by local authorities, forcing the applicants to pursue a complicated and expensive appeal process."<sup>484</sup>

Following concerted efforts by the Czech Government, amendments addressing these longstanding concerns were finally approved by the Chamber of Deputies of the Czech Parliament on 9 July 1999 and by its Senate on 29 July 1999.<sup>485</sup> The legislation entitles all persons who were citizens of the Czech and Slovak Federal Republic and who had permanent residence on Czech territory at the time of the dissolution of Czechoslovakia to become citizens of the Czech Republic upon application. On 23 August 1999, President Havel signed the bill into law.

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<sup>482</sup> The second requirement is also believed to have had a disproportionate impact on Roma. According to two writers, crimes committed by Roma are more likely to be detected than those of the majority population. See Šiklová and Miklušáková, *supra* (note 480), at p. 182.

<sup>483</sup> Introductory Remarks, Mr. Max van der Stoep, High Commissioner on National Minorities of the Conference on Security and Cooperation in Europe, CSCE Human Dimension Seminar on "Roma in the CSCE Region", jointly convened by the Council of Europe and the CSCE, Warsaw, 20 September 1994; the speech is reproduced in Wolfgang Zellner and Falk Lange (eds.), *Peace and Stability through Human and Minority Rights*, NOMOS, Baden-Baden, 1999, pp. 95-99.

<sup>484</sup> Schlager, *supra* (note 90), at p. 53.

<sup>485</sup> Law No. 159/1999 coll. amending Law No. 40/1993 coll. on Acquiring and Losing Citizenship of the Czech Republic.



The Government of the Czech Republic and members of the Czech Parliament who provided leadership in securing these amendments are to be commended for this important milestone. But past experience points up the need for continued vigilance in ensuring that the law is faithfully executed. In particular, special efforts may be required to ensure that bureaucratic obstacles do not block Romani applicants from claiming their fundamental right to citizenship in accordance with the new law. Past experience has also shown the importance of effective outreach programs to ensure that those previously denied citizenship are aware of their rights and the procedures for exercising them.

## **2. The Former Yugoslav Republic of Macedonia**

Several thousand Roma are estimated to be stateless as a result of the Act on Citizenship of the Republic of Macedonia, which entered into effect on 11 November 1992.<sup>486</sup> The law conferred automatic citizenship only on individuals who had possessed Macedonian republican citizenship - a condition many Roma did not meet.<sup>487</sup> Citizens of other republics of the former Yugoslavia and nationals of the former Yugoslavia who were registered residents of Macedonia could apply within one year to acquire Macedonian citizenship, but the Act also required them to “have a permanent source of funds” and to have “legally resided on the territory of the Republic of Macedonia at least 15 years.”<sup>488</sup>

These requirements are believed to have had a disproportionately exclusionary effect on Roma. In view of the high rate of unemployment among Roma, many were unable to satisfy the requirement that they “have a permanent source of funds.” Indeed, many could not afford the administrative fee associated with applying for citizenship. Further, many Roma had never formally registered as legal residents, even if they had lived in Macedonia for a long time. Finally, the government did not publicize procedures for applying for citizenship.

## **3. Croatia**

Roma have also faced obstacles in obtaining citizenship in Croatia, reportedly leaving many stateless. Article 30 of the Law on Croatian Citizenship of 26 June 1991 defines Croatia’s initial body of citizens as those who possessed republican-level Croatian citizenship. As amended on 8 May 1992, the law enables others to claim Croatian citizenship if they are a “member of the Croatian people” and make a written statement that they consider themselves Croatian citizens. However, the members of a field mission conducted in 1998, sponsored by a specialist NGO, reported that they “did not meet a single Rom who had successfully claimed to be a Croat and had thereby been granted citizenship” under this provision.<sup>489</sup> Instead, the

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<sup>486</sup> See ERRC, *A Pleasant Fiction: The Human Rights Situation of Roma in Macedonia*, Budapest, July 1998, at p. 17.

<sup>487</sup> *Id.* at p. 20.

<sup>488</sup> Act on Citizenship of the Republic of Macedonia, Article 26.

<sup>489</sup> Savelina Danova and Rumyan Russinov, “Field Report: The ERRC in Croatia”, Roma Rights, Summer 1998, *supra* (note 201), at p. 51.

Roma they interviewed had all been processed under provisions applicable to “aliens.” Conditions for naturalization included two that have apparently served to prevent “Roma all over Croatia” from acquiring citizenship. First, they must demonstrate proficiency in the Croatian language and Latin script; second, they must convince authorities based on their conduct that they are “attached to the legal system and customs persisting in the Republic of Croatia” and that they accept “the Croatian culture.”

#### 4. OSCE and Other International Standards

To the extent that laws governing citizenship in the context of State succession exclude from automatic citizenship long-term residents of the successor State who possessed citizenship in the predecessor State, they breach core principles of the OSCE, as well as relevant principles of international law. The infringement is further compounded when the exclusion is discriminatory. Recent enunciations of relevant principles include the following:

- “[E]xclusion from the initial body of citizens of long-term permanent residents, who had a genuine and effective link and who had indicated their social attachment through exercise of civil and social functions, contradicts international legal principles.”<sup>490</sup>
- “The OSCE Parliamentary Assembly . . .

31) Recalls the commitments under the 1992 Helsinki Document not to increase statelessness;

33) Calls on the participating States to give equal rights to individuals as citizens, not as members of a particular national or ethnic group. Accordingly, they should ensure that all citizens be accorded equal respect and consideration in their constitutions, legislation and administration and that there be no subordination, explicit or implied, on the basis of ethnicity, national origin, race, or religion; further calls on the participating States to acknowledge that citizenship itself is based on a genuine and effective link between a population and a territory and should not be based on race or ethnicity and must be consistent with the State’s international obligations in the field of human rights;

34) Urges that, upon a change in sovereignty, all persons who have a genuine and effective link with a new State should acquire the citizenship of that State.”<sup>491</sup>

- “States shall ensure that, through the operation of national laws, all persons who were citizens of a predecessor State and who are permanently residing on the

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<sup>490</sup> The Office of the United Nations High Commissioner for Refugees, *The Czech and Slovak Citizenship Laws and the Problem of Statelessness*, February 1996, p. 13, at paragraph 56, *reproduced in European Series* (UNHCR, Regional Bureau for Europe), Vol. 2, No. 4, September 1996, pp. 1-29

<sup>491</sup> Ottawa Declaration of the OSCE Parliamentary Assembly, 8 July 1995.

territory of a successor State, enjoy or be granted citizenship.”<sup>492</sup>

- “In all cases of State succession, the successor State shall grant its nationality to all nationals of the predecessor State residing permanently on the transferred territory.”<sup>493</sup>

## 5. Restrictive Regulations

The laws of some countries have the effect of denying large proportions of the Romani population the core right attaching to citizenship - the right to vote. For example, the French Act of 1969 regulating the status of Roma provides that French nationals who are non-sedentary can be entered on the electoral register only after three years of uninterrupted attachment to the same municipality. In practice, this is estimated to deny 75 percent of France’s Romani communities the right to vote.<sup>494</sup>

In several countries, including Greece and the Slovak Republic, the right to vote depends upon residency requirements that many Roma have trouble meeting. Many Roma lack legal literacy and thus do not possess or know how to obtain the requisite documentation; some Roma encounter resistance from responsible authorities when they attempt to register.

## 6. Conclusions

As stated before, in no case should new citizenship laws be drafted and implemented in such a way as to discriminate against legitimate claimants for citizenship, or to withhold citizenship from long-term inhabitants of the State. Further, OSCE participating States should ensure that laws relating to registration of residency do not operate to disenfranchise their citizens or otherwise have a discriminatory effect.

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<sup>492</sup> Programme of Action, adopted by the Regional Conference to address the problems of refugees, displaced persons, other forms of involuntary displacement and returnees in the countries of the Commonwealth of Independent States and relevant neighbouring States (the OSCE Conference on Migration), Section I, paragraph 15 (b), Geneva, 30-31 May 1996.

<sup>493</sup> Declaration on the Consequences of State Succession for the Nationality of Natural Persons, adopted by the European Commission for Democracy through Law (the Venice Commission), at its 28<sup>th</sup> Plenary Meeting, Venice, 13-14 September 1996.

<sup>494</sup> European Committee on Migration, *supra* (note 280), at p. 22.

## VII. RECOMMENDATIONS

### A. Discrimination and Racial Violence

*Law should establish cause of action, remedies and define discrimination. Among the specific measures needed are:*

1. Enactment of comprehensive anti-discrimination legislation (addressing racial and ethnic discrimination in all fields of public life, including access to public accommodations, citizenship, education, employment, health, housing, public and social services, etc.).
2. Enactment and enforcement of legislation prohibiting advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
3. Enactment of legislation mandating sentencing enhancements for offenses motivated by ethnic/racial animus.
4. Enactment of government regulations or other applicable legal norms specifically prohibiting ethnic-racial discrimination in all activities undertaken and/or funded by the government.
5. Promulgation and implementation of affirmative action policies giving preference to qualified Roma in public employment, public contracting, and in all other activities undertaken and/or funded by the government.
6. Effective enforcement of the above legal norms through promulgation and enforcement of internal disciplinary standards to ensure that public officials who discriminate, including police, are sanctioned swiftly and meaningfully.
7. Establishment of a government office staffed with qualified personnel with responsibility for publicizing anti-discrimination norms, and with the power to investigate and prosecute violations.
8. Public officials from the highest levels on down should speak out against racial discrimination against Roma and others, and make it clear that racism will not be tolerated.
9. Pursuant to Article 14 of the UN Convention on the Elimination of Racial Discrimination, declaration of recognition of the competence of the supervisory committee to receive and consider communications from individuals or groups alleging violations of the Convention (NB many OSCE countries have not so declared).
10. Development and execution of training programs for police, prosecutors, judges in international human rights law concerning racial and ethnic discrimination.
11. Development and execution of education programs for the general public – including use of the mass media – concerning the nature of racism against Roma, the legal prohibitions against racial discrimination, and the rights of all individuals to legal redress for violations of their rights.
12. In the field of education, fund and provide language and/or other assistance necessary to ensure equal educational opportunities for Romani children.
13. Adopt measures aimed at facilitating access to justice for Roma, including establishing, funding and implementing effectively an entitlement to legal assistance for indigent persons, including but not limited to Roma, charged with crimes and/or those bringing civil legal action in order to vindicate legal rights.

14. Establish and implement mechanisms to monitor and report transparently and regularly on progress in each of the above areas.

## **B. Education**

*Improving access to education and opportunities for academic achievement by Roma are crucial to the advancement of Romani communities' broader prospects.*

1. National Governments must make concerted efforts to eradicate manifestations of anti-Roma discrimination in schools. To this end, governments should ensure that teachers and other education professionals receive adequate training in multicultural education, and that national law includes adequate provisions banning discrimination in the sphere of education and providing effective remedies.
2. Governments should make concerted efforts to eradicate practices that tend toward involuntary segregation of Romani children in schooling, particularly the practice of routing Romani children to schools or classes for mentally disabled students. Governments should commit resources to programs that enable Romani children to succeed in regular schools.
3. Governments may wish to consider supporting pre-school programs that help prepare Romani children for primary schools, as well as “booster” programs that provide appropriate support to Romani children while they are attending regular schools.
4. Governments should take steps to increase the number of Roma educators and teachers' assistants.
5. In light of the distinct cultural identity of Roma, a keystone of educational programs aimed at enhancing their access to education and their academic achievement should be flexibility.
6. To ensure that the dignity of all children is fully respected in schools, governments should ensure that educational texts include material on Romani history and culture, especially in regions and localities with substantial Romani populations.
7. Governments should adopt programs that would ensure that the costs of meals, textbooks, and similar costs related to education are covered with respect to children whose parents cannot afford to pay these costs.

## **C. Living Conditions**

*The housing and health concerns of many Romani communities in OSCE participating States merit concerted attention and commitment of resources. The following are some measures that could be usefully considered.*

1. Governments should show greater readiness to assume the risk of guaranteeing loans that may be available from international organizations and financial institutions for housing projects.
2. Foreign donors should consider funding feasibility studies on specific housing projects, which may in turn encourage local and national authorities to apply to these same donors for loans to implement larger housing projects.

3. OSCE participating States should review their regulatory systems with a view toward eliminating requirements that serve to block housing programs from moving forward even when sufficient funding may be available.
4. Romani individuals should be involved in the design of housing policies and meaningfully engaged in the construction, rehabilitation and/or maintenance of public housing projects meant to benefit them.
5. While respecting the free choice of particular Romani communities to live with other Roma, governments should ensure that housing policies do not foster segregation. One approach that may be productive is to provide financial incentives for housing projects whose intended beneficiaries include a mix of Roma and non-Roma.
6. Governments must ensure that Roma are not victims of discrimination in respect of housing. Where such legislation does not yet exist, OSCE participating States should enact laws that prohibit discrimination in housing and provide effective remedies for violations.
7. In view of the extreme insecurity many Roma now experience in respect of housing, governments should also endeavor to regularize the legal status of Roma who now live in circumstances of unsettled legality.
8. Governments should take immediate steps to address the high incidence of disease and malnutrition among Romani communities.
9. Governments should take steps to ensure equal access of Roma to public health care.
10. Governments should give special attention to the particular situation and needs of women in taking measures to ensure, inter alia, adequate housing and access to health care.

#### **D. Political Participation**

*The following recommendations are all meant to support the general objective of ensuring effective Roma participation, and several have application for IGOs as well as individual OSCE States.*

1. *Early involvement:* The involvement of Roma at the earliest stages in the development of the broad outlines as well as the specific contours of Roma policy is essential to the effectiveness of such policies.
2. *Influence of Roma views on government policies:* Inclusion of Roma in formal consultation processes will contribute to the effectiveness of government policies.
3. *Inclusiveness:* Mechanisms for securing Romani participation in shaping major policy initiatives are most likely to be effective and legitimate if they involve a broadly representative process.
4. *Transparency:* Governments should ensure that representatives of Romani communities receive essential information about programs and proposals sufficiently in advance of decision-making deadlines to allow meaningful analysis and input by those representatives.
5. *Participation of Roma outside formal meetings:* Valuable input from Romani leaders can be gathered in the course of substantive working sessions, taking place outside the parameters of regularly-scheduled formal meetings with government officials.

6. *Meaningful participation of Roma at all levels of governance:* In view of the central importance of local administrations in realizing national Roma policies, Roma participation at these levels is essential to the effective implementation of such policies.
7. *Involvement of Roma in implementation and evaluation:* Roma should be meaningfully involved not only in developing but also implementing and evaluating the success of programs aimed at improving the conditions of Romani communities.
8. *Training:* Donors seeking to enhance Roma involvement in policy-making processes could usefully offer training programs aimed at improving political, policy-making and public administration skills.
9. *Citizenship:* In no case should new citizenship laws be drafted and implemented in such a way as to discriminate against legitimate claimants for citizenship, or to withhold citizenship from long-term inhabitants of the State. Further, OSCE participating States should ensure that laws relating to registration of residency do not operate to disenfranchise their citizens or otherwise have a discriminatory effect.

#### **E. Enhancement of the Mandate of the OSCE Contact Point for Roma and Sinti Issues**

*In light of the complexity and magnitude of the issues Roma face, and the various inter-governmental bodies which have developed initiatives related to Roma, the OSCE Contact Point for Roma and Sinti Issues will be most effective if the office establishes targeted priorities in implementing its broad mandate. The following are some of the activities that could usefully be pursued by the Contact Point.*

1. Assume a pro-active role in analyzing information concerning measures undertaken by participating States in meeting their OSCE commitments vis-à-vis Roma and in advising governments concerning their efforts to meet those commitments.
2. OSCE participating States should respond in a timely fashion to specific questions concerning their policies and practices in respect of Roma that may be formulated by the Contact Point.
3. Act as an advisor to governments on mechanisms that are likely to ensure the effective participation of Roma in policy-making at the national, regional and local level, and in linking national policy to implementation at the local level.
4. Advise governments on effective mechanisms for alleviating tensions between Romani and non-Roma communities, and on effective means for combating anti-Roma discrimination by public officials and institutions, including police. The compilation of a manual of “best practices” in this regard could be a particularly useful contribution.
5. Conduct on-site inquiries as necessary to investigate conditions affecting Roma populations. The Contact Point should be assured the necessary resources and facilities to conduct these inquiries.
6. Governments and inter-governmental bodies confronted with the challenge of protecting Romani communities which are at risk can draw upon the Contact Point as a resource; the OSCE in particular could usefully incorporate Roma issues into its training programs for its mission members who are working in countries with Roma populations.

7. In light of the Contact Point's mandate to include "seminars [and] workshops" in his work program, and of the utility of targeted implementation in this area of the mandate, it would be a particularly useful contribution to organize a seminar on the issue of ethnic data collection by governments.
8. The programs of the Contact Point should be shaped, at least in part, by the possibility of enhancing the contributions of important initiatives in respect of Roma undertaken by other organizations.



## **APPENDIX I: EXCERPTS FROM CSCE/OSCE DOCUMENTS REFERRING TO ROMA**

### **DOCUMENT OF THE COPENHAGEN MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE CSCE (1990)**

(40) The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. In this context, they also recognize the particular problems of Roma (gypsies).

They declare their firm intention to intensify the efforts to combat these phenomena in all their forms and therefore will

- (40.1) - take effective measures, including the adoption, in conformity with their international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-semitism;
- (40.2) - commit themselves to take appropriate and proportionate measures to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic or religious identity, and to protect their property;
- (40.3) - take effective measures, in conformity with their constitutional systems, at the national, regional and local levels to promote understanding and tolerance, particularly in the fields of education, culture and information;
- (40.4) - endeavour to ensure that the objectives of education include special attention to the problem of racial prejudice and hatred and to the development of respect for different civilizations and cultures;
- (40.5) - recognize the right of the individual to effective remedies and endeavour to recognize, in conformity with national legislation, the right of interested persons and groups to initiate and support complaints against acts of discrimination, including racist and xenophobic attacks;
- (40.6) - consider adhering, if they have not yet done so, to the international instruments which address the problem of discrimination and ensure full compliance with the obligations therein, including those relating to the submission of periodic reports;
- (40.7) - consider, also, accepting those international mechanisms which allow States and individuals to bring communications relating to discrimination before international bodies.

## CSCE MEETING OF EXPERTS ON NATIONAL MINORITIES (GENEVA 1991)

### VI.

The participating States, concerned by the proliferation of acts of racial, ethnic and religious hatred, anti-semitism, xenophobia and discrimination, stress their determination to condemn, on a continuing basis, such acts against anyone.

In this context, they reaffirm their recognition of the particular problems of Roma (gypsies). They are ready to undertake effective measures in order to achieve full equality of opportunity between persons belonging to Roma ordinarily resident in their State and the rest of the resident population. They will also encourage research and studies regarding Roma and the particular problems they face.

## DOCUMENT OF THE MOSCOW MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE CSCE (1991)

### III.

(42.2) [The participating States] recognize that effective human rights education contributes to combating intolerance, religious, racial and ethnic prejudice and hatred, including against Roma, xenophobia and anti-semitism;

## THE HELSINKI DOCUMENT: THE CHALLENGES OF CHANGE (1992)

### VI. The Human Dimension

(34) [The participating States] will consider developing programmes to create the conditions for promoting non-discrimination and cross-cultural understanding which will focus on human rights education, grass-roots action, cross-cultural training and research;

(35) Reaffirm, in this context, the need to develop appropriate programmes addressing problems of their respective nationals belonging to Roma and other groups traditionally identified as Gypsies and to create conditions for them to have equal opportunities to participate fully in the life of society, and will consider how to co-operate to this end.

## **APPENDIX II: MANDATE OF THE ODIHR CONTACT POINT FOR ROMA AND SINTI ISSUES**

### **THE BUDAPEST DOCUMENT: TOWARDS A GENUINE PARTNERSHIP IN A NEW ERA (1994)**

#### **VII. The Human Dimension**

##### **Roma and Sinti**

(23) The participating States decide to appoint within the ODIHR a contact point for Roma and Sinti (Gypsies) issues. The ODIHR will be tasked to:

- act as a clearing-house for the exchange of information on Roma and Sinti (Gypsies) issues, including information on the implementation of commitments pertaining to Roma and Sinti (Gypsies);
- facilitate contacts on Roma and Sinti (Gypsies) issues between participating States, international organizations and institutions and NGOs;
- maintain and develop contacts on these issues between CSCE institutions and other international organizations and institutions.

To fulfil these tasks the ODIHR will make full use of existing resources. In this context they welcome the announcement made by some Roma and Sinti (Gypsies) organisations of their intention to make voluntary contributions.

(24) the participating States welcome the activities related to Roma and Sinti (Gypsies) issues in other international organisations and institutions, in particular those undertaken in the Council of Europe.

### **DECISION OF THE 1998 OSCE OSLO MINISTERIAL COUNCIL ON ENHANCEMENT OF THE OSCE'S OPERATIONAL CAPABILITIES REGARDING ROMA AND SINTI ISSUES**

The Ministerial Council,

Bearing in mind the existing OSCE commitments regarding Roma and Sinti, and

Recalling the decision taken by the Budapest Summit to appoint within the ODIHR a Contact Point for Roma and Sinti (Gypsies) Issues,

1. Decides to enhance the capability of the OSCE regarding those issues by strengthening the existing ODIHR Contact Point for Roma and Sinti Issues. Among its priorities will be:

- to enhance the OSCE's interaction with the governments of the participating States, with representatives of Roma and Sinti communities, as well as with

international organizations, initiatives and NGOs relevant to Roma and Sinti issues, and in particular to secure further mutual reinforcement of co-operation with the Co-ordinator for Roma in the Council of Europe with a view to avoiding duplication of effort, including the establishment of regular consultations with those organizations, initiatives and NGOs in order to develop synergies and common approaches designed to facilitate full integration of Roma and Sinti communities into the societies they live in, while preserving their identity;

- to enhance co-operation among OSCE institutions and mission/field presences with respect to Roma and Sinti, if applicable;
- to develop, on the basis of input from participating States, the OSCE institutions, and in particular the HCNM, Roma and Sinti communities, NGOs, and international organizations and other institutions and initiatives, a work programme which should include, inter alia, seminars, workshops and clearing houses;
- to collect information from the participating States on legislative and other measures related to the situation of Roma and Sinti with a view to making it available to the OSCE community, as well as to other interested international organizations, and to elaborating additional reports on the situation of Roma and Sinti in the OSCE area.

2. Further decides that the Contact Point should deal solely with matters concerning Roma and Sinti.

3. Tasks the Permanent Council with devising appropriate ways to ensure adequate resources to implement this decision.

## APPENDIX III: COUNCIL OF EUROPE RECOMMENDATIONS

### COUNCIL OF EUROPE RECOMMENDATION 1203 (1993)<sup>1</sup> on Gypsies in Europe

#### General observations:

1. One of the aims of the Council of Europe is to promote the emergence of a genuine European cultural identity. Europe harbours many different cultures, all of them, including the many minority cultures, enriching and contributing to the cultural diversity of Europe.
2. A special place among the minorities is reserved for Gypsies. Living scattered all over Europe, not having a country to call their own, they are a true European minority, but one that does not fit into the definitions of national or linguistic minorities.
3. As a non-territorial minority, Gypsies greatly contribute to the cultural diversity of Europe. In different parts of Europe they contribute in different ways, be it by language and music or by their trades and crafts.
4. With central and east European countries now member states, the number of Gypsies living in the area of the Council of Europe has increased drastically.
5. Intolerance of Gypsies by others has existed throughout the ages. Outbursts of racial or social hatred, however, occur more and more regularly, and the strained relations between communities have contributed to the deplorable situation in which the majority of Gypsies lives today.
6. Respect for the rights of Gypsies, individual, fundamental and human rights and their rights as a minority is essential to improve their situation.
7. Guarantees for equal rights, equal chances, equal treatment, and measures to improve their situation will make a revival of Gypsy language and culture possible, thus enriching the European cultural diversity.
8. The guarantee of the enjoyment of the rights and freedoms set forth in Article 14 of the European Convention on Human Rights is important for Gypsies as it enables them to maintain their individual rights.
9. Specific legislation to protect minorities has been adopted by the member states of the Council of Europe. The Council of Europe has adopted several resolutions and recommendations concerning minorities. Reference should be made in particular to Assembly Recommendation 1134 (1990) on the

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<sup>1</sup> Assembly debate on 2 February 1993 (24th Sitting) (see Doc. 6733, report of the Committee on Culture and Education, Rapporteur : Mrs Verspaget). Text adopted by the Assembly on 2 February 1993 (24th Sitting).

rights of minorities. These texts are important to Gypsies, but as one of the very few non-territorial minorities in Europe Gypsies need special protection.

10. In the past the Council of Europe has also adopted several resolutions and recommendations specifically concerning Gypsies: Assembly Recommendation 563 (1969) on the situation of Gypsies and other travellers in Europe; Committee of Ministers Resolution (75) 13 containing recommendations on the social situation of nomads in Europe and Recommendation No. R (83) 1 on stateless nomads and nomads of undetermined nationality; Standing Conference of Local and Regional Authorities of Europe Resolution 125 (1981) on the role and responsibility of local and regional authorities in regard to the cultural and social problems of populations of nomadic origin. The implementation of these resolutions and recommendations, and particularly in the new member states, is extremely important for the position of Gypsies.

11. The Assembly therefore recommends that the Committee of Ministers initiate, where appropriate by proposals to governments or the relevant local and regional authorities of member states, the following measures:

In the field of culture:

- i. the teaching and study of Gypsy music at several schools of music in Europe should be stimulated and the development of a network of such music schools encouraged;
- ii. a European programme for the study of Romanes and a translation bureau specialising in the language should be established;
- iii. the provisions for non-territorial languages as set out in the European Charter for Regional or Minority Languages should be applied to Gypsy minorities;
- iv. the foundation of centres and museums of Gypsy culture should be stimulated, and support given to regular Gypsy festivals;
- v. a travelling exhibition should be organised in the series of European art exhibitions on the reciprocal effects of contacts with Gypsy culture;

In the field of education:

- vi. the existing European programmes for training teachers of Gypsies should be extended;
- vii. special attention should be paid to the education of women in general and mothers together with their younger children;
- viii. talented young Gypsies should be encouraged to study and to act as intermediaries for Gypsies;

In the field of information :

- ix. information should be provided for Gypsies on their fundamental rights and how they can be secured;
- x. a European information centre should be established on the situation and culture of Gypsies, one of its tasks being to inform the media about Gypsies;

In the field of equal rights:

- xi. member states, which have not yet ratified the International Covenant on Civil and Political Rights (New York, 1966) or the International Convention on the

Elimination of all Forms of Racial Discrimination (New York, 1966), should be urged to do so;

xii. discrimination against Gypsies in the European Convention on Human Rights should be removed by an appropriate declaration to the effect that the term “vagrants” in Article 5.1.e does not necessarily apply to people with a nomadic lifestyle;

xiii. the provisions of any additional protocol or convention relating to minorities should apply to non-territorial minorities;

xiv. member states, which have not yet done so, should ratify the 4th Protocol to the European Convention on Human Rights, which guarantees the liberty of movement and is as such essential for travellers;

xv. member states should alter national legislation and regulations that discriminate directly or indirectly against Gypsies;

xvi. it should be acknowledged that the fact of being the victim of a pogrom or having a reasonable fear of becoming a victim of a pogrom, against which the authorities refuse or prove unable to offer effective protection can, in individual cases, constitute a well- founded fear of persecution for being a member of a particular social group, as indicated in the 1951 United Nations Convention relating to the Status of Refugees;

Everyday life:

xvii. member states should ensure that Gypsies are consulted in the drawing up and application of regulations regarding them;

xviii. further programmes should be set up in the member states to improve the housing situation, education and labour possibilities of those Gypsies who are living in less favourable circumstances; the Gypsies should participate in the preparation of these programmes and in their implementation;

General measures:

xix. independent research should be initiated into the national legislation and regulations concerning Gypsies, and their application in practice, and regular reports on this research presented to the Assembly;

xx. co-operation should be pursued with the European Community on subjects relating to Gypsies, such as education, combating poverty, safeguarding the European cultural heritage, recognition of minorities and promotion of equal rights;

xxi. the Council of Europe should grant consultative status to representative international Gypsy organisations;

xxii. a mediator for Gypsies should be appointed by the Council of Europe, after consultation with representative organisations of Gypsies, with the following tasks at least:

a. to review the progress made in the implementation of measures taken or recommended by the Council of Europe concerning Gypsies;

b. to maintain regular contact with representatives of Gypsies;

c. to advise governments of member states in matters concerning Gypsies;

d. to advise the different bodies of the Council of Europe in matters concerning Gypsies;

e. to investigate government policy and the human rights situation related to Gypsies in member states;

f. to investigate the position of stateless Gypsies or Gypsies with undetermined nationality;

And with the authority:

- g. to receive replies to questions addressed to governments or government representatives of member states;
- h. to enjoy full access to relevant government archives and other material;
- i. to question citizens of member states of the Council of Europe;
- xxiii. member states should report to the Secretary General of the Council of Europe in two years time on the progress made in improving the situation of Gypsies and implementing Council of Europe recommendations.

### ECRI GENERAL POLICY RECOMMENDATION NO. 3: COMBATING RACISM AND INTOLERANCE AGAINST ROMA/GYPSIES (1998)

The European Commission against Racism and Intolerance:

Recalling the decision adopted by the Heads of State and Government of the member States of the Council of Europe at their first Summit held in Vienna on 8-9 October 1993;

Recalling that the Plan of Action on combating racism, xenophobia, antisemitism and intolerance set out as part of this Declaration invited the Committee of Ministers to establish the European Commission against Racism and Intolerance with a mandate, inter alia, to formulate general policy recommendations to member States;

Recalling also the Final Declaration and Action Plan adopted by the Heads of State and Government of the member States of the Council of Europe at their second Summit held in Strasbourg on 10-11 October 1997;

Stressing that this Final Declaration confirms that the goal of the member States of the Council of Europe is to build a freer, more tolerant and just European society and that it calls for the intensification of the fight against racism, xenophobia, antisemitism and intolerance;

Noting the proposal concerning the nomination of a European mediator for Roma/Gypsies contained in Recommendation N° 1203 (1993) of the Parliamentary Assembly of the Council of Europe;

Bearing in mind the conclusions of the human dimension seminar on Roma in the CSCE (OSCE) region organised on 20-23 September 1994 by the Organisation for Security and Co-operation in Europe (OSCE), in close consultation with the Council of Europe and the continuing co-operation between the two Organisations in this field;

Welcoming the nomination by the Secretary General in 1994 of a Co-ordinator of Council of Europe Activities on Roma/Gypsies;

Bearing in mind the work of the Specialist Group on Roma/Gypsies (MG-S-ROM);

Recalling Recommendation N° R (97) 21 of the Committee of Ministers to member States on the media and the promotion of a climate of tolerance;



Recalling the provisions contained in ECRI's general policy recommendation No. 1, which sought to assist member States in combating racism, xenophobia, antisemitism and intolerance effectively, by proposing concrete and specific measures in a limited number of particularly pertinent areas;

Profoundly convinced that Europe is a community of shared values, including that of the equal dignity of all human beings, and that respect for this equal dignity is the cornerstone of all democratic societies;

Recalling that the legacy of Europe's history is a duty to remember the past by remaining vigilant and actively opposing any manifestations of racism, xenophobia, antisemitism and intolerance;

Paying homage to the memory of all the victims of policies of racist persecution and extermination during the Second World War and remembering that a considerable number of Roma/Gypsies perished as a result of such policies;

Stressing in this respect that the Council of Europe is the embodiment and guardian of the founding values - in particular the protection and promotion of human rights - around which Europe was rebuilt after the horrors of the Second World War;

Recalling that combating racism, xenophobia, anti-semitism and intolerance forms an integral part of the protection and promotion of human rights, that these rights are universal and indivisible, and that all human beings, without any distinction whatsoever, are entitled to these rights;

Stressing that combating racism, xenophobia, antisemitism and intolerance is above all a matter of protecting the rights of vulnerable members of society;

Convinced that in any action to combat racism and discrimination, emphasis should be placed on the victim and the improvement of his or her situation;

Noting that Roma/Gypsies suffer throughout Europe from persisting prejudices, are victims of a racism which is deeply-rooted in society, are the target of sometimes violent demonstrations of racism and intolerance and that their fundamental rights are regularly violated or threatened;

Noting also that the persisting prejudices against Roma/Gypsies lead to discrimination against them in many fields of social and economic life, and that such discrimination is a major factor in the process of social exclusion affecting many Roma/Gypsies;

Convinced that the promotion of the principle of tolerance is a guarantee of the preservation of open and pluralistic societies allowing for a peaceful co-existence;

Recommends the following to Governments of member States:

- to sign and ratify the relevant international legal instruments in the field of combating racism, xenophobia, antisemitism and intolerance, particularly the

Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages;

- to ensure that the name used officially for the various Roma/Gypsy communities should be the name by which the community in question wishes to be known;
- bearing in mind the manifestations of racism and intolerance of which Roma/Gypsies are victims, to give a high priority to the effective implementation of the provisions contained in ECRI's general policy recommendation N° 1, which requests that the necessary measures should be taken to ensure that national criminal, civil and administrative law expressly and specifically counter racism, xenophobia, antisemitism and intolerance;
- to ensure that discrimination as such, as well as discriminatory practices, are combated through adequate legislation and to introduce into civil law specific provisions to this end, particularly in the fields of employment, housing and education;
- to render illegal any discrimination on the part of public authorities in the exercise of their duties;
- to ensure that suitable legal aid be provided for Roma/Gypsies who have been victims of discrimination and who wish to take legal action;
- to take the appropriate measures to ensure that justice is fully and promptly done in cases concerning violations of the fundamental rights of Roma/Gypsies;
- to ensure in particular that no degree of impunity is tolerated as regards crimes committed against Roma/Gypsies and to let this be clearly known among the general public;
- to set up and support specific training schemes for persons involved at all levels in the various components of the administration of justice, with a view to promoting cultural understanding and an awareness of prejudice;
- to encourage the development of appropriate arrangements for dialogue between the police, local authorities and Roma/Gypsy communities;
- to encourage awareness-raising among media professionals, both in the audiovisual field and in the written press, of the particular responsibility
- they bear in not transmitting prejudices when practising their profession, and in particular in avoiding reporting incidents involving individuals who happen to be members of the Roma/Gypsy community in a way which blames the Roma/Gypsy community as a whole;
- to take the necessary steps to ensure that rules concerning the issue of de jure and de facto access to citizenship and the right to asylum are drawn up and applied so as not to lead to particular discrimination against Roma/Gypsies;

- to ensure that the questions relating to "travelling" within a country, in particular regulations concerning residence and town planning, are solved in a way which does not hinder the way of life of the persons concerned;
- to develop institutional arrangements to promote an active role and participation of Roma/Gypsy communities in the decision-making process, through national, regional and local consultative mechanisms, with priority placed on the idea of partnership on an equal footing;
- to take specific measures to encourage the training of Roma/Gypsies, to ensure full knowledge and implementation of their rights and of the functioning of the legal system functions;
- to pay particular attention to the situation of Roma/Gypsy women, who are often the subject of double discrimination, as women and as Roma/Gypsies;
- to vigorously combat all forms of school segregation towards Roma/Gypsy children and to ensure the effective enjoyment of equal access to education;
- to introduce into the curricula of all schools information on the history and culture of Roma/Gypsies and to provide training programmes in this subject for teachers;
- to support the activities of non-governmental organisations, which play an important role in combating racism and intolerance against Roma/Gypsies and which provide them in particular with appropriate legal assistance;
- to encourage Roma/Gypsy organisations to play an active role, with a view to strengthening civil society;
- to develop confidence-building measures to preserve and strengthen an open and pluralistic society with a view to a peaceful co-existence.



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