

Refugee Women's Resource Project, Asylum Aid
March 2002

Romani Women from Central and Eastern
Europe:

A '*Fourth World*', or Experience of Multiple
Discrimination

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INTRODUCTION

The main objective of this report is to highlight some of the experiences of multiple discrimination that Romani women in Central and Eastern Europe face, experiences that relate in particular to issues of gender violence, persecution and lack of state protection.

Our aim is to answer specifically and as accurately as possible the following questions: What is the actual experience of Romani women in the face of rising racism and xenophobia and denial of women's rights? Do we know about Romani women's rights in the first place? And to what extent can such rights be protected?

1. GENDER VIOLENCE AND RACE / ETHNICITY

Although there is an increasing body of documents and publications on human rights and violence against women in specific countries, the human rights of women within some minority groups have remained under-documented. A parallel to this is that, generally speaking, the voices of women from minority groups – be they defined by ethnicity, caste, migration or disability - are still largely ignored.

Yet the limited amount of research undertaken in this field¹ reveals that there are often '*brutal intersections*' between gender violence, race and ethnicity. As the UN Development Fund for Women (UNIFEM) put it, '*many instances of discrimination against women intersect with racial bigotry as well as negative perceptions of ethnicity, religion, language, culture, class, caste, sexual orientation, migrant or refugee status, or physical disability*'.²

UNIFEM adds: '*The interaction of gender and racial discrimination often translates into the abuse of women of stigmatised racial and ethnic groups*'. According to the United Nations, '*when a woman's race is factored in to her experience, (...) areas of particular concern include (...) race-based violence against women*'.³

¹ The complexities and varieties of the forms of oppression experienced by women from different ethnic groups and backgrounds have been explored by Afshar, A., and Maynard, M., in '*The Dynamics of Race and Gender: Some Feminist Interventions*', Taylor and Francis Ltd, London, 1994. According to the UN, '*until recently, the intersection of gender and racial discrimination and its consequences had not been subject to detailed consideration*', see UN World Conference Against Racism, '*At the Crossroads of Gender and Racial Discrimination*', (Press kit: Issues – Gender and Racial Discrimination), 2001, p.2 of 2, at: <http://www.un.org/WCAR/e-kit/gender.htm>.

² UNIFEM, '*Race, Ethnicity and Violence Against Women*', 2001, available at www.unifem.undp.org/racism/issue_vaw.pdf (also in html version).

³ See UN World Conference Against Racism, '*At the Crossroads...*', op. cit.

Indira Patel describes 'intersectionality' as 'what occurs when a woman from a minority group (class, caste, race, disability, age, religion, migrant, youth, displaced, refugees, asylum seekers, health status, etc) (...) has to deal not only with one form of oppression, but with all the forms (...) which link together to make a double, a triple, a multiple, a many layered blanket of oppression which impacts on her life'.⁴

Patel also contends that: 'Race, ethnicity, gender, or class, are often seen as separate spheres of experience which determine social, economic and political dynamics of oppression. [But] if we just look at racism as a simple issue of dominance of one group over another (on the grounds of ethnic and cultural superiority), then we ignore the complex dynamics of racism. We tend to ignore the structural manifestations which are embedded in the current world order and socio-economic infrastructures. Most importantly we ignore the gendered and layered nature of racism and the many ways in which this impacts on the lives of women in the world.'

The impact of racism and intolerance on minority women's rights was also highlighted during the preparation for the World Conference Against Racism (September 2001) when the Women's Caucus specifically referred to the situation of Romani women: 'rising nationalism, xenophobia and intolerance against all ethnic minorities including the Roma people, strongly affect the living conditions and rights of women from these groups. The state policies often neglect the needs of minority women such as access to education, information, health care including reproductive health and rights, legal protection, social services'.⁵

Multiple discrimination (or the 'brutal intersections' of gender violence and race/ethnicity) has been hideously illustrated by the fate of thousands of women and girls from minority groups subjected to sexual violence, rape, enforced pregnancy and sexual exploitation during the conflicts in the Great Lakes region and the Balkans in the last decade alone. During such conflicts, women were targeted because of their ethnic identity.

However, such 'double' or multiple discrimination is also evident from the experiences of women belonging to minority groups living in

⁴ Patel, I., 'What the Hell is Intersectionality?', in NAWO UPDATE, Issue No. 23 New Year, 2002, p.12 of 22.

⁵ 'Statement of the Women's Caucus to the meeting of NGOs from Eastern and Central Europe', Warsaw 15-18 November 2000, Source: www.hri.ca/racism/meetings/women.htm.

countries of relative political stability. In such countries, the experiences of Romani women constitute a prime example of how multiple discrimination affects the lives of women from minority groups differently. It is one of the objectives of this report to highlight this.

2. GENDER VIOLENCE, RACE-BASED VIOLENCE AND LACK OF STATE PROTECTION

Another main objective of the report is to document why Romani women cannot find protection against abuse when living in a society where women in general find it extremely difficult, if not impossible, to get justice when their human rights have been violated.

Indeed, a counterpart to the multiple discrimination experienced by women and girls of minority groups, is the lack of protection from the state authorities. According to UNIFEM, *'it is precisely these women who have the least access to mechanisms for justice'*.⁶

The Women's Caucus also reports that *'human rights of women within minority groups (including racial, ethnic, sexual, religious ones) are not adequately protected by relevant state authorities and institutions (example: domestic violence, rape, traditional practices harmful to girls and women)'*.⁷

Again, the case of Romani women is no exception. In the context of racism and xenophobia, as well as social discrimination and extreme deprivation, Romani women are particularly vulnerable to the increase of violence from both members of the 'gadje' (non-Roma) communities and members of their own communities. Such experience is well described in the following statement:

'Consider the societal roadblocks experienced by a Roma woman living in Eastern Europe. As a member of the Romani population, she has few advocates and is the target of constant hostility. She is marginalized within her community because of her minority status and within her family because of her gender. The same can be said of an aboriginal woman living in Australia, a Dalit woman living in India, a female asylum seeker living in England and so on. These women live at the crossroads of gender and racial discrimination'.⁸

⁶ UNIFEM, op. cit.

⁷ Statement of the Women's Caucus, op. cit.

⁸ UN World Conference Against Racism, *'At the Crossroads...'*, op. cit.

3. CONTEXTUALISING THE EXPERIENCE OF ROMANI WOMEN ASYLUM SEEKERS

3.1 The deterioration of living conditions and safety for Roma

In the past decade (following the fall of Communism in 1989), the socio-economic conditions of Roma people have seriously deteriorated. Many countries in Central and Eastern Europe have entered a '*transition*' period marked in particular by a sharp increase in unemployment and poverty: in countries like Romania and the Czech Republic, Roma people have been particularly hit, as they were often the first to be laid off from their jobs.⁹ This has had and is continuing to have a direct impact on the ability of Roma to access other social services such as housing and health provision.

An independent expert report submitted to the Sub-Commission on the Promotion and Protection of Human Rights identified four main areas of concern for the Roma: housing; education; employment and political participation.¹⁰ In fact, it found that many of the social protection, health care, and housing programs effectively screen out the Roma from support they desperately need. Policies are marginalizing the Roma instead of promoting their integration. As a result, the Roma are reported to be over-represented in all categories in need of social protection: the very poor, the long-term unemployed, the unskilled, the uneducated, members of large families, and individuals without residence permits, identity documents or citizenship papers.¹¹

All recent reports indicate that the situation is not getting better and will require long-term social investment from the governments concerned.¹² Yet, as Angela Kocze, Human Rights Education Director of the European Roma Rights Center (ERRC hereafter) put it, '*it is*

⁹ For more details on this, see Guy, W., (edit.), '*Between past and future: the Roma of Central and Eastern Europe*', University of Hertfordshire Press, Hertfordshire, August 2001, 429p.

¹⁰ Yeung Kam Yeung Sik Yuen, '*Note on the sixth session of the Working Group on Minorities of the Sub-Commission on the Promotion and Protection of Human Rights (22-26 May 2000)*', Office of the High Commissioner for Human Rights, June 2000, at: <http://www.unhcr.ch/html/menu2/10/c/minor/minornote.htm>

¹¹ The separation of Czechoslovakia into two separate entities, the Czech Republic and Slovakia, had led to a *de facto* denial of citizenship (i.e. political and social rights) for many Roma living in the Czech Republic with the adoption of the 1993 Czech citizenship law which required proof of residence in the Czech lands for at least two years and no criminal record for the previous five years. The discriminatory nature of the law was finally overcome under international pressure (and after many Czech Roma fled the country as refugees) when parliamentary deputies voted in favour of a significant amendment on 9 July 1999. See Guy, W., '*The Czech lands and Slovakia: another false dawn*' in Guy, W. (edit.), '*Between past and future...*', op. cit., pp. 297-298.

¹² See list of references, in **Section III**.

precisely the social and economic rights that tend to determine whether the Romani communities will be viable in the future'.¹³

Romani communities are also particularly vulnerable because, parallel to the increase in poverty, there has been a resurgence of extremist nationalism and racial violence throughout Central and Eastern Europe.¹⁴ Amongst other minorities, the main victims of this violence have been the Roma people.

These developments have led to other major consequences as far as women, and Romani women in particular, are concerned. Commenting on the situation in Central and Eastern Europe, the UN Children's Fund (UNICEF) notes that *'the increase in poverty, unemployment, hardship, income inequality, stress, and adult mortality and morbidity (...) suggests that there is a rise in violence in society, including violence against women. These factors can also indirectly raise women's vulnerability by encouraging more risk-taking behaviour, more alcohol and drug abuse, the breakdown of social support networks, and the economic dependence of women on their partners'.¹⁵*

UNICEF notes that the situation is aggravated by the fact that there is often a lack of awareness, education and understanding, as well as infrastructures and programmes to address the problems. In other words, women are left even more vulnerable because they do not know where to find the support they need when confronted with such situations.

As Romani women very often live at the fringes of society either because they are economically deprived or socially isolated by anti-Roma behaviours socially, it is likely that their vulnerability will be even greater than that of women generally.

Talking about the situation of women in Serbia, and based on her own experience as a volunteer for SOS Hotline and the Autonomous Women's Centre Against Sexual Violence in Belgrade, Zorica Mrsevic comments:

¹³ Kocze, A., *'Human Rights of the Romani Minority'*, Commission on Security and Cooperation in Europe, 8 June 2000, at: www.house.gov/csce/AngelasTestimony.htm

¹⁴ For more on the subject see the Open Society Institute, *'Racism in Central and Eastern Europe and Beyond: Origins, Responses and Strategies'*, OSI, Budapest, 19 July 2001, www.osi.hu/resources/racism.htm

¹⁵ UNICEF, *'Women in Transition, 1999'* (Regional Monitoring Report No.6), at www.eurochild.gla.ac.uk/documents/monee/pdf/monee6/chap-5.pdf

'Because they desperately need food, medicine, money, jobs, housing, or other "more important" (essential) services, the women do not want to bother social workers with more "trivial" problems, such as domestic violence. (...) Since many Gypsy women do not buy newspapers or read, they may not know the numbers of organisations like SOS Hotline'.¹⁶

3.2 The Emergence of the Roma Issue in Europe The Roma from Central and Eastern Europe have been a major focus of the human rights community as well as institutional bodies (such as the European Commission, the Council of Europe, the OSCE, the UN, etc.)¹⁷ and the media in Western Europe and the UK in particular.

A growing awareness of the situation of Roma emerged from the fact that many of the Central and Eastern European countries where Roma are living today have applied for integration to the European Union. In order to integrate, applicant countries must comply with all international and regional instruments to which members of the European Union are signatory. Thus, the procedures to follow in order to achieve a successful integration have been a catalyst for changes both in terms of the political structures and domestic law. The main result of this process has been that, on the surface at least, none of the countries under review for EU accession could ignore the problems faced by their respective Roma communities any longer.¹⁸ As the Czech Republic Ministry of Interior put it, *'the whole issue of Roma (...) is being watched abroad'*.¹⁹

On the other hand, the democratic changes that have been taking place have been accompanied by a resurgence of extremist nationalism and racial violence and, amongst other minorities, the main victims of this violence have been the Roma people: this situation started to be exposed with the arrival of asylum seekers in Western Europe.

¹⁶ Mrsevic, Z., 'Filthy, Old, and Ugly: Gypsy Women from Serbia', in Wing, A. (edit.), *'Global Critical Race Feminism: An International Reader'*, New York University Press, New York, 2000, 451p., pp. 160-175. See also **Section I**.

¹⁷ See **Section III**.

¹⁸ According to Will Guy, the EU has however sent mixed messages to candidates to accession as EU officials *'periodically (...) reassuring candidates that failure to meet the entry criteria, in relation to Roma, should not result in rejection of their application'*. See Guy, W., 'Romani identity and post-Communist policy', in Guy, W., (edit.), *'Between past and future'*, op. cit., p.17. Míta Castl-Kaněrová also argues that the European Union has double standards in terms of recognizing Roma's human rights and *'find it more convenient to label Roma as economic migrants'*. See 'Roma refugees: the EU dimension', in Guy, W., (edit.), *ibid.*, pp. 117-133.

¹⁹ Ministry of Interior of the Czech Republic, *'Report on state strategy in punishing criminal offences motivated by racism and xenophobia or committed by supporters of extremist groups'*, Prague, March 1998, p.19 of 47.

Indeed, the combination of the two tightly inter-linked issues, increasing social exclusion and racial discrimination (and the related violence), has led Roma people to leave their native country and seek refuge in Western countries such as Canada, the UK, Belgium or France.²⁰ The reception in Europe, however, has been far from welcoming. Despite the overwhelming evidence documenting racial discrimination, Roma people have to fight extremely hard to get their rights as asylum seekers recognised and to demonstrate that they suffer from persecution as defined by the 1951 UN Convention.

The stand adopted by the Home Office in the UK is particularly worrying. As part of a policy to deter Roma from coming to the UK, the Home Office sent British Immigration Officers to be posted at the embarkation desk at Prague airport in the summer of 2001, in order to identify those who would not be 'eligible' for asylum. As a result of this discriminatory policy, the great majority of Czech Roma were denied access to the asylum system before they had even officially applied to it.²¹ This policy was implemented despite contravening the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) to which the UK is a party. The policy also contravened the international standard in refugee law according to which every individual claim should be reviewed on its merits.

In the UK also, the media have been vilifying the Roma who were described as 'scroungers' or 'beggars'. Even though Roma do not constitute the most numerous group of asylum seekers in the country, the phenomenon was quickly brought to the attention of the public by the media and policy makers alike.

As more and more turned up at the gates of 'Fortress Europe', the predicament that Roma people have been facing in Central and Eastern Europe in recent years, has been more documented.

Apart from academic studies, the situation has been exposed by the work of a number of NGOs such as the Helsinki committees based in

²⁰ Not only Roma from the Czech Republic, Poland or Romania but also from Bulgaria, Hungary (they constitute one of the biggest groups of asylum seekers in Canada) or Slovakia. Polish Roma and Roma from the territories of former Yugoslavia were amongst the first to flee their countries in 1991. See Guy, W., 'The Fifth World Romani Congress and the IRU', in Guy, W. (edit.), 'Between past and future...', op. cit., p. 166.

²¹ Liberty, the human rights organisation, filed a lawsuit against the UK government on 24 October 2001 for the settings of pre-entry controls in the Czech Republic that amount to discriminatory procedures against the Roma. The lawsuit was launched on behalf of ERRC and 6 Czech Roma. For more on this, see *Roma Rights*, Number 4, 2001 at www.errc.org/rr_nr4_2001/snap1.shtml.

the region and ERRC,²² and the publications produced by other institutions such as the Open Society Institute. The International Romani Union and the advent of the Fifth World Romani Congress (Prague 24-28 July 2001) also contributed to bringing the situation of Roma in Central and Eastern Europe under the spotlight.

4. WHAT DO WE KNOW ABOUT ROMANI WOMEN?

Despite a growing body of documentation available on racial discrimination, violence and violations of the Roma's social rights, the rights of Romani women, both as women and as Romani women, have remained largely undocumented.²³

To be fair, specific anthropological and sociological studies on Roma people in general, especially from Central and Eastern Europe, remain few and disparate. As Dimitrina Petrova, Executive Director of ERRC, put it, we are still '*not terribly well informed about who are the Roma*' and about their struggle for identity.²⁴ Not only do they live in many different countries, but historically they have also been neglected by officials who showed very little interest in their lives. As a result, statistical data on Roma are '*hard to come by*'.²⁵ Also the available studies tend to focus mainly on social rights (especially in terms of social exclusion) and pay insufficient attention to their other human rights.

Statistics and anthropological or sociological studies on Romani women from Central and Eastern Europe are even fewer. Nicoleta Bitu also notes that '*the issue of Roma/Gypsy women has not been a matter for particular attention for the international organisations so far*'. She adds that the Roma/Gypsy non-governmental organisations are also guilty of not paying '*much attention*' to Romani women, '*especially (...) not in case of crisis situations, even if it is usually the Roma/Gypsy women who keep the contact with the majority communities*'.²⁶

²² ERRC was set up in 1996. Besides the production of a quarterly magazine '*Roma Rights*' that contains both thematic and country reports, and publications on the situation of Roma in the region, ERRC provides legal representation for Roma people up to the level of the European Court in Strasbourg.

²³ A notable exception is the by Medica Zenica, '*How we live(d)*', Zenica, January 2001 that examines the links between race, class, gender and domestic violence amongst Romani communities in Bosnia and Herzegovina. The book, which presents a number of statistics collected locally, is also based on testimonies from Romani women. See also **Section I**.

²⁴ Petrova, D., 6 September 2001 (launch of the book Guy, W., (edit.), '*Between Past and Future...*', op. cit.).

²⁵ Kocze, A., op. cit.

²⁶ Bitu, N., '*The situation of Roma/Gypsy women in Europe*', Council of Europe, Strasbourg, 17 September 1999 (Reference: rom/mgsrom/doc99/MG-S-ROM (99) 9e).

Therefore, at best one can find personal accounts relating to specific experiences and customs that affect some Romani women's lives in some countries or communities.²⁷ A notable exception is the report produced and published in January 2001 by the organisation *Medica Zenica*, 'How we live(d)'.²⁸

In other words, whilst most studies on the Roma from Central and Eastern Europe focus on racist crimes and social discrimination of Roma as a whole, they do not take into consideration their disparate impact on Roma men and Romani women, or the disparate impact on women from different ethnic groups. Such studies, whether they are country specific or community specific studies, are yet to be published on the subject.²⁸ In the meantime, one can only use sources such as interviews, reports, discussion papers or legal rulings on specific asylum cases, which have been the basis for this report.

Yet, as Indira Patel notes, '*all analysis requires data [and] for intersectionality the first requirement is data desegregated by race, ethnicity and other identities. This permits identification of the magnitude of particular problems and policies on particular groups of women*'.²⁹

The difficulty in sourcing information in relation to Romani women was recently acknowledged by a researcher of the Council of Europe undertaking a major study on 'Roma Women and Access to Public Health Care' in nine countries in Eastern and Western Europe. Referring to the background of the research, Anna Pomykala wrote: '*while there is little doubt that the overall health situation of Roma and Sinti is poor both in general and in relation to general populations, there is surprisingly little information specifically on the health situation of Roma women*'.³⁰ In fact, Anna Pomykala told RWRP that one year into her research she still had found little information on Romani women's health issues. Although she had travelled to various countries in Eastern Europe, she found that her access to Romani women had been

²⁷ See for instance Fonseca, I., 'Bury me standing: The Gypsies and their journey', Vintage, New York, 1996, and Mrsevic, Z., 'Filthy, Old and Ugly, Gypsy Women from Serbia', in Wing, A., (edit), op. cit. As mentioned before, a notable exception is the report produced by *Medica Zenica*, 'How we live(d)', op. cit.

²⁸ The lack of information is such that in her own contribution to the book 'Global Critical Race Feminism', Zorica Mrsevic writes '*it is my hope in offering these stories that some of you will be interested in learning more, in doing additional research to make the plight of Romani women visible to the international community*'. See Mrsevic, *ibid.*, p. 161 of 451.

²⁹ Patel, I., op. cit.

³⁰ Document communicated to RWRP by Anna Pomykala. The Sinti are Roma who arrived in Germany and Austria in the 15th and 16th centuries. See Tebbutt, S., 'Germany and Austria: The 'Mauer im Kopf' or virtual wall', in Guy, W. (edit.), op. cit., p. 268.

occasionally impeded by Roma male leaders who claimed that they 'knew' all about such issues themselves.

There is no doubt that the challenge, in terms of analysing and documenting the specific experience of Romani women in Central and Eastern Europe, is increased by the fact that Roma people are very protective of their identity and may be suspicious of any study undertaken by 'gadje' or non-Roma.³¹ Oxfam, which has been working with Romani communities in Tuzla, Bosnia-Herzegovina, noted that '*many Roma people are hesitant to be open about their background and culture, for fear of further prejudice*'.³²

Yet the prospect of studies by Romani women from Central and Eastern Europe into Romani women's issues is gravely undermined by the fact that Romani women are also excluded from educational opportunities, either through outright social discrimination (the '*special schools*' issue)³³ or because traditional Romani values provide other priorities for Romani girls. In addition to this, any attempt to discuss Romani women's rights or issues, within the Roma movement internationally or within specific Roma communities, is seen as tantamount to questioning the very identity and culture of Roma people.³⁴

Last but not least, it is impossible to overstate the diversity of the Roma communities in Central and Eastern Europe (and elsewhere) and this diversity applies to the experiences of Romani women too: Nicoleta Bitu warns that '*some criteria have to be borne in mind when analysing the issue of Roma/Gypsy women*' and such criteria include '*the group of Roma/Gypsy to which the women belong; their place of living – urban or rural; their marital status; (...) the social group to which they belong; the specificities of the culture of the majority population; the religion*'.³⁵

The combined result is a lack of detailed information relevant to the lives of Romani women, in relation to their status in their own

³¹ Besides cultural norms, this protective nature is a result of Roma people's social historical experience in Central and Eastern Europe (e.g. genocide or policy of sterilization like in the Czech Republic).

³² Jones, A., 'Migration, ethnicity and conflict: Oxfam's experience of working with Roma communities in Tuzla, Bosnia-Herzegovina', in '*Gender and Development*', Oxfam UK, Oxford, 1998.

³³ For more on the segregation of Romani children in '*special schools*' (i.e. schools for mentally impaired children), see for instance ERRC, 'Roma and the rights to education' in '*Roma Rights*', summer 1998 and 'Rights of the Child', in '*Roma Rights*', Nr. 3, 2000. A number of publications on social discrimination, referred to in **Section III**, also cover this issue.

³⁴ These issues are covered in **Section I**.

³⁵ Bitu, N., op. cit.

community and the violence they suffer both in the community and outside the community.

Despite this, and based on the various (mainly second-hand) testimonies we collected, we endeavour in this report to provide a better understanding of the experience of Romani women in Central and Eastern Europe, in terms of violence and abuse.

Such experience is analysed using the following questions as a framework:

- What is the experience of Romani women in the context of racism and xenophobia?
- What are the obstacles Romani women face when seeking justice in the face of the gender and racial violence to which they are subjected?

5. OBJECTIVES AND METHODOLOGY:

The report was written with the aim of assisting in the determination and presentation of asylum claims from Romani women or Roma families at all stages of application. It is therefore mainly aimed for use by legal representatives, caseworkers or other advisers, as well as Home Office decision-makers or Adjudicators in the UK.

In particular, the objectives are:

- To inform legal representatives and caseworkers about the impact of certain Romani traditional values and structures on the life and experience of Romani women which could also affect their experiences as asylum seekers.
- To document the nature of violations of Romani women's rights in three countries in Central and Eastern Europe.
- To place the abuse of Romani women's rights in the context of wider societal attitudes to Roma and women in the three countries under review to highlight the double discrimination (when gender and ethnicity intersect) to which Romani women are subjected both as victims of violence and when trying to seek protection. It is particularly important for legal representatives, Home Office decision-makers and Adjudicators to realise that the '*double burden*' of gender and racial discrimination directly affects a woman's experience when

attempting to get justice for abuse and crimes committed against her.

- To provide up-to-date references to resources for use by Home Office officials, adjudicators as well as legal practitioners and caseworkers representing Romani women or Roma families in their application for asylum in the UK.
- To draw attention to the need to undertake further scientific studies on the experience of Romani women in Central and Eastern Europe.

The methodology used for completing this research consisted of:

- Reviewing written information from as many sources as possible, produced both in the UK and worldwide, and including: articles from newspapers and magazines, reports produced by human rights groups and organisations (Roma and non-Roma), European institutions, official documents from various UN institutions, and other relevant documents such as case law databases or academic papers from legal institutions.
- Interviewing people in various capacities (as adviser, legal representative, researcher) who have been dealing or are still dealing with Romani women.

6. STRUCTURE OF THE REPORT:

The content of this report has very much been shaped by the information currently available on Romani women's rights and abuse of their rights as members of minority groups.

Section I, 'Romani women's rights: general considerations', aims to uncover why Romani women are unlikely to have access to protection when their human rights are being violated. This is done through an update on the current debate taking place *within* the international Roma community on Romani women's rights (**PART I**); a review of traditional values/structures that are shaping Romani women's lives (**PART II and III**); an overview on the extent of violence against Romani women *within* Roma communities, by drawing on testimonies, articles, studies and case law examples from different parts of the world (**PART IV**); and a review of the legal recourse Romani women may have access to *within* their community (**PART V**).

We believe that all these elements, in addition to the external constraints to which Romani women are subjected (as members of a minority group that is discriminated against in the majority society) are essential to the experience of Romani women, especially as they will influence their willingness and ability to seek protection when they are subjected to abuse. We look at such implications also in **PART V** and for this reason, we think that it is essential for Home Office officials, lawyers and other advisers to read Section I in addition to any of the country-specific sections relevant to them.

Section II consists of a series of country studies, concerning the Czech Republic, Poland and Romania, and trying to focus on the experience of Romani women in the wider context of racism and women's rights in such countries.

Again, the country studies do not intend to be exhaustive: as Fosztó and Anăstăsoaie stress in the case of Romania, '*little empirically-based research is available on the Roma*'³⁶ with the result that many areas remain undocumented. In the course of this study, it was found that most of the contemporary research on women's rights in Central and Eastern Europe fails to recognize the gendered experience of persecution for women belonging to minority groups such as the Roma. Lack of information on the specific predicament faced by Romani women as members of a minority group and as women within a minority group means that much more needs to be done to provide a full picture of the abuses suffered by Romani women.³⁷ There is therefore a burning need to '*bridge the information gap*' in this field too and it is hoped that the report will trigger interest in taking on such a challenge.

Section II Part I for each country under review (the Czech Republic, Poland and Romania), intends to draw attention to some of the experiences Romani women may face when confronted by racist violence. Section II Part I also includes a review of the obstacles Romani women face when seeking protection from racist crimes. In fact, the report endeavours to update the reader on issues of legislation, police protection and possibilities of redress in court. The issue of state protection is essential because it is at the core of any

³⁶ Fosztó, L. and Anăstăsoaie, M-V., 'Romania: representations, public policies and political projects' in Guy, W. (edit.), '*Between Past and Future...*', op. cit.

³⁷ There is currently very few studies in English on women's rights violations experienced within Roma communities. One exception, as already mentioned, is the work of *Mendica Zenica*, '*How we live(d)*' that presents the findings of the organisation's own research on domestic violence in Zenica, Bosnia-Herzegovina (op. cit.). See also **Section I**.

asylum claim and the report aims to demonstrate whether such protection is available in practice or not.

As mentioned before, the intersection between race and gender very often translates into women of minority groups being both subjected to violence and denied protection from the authorities. In such a context, it was deemed important that issues around police training and capacity for investigating racially motivated crimes or sexual crimes be looked at. Indeed, evidence of police training on human rights and race issues for instance, organised by or in cooperation with the authorities, may indicate good will from the government to tackle issues of racial discrimination and human rights as far as law enforcement is concerned. In this respect, when such training has occurred at national level in one form or another, can indicate that the state is not unwilling to provide protection.

On the other hand, when racism in the police remains prevalent and is documented through either mistreatment of Roma or ineffective (or non-existent) police investigations into crimes against Roma, this can indicate a lack of political will to enforce respect for people's rights and ultimately the state's unwillingness or inability to provide protection to Romani women (and Roma people in general).

In addition, the country studies in Section II aim to document the prevalence of other forms of violence against women (**PART II**). Even if specific data are not available, this is particularly relevant to Romani women because there is evidence that some of the racist attacks against Romani women include sexual assaults. As we tried to demonstrate in Section I, there is also evidence that Romani women are subjected to violence within the confines of their own community.

As information is lacking on the subject, the report does not include statistics on any specific form of violence against Romani women in the three countries under review. It does however bring together information on the prevalence of domestic violence and sexual violence in these countries and what sort of support system or level of protection (Romani) women victims and survivors of abuse could expect to find.

Social discrimination constitutes another violation of Romani women's rights as it results in deprivation of some of the basic human rights such as right to education, housing, and benefits. Such discrimination is important to acknowledge in order to understand the wider context of violence against Romani women because *'when women who do not have rights or when such rights are not respected by the State and in*

the absence of equal opportunities for education and employment, they are made more vulnerable than their male counterparts'.³⁸ Social discrimination therefore makes minority women particularly vulnerable to abuse such as trafficking and other forms of sexual violence.

Although social discrimination is mentioned in this report, it is not developed at great length, mainly because some recently published reports provide extensive details on the subject. They are referred to in our report (see also **Section III**). Nor does this report cover issues relating to women's economic and political rights, which can likewise be found more specifically in some of the materials referred to in the text.

³⁸ UN World Conference Against Racism, '*At the Crossroads...*', op. cit.

SECTION I ROMANI WOMEN'S RIGHTS: General considerations

'If Gypsy men are the Third World within the Second World, then Gypsy Women are its Fourth World'¹

¹ Mrsevic, Z., 'Filthy, Old, and Ugly Gypsy Women from Serbia', in 'Global Critical Race Feminism: An International Reader', New York Press University, New York, 2000, p. 174 of 451. The 'Second World' refers to the former socialist countries.

INTRODUCTION

Due to racial hatred and a complex set of cultural beliefs and rules internal to Romani communities, violence against Romani women has far-reaching implications in terms of their rights. For the invisibility of the violence against Romani women results in Romani women being deprived of most of their human rights.

Violence against Romani women can be categorised as follows:

- Ethnically motivated hate crimes, including verbal threats (psychological harm), bodily harm, and serious sexual assaults.
- Social and political discrimination (either gender-based or ethnic-based) that results in deprivation of some of the basic human rights such as right to education, housing, or benefits.
- Domestic violence including child abuse, incest, wife beating, rape, etc.

In this section, we mainly look at the third category of violence, and also briefly and in general terms at sexual violations committed against Romani women by non-Roma. However, **the main objective of this section** is to uncover why Romani women are less likely to access protection in the particular context(s) in which they are living. This report will try to highlight the elements that work against the full realisation of Romani's women rights not only in the country they come from, but also their recognition as asylum seekers.

'If Gypsy men are the Third World within the Second World, then Gypsy Women are its Fourth World' writes Zorica Mrsevic. Romani women, she further concludes, are *'even more oppressed, more discriminated against, and poorer than their men, not only suffering discrimination because they are Gypsies, but also suffering from their own violent and negligent men or male violence in general'*.²

Our aim is therefore to try to provide a response through a review of the social context in which Romani women live. We propose to do this by looking at three major issues, starting with an update on the overall *internal* debate on Romani women's rights as discussed amongst the Roma; followed by a review of some of the traditional structures/values that are shaping the lives of Romani women; and lastly by providing some background information on the violence experienced by Romani women generally speaking, at the hands of their *'own violent and negligent men'*.

This, we hope, will help the reader, and legal practitioners/advisers in particular, to understand why violence committed against Romani

² Msrevic, Z., op. cit.

women *within* their own community remains yet to be thoroughly investigated and documented. It is hoped that it will also help to understand why Romani women are less likely to seek and/or access protection for *all forms of violence* committed against them, especially in the context of racism and xenophobia.

PART I ROMANI WOMEN'S RIGHTS IN THE EYES OF THE ROMA: PROVISIONS AND DEBATE

I.1. The provisions of the International Romani Union's Charter In principle, the International Romani Union recognizes equality between Romani women and Roma men. The preamble of the International Romani Union (IRU) Charter adopted in July 2000 recognizes '*equal rights of men and women*'.³ Article 8 of Chapter I of the Charter also defines as one of IRU's goals and principles the enforcement and strengthening of regard '*for human rights and fundamental liberties for all irrespective of race, sex, language or religion*'.

However, there is no '*commissariat*' dedicated to women's rights in the Presidium of the IRU, an institution otherwise divided into 10 '*commissariats*' including a Social and Economic Commissariat, a Human Rights Commissariat and a Legal and Legislative Commissariat.⁴ This indicates that the experiences of Romani women are not given a separate platform within the Roma institutions themselves.

At the same time, Article 2 of Chapter I of the Charter sets as one of its goals and principles '*to develop all favourable qualities of the Romani, their cultural traditions, customs and language*'.

Whilst the respect for equality of women and men and cultural traditions and customs do not always clash, there has been in recent years a debate on how Romani traditional values may impede not only Romani women's rights and equality of Romani women and Roma men, but also protection of Romani women from violence.

Despite evidence of various forms of violence against Romani women (see below), Nicoleta Bitu, an independent consultant on Romani women's issues, also notes that the '*the fact that the level of awareness on this topic is not high is also the result of the lack of a Roma women's movement at international level*'.⁵

³ The International Romani Union was founded in 1977 as an organisation embodying Romani aspirations and goals through the adoption of statutes and the creation of a number of organs. The 2000 Charter was adopted by members of the Romani Union on 28 July 2000 at the Fifth World Romani Congress held in Prague. For more details on the IRU, the Congress and the Charter, see Guy, W., '*The Fifth World Romani Congress and the IRU*', in Guy, W. (edit.), '*Between past and future: the Roma of Central and Eastern Europe*', University of Hertfordshire Press, Hertfordshire, 2001, pp. 157-219.

⁴ Also there seem to be very few women elected as IRU officers, including members of the Cabinet, the Parliament, the Court of Justice or the Presidium. Guy, W., op. cit., pp. 199-200.

⁵ Bitu, N., '*The situation of Roma/Gypsy women in Europe*', Council of Europe, Strasbourg, 17 September 1999 (Reference: rom/mgsrom/doc99/MG-S-ROM (99) 9e).

I.2. The debate about Romani women's rights Whilst Romani women from Western Europe have produced a '*Manifest of Roma/Gypsy women*' (1994) that refers to the situation of Romani women from the European Union,⁶ it seems that the experience of Romani women from Central and Eastern Europe remains to be heard.

At the Hearing of Roma/Gypsy women organised by the Council of Europe in Strasbourg in September 1995, Nicoleta Bitu notes that the participants talked more '*about the general situation of the Roma people than about their specific situation as women*'.⁷ Roma/Gypsy were reported to prefer '*to underline the social and ethnic discriminations against their own communities rather than to speak about their daily difficulties. (...) Even if they are in front of the European Parliament or in private discussion, [Romani women] are discreet about their relationship with men*'.

Romani women from Central and Eastern Europe were however able to talk about their experiences and aspirations at the '*international conference of Romani women*' that took place in Budapest in June 1998. The discussion, which concentrated on which elements of the traditional Romani culture should be preserved and which should be rejected, revealed a division amongst Romani women, amongst progressive and conservative views. Two major factors are at the heart of such a division: Romani women's role in the preservation of the Romani culture and the experience of racial discrimination and violence (including attempts to assimilate) of the Romani communities in different parts of Central and Eastern Europe.

I.3. Traditional values, cultural identity and Romani women's rights

Romani women bear a lot of responsibility for the preservation of a Romani culture and identity, both as women and as child-bearers. The debate on whether their role within their community should be redefined is therefore deeply entangled with the issue of the identity of Roma in general. Any attempt to change such a role can sometimes be seen as '*giving away*' the Romani identity, especially in a historical context where Roma have suffered at best prejudice and at worst extermination.

The social context of racial discrimination cannot be separated from the debate about Romani women's rights. Indeed, according to Nicoleta Bitu, the emergence of a debate on the identity and social role of Romani women came about as Romani women started to

⁶ Details can be found in '*Femmes Tsiganes*' in *Etudes Tsiganes*, revue semestrielle, Vol. 10, pg. 146 (quoted by Bitu, N., op. cit.).

⁷ Bitu, N., op. cit. p. 6.

participate actively as human rights activists in the movement to defend the rights of Roma in the context of discrimination and racial violence taking place in Europe.⁸

Nicolata Bitu also stresses that the fact that Roma are constantly faced with conflicts (from interethnic local ones to wars) reinforces the traditional view that Roma should not change their traditions. Isabel Fonseca, author of the book *'Bury me standing: The Gypsies and their journey'*⁹, writes: *'Gypsies are profoundly mistrustful of outside influence: understandable, when you consider the draconian drives, at least in eastern and central Europe, to assimilate them'*.¹⁰

Romani women willing to promote the rights of women – as universally accepted – are confronted with the traditional values of their families, the patriarchal values of the majority society and of the attitude of male Romani activists. At the same time, such conflicts *'prevent the Roma/Gypsy women to get out of their closed worlds'*.¹¹ As a result, Romani women are said to be in a particularly *'difficult position'* as they are *'at the intersection of the traditional culture and the modernity'*.¹²

The whole debate is complicated by the fact that the experience of Romani women can differ substantially, according to which Roma group they belong to (and which customary legal system they abide by), which country and which social conditions they live in (nomadic/settled, urban or rural area, social group, etc.), and/or which religion they follow (Roma can be Catholic, Orthodox Christians or Muslims).

I.4. Resistance to recognize Romani women's rights The shift amongst the Roma on the debate of how Romani women's issues need to be addressed does not necessarily follow the gender divide; however, given the prevalence of traditional patriarchal structures, women may expect more resistance to change from Roma men as the Spanish example (see below) demonstrates. But also some women resist such

⁸ Bitu, N., op. cit.

⁹ The book (Vintage, New York, 1996), based on Fonseca's extensive travels amongst Roma in Central and Eastern Europe, describes Gypsies/Roma's experience of human rights abuses and prejudice, as well as social issues and traditional values such as widespread illiteracy, suspicions of strangers (gadje), and the position of women *within* the Romani communities.

¹⁰ Fonseca, I., *'The truth about Gypsies'*, *The Guardian*, 24 March 2000 available at: www.guardian.co.uk/Archive/Article/0,4273,3977740,00.html

¹¹ Bitu, N., op. cit. On the other hand, Nicoleta Bitu also notes that Romani women learn to develop negotiating skills, as they have to *'find ways in which they can approach the majority population for security and sometimes survival reasons'*.

¹² Bitu, N., op. cit., p. 6.

changes on the basis that if anything, issues brought up by Romani women should be dealt with *within* the family or the community. One such example is given by Katalin Sztojka from Hungary who, in response to the European Roma Rights Center initiative inviting a young Romani woman to write an article on the status of Romani women, wrote that '[the Roma] *should not address the issue of women's rights [and] should not think about organisations for the defence of women's rights.*'¹³ For, for a woman to complain about her husband, is tantamount to '*threatening the integrity and the good name of her family*'.¹⁴

For others, Romani women's issues, within the wider context of discrimination suffered by Roma people as a whole, are not deemed a priority. Martin Demirovski, a young Romany activist from Macedonia writes: '*My advice to you (...) is not to divide Roma into women and men or gay and lesbian. Turn your attention instead to the global problem of the Roma and discrimination against us as your priority.*'¹⁵ He adds on: '*In the eyes of the gadje*¹⁶ *you are not a girl or a woman first, you are a GYPSY*'.¹⁷

This traditionalist or conservative position across various Romani communities is also shared in Serbia in the experience of Zorica Mrsevic: '*their problems are invisible not only because they are Gypsies, but also because they are women. Gypsies consider life to be a fight for common goals (survival problems), caused by common causes (poverty, discrimination), which does not leave much space for "separate" problems like gender issues*'.¹⁸ Referring to the communist period ('when women as citizens felt equally oppressed with their men'), she adds: '*many women came to believe that their separate gender interests were less important until some broader political issues got resolved. Thus, the feeling of common engagement in the daily struggle for common goals and for universal values that are equally important to men and women has influenced Gypsies, male and female, to minimize and overlook manifestations of sexist aggression*'.

In another context Sonia Randhawa, who wrote about women's experience of double discrimination, reports that '*Vera Kurtic explained that child marriages and discrimination against women are considered necessary. Gender discrimination is told to take a back*

¹³ Sztojka, K., in *Roma Rights: 'Women's Rights'*, Number 1, 2000, p.33.

¹⁴ Sztojka, K., *ibid.*

¹⁵ Martin Demirovski, in *Roma Rights: 'Women's Rights'*, *op. cit.*, p.32.

¹⁶ *Gadje* refers to anyone or anything that is non-Roma.

¹⁷ Emphasis as in original text.

¹⁸ Mrsevic, Z., *op. cit.*, p. 173.

seat until the problems caused by racial discrimination can be solved'.¹⁹

Such conservative views have been contested by a number of Roma, especially women. Mercedes Porrás, a 28 year-old Spanish student and worker, says: *'I see myself first and foremost as a human being and secondly as a Roma... I have my own views, and I try to form them independently of what is expected of me as a Roma.'*²⁰

Many other Romani women in Spain (and elsewhere) agree with this. Indeed, the emergence of a generation of Romani women rebelling against their traditional roles as housewives in Spain illustrates the cultural struggle they have to face within their own community. The case of about 400 Romani women studying at Spanish universities is said to be a number *'large enough to cause concern among Roma men. They fear for their inherited status as head of the family. And they foresee the complete disappearance of the Roma culture if their women are going to live like all other western women'*.²¹

One such woman, who *'wants to be in control of her own career and life'*, is said to have *'broken practically all Roma norms by living the life of a modern European woman'*. As one of (still) a minority of Romani women, she sees education as a necessary condition for change and progress for Roma people in sharp contrast with her father's point of view. He questioned why she wanted an education beyond primary school: *'what do you want with an education? You're a woman, a Roma!'*²²

¹⁹ Randhawa, S., *'Double Discrimination: Women and race'* at www.isiswomen.org/womenet/lists/announce/archive/msg00164.html. Vera Kurtic is a senior graduate of the Faculty of Philosophy in Nis (Serbia) – Sociology Department. Since 1997 she has been actively involved in the work of women's organizations at the territory of South Serbia: SOS Hotline for Battered Women and Children, Center for Non violent Conflict Resolution and is one of the founders of Women's Space in 1997 where she presently works as a programme coordinator. Ms. Kurtic works actively within the Gay-Lesbian organizations in Serbia but also as an international trainer for Roma women and as a trainer for the programme of Norwegian's People Aid "Women Can Do It" for women politicians in Serbia (source: www.cwgl.rutgers.edu/wc/testifiers.htm).

²⁰ Clausager, M., *'Women as the Bearers of Culture'*, in *equal voices*, European Monitoring Centre on Racism and Xenophobia, July 2001, p.15.

²¹ Clausager, M., *ibid.* The emergence of an *elite* of educated Romani women in Spain coincides with a growing number of studies on Romani women in the country. This includes the *Barañi* project study of Romani women prison inmates in Spain (the report in Spanish can be found on <http://personales.iet.es/gea21/>).

²² Clausager, M., *ibid.*, p.16.

As the recent Spanish Gypsy asylum case revealed,²³ in which a woman was granted refugee status in the USA after fleeing domestic violence, patriarchal community structures and norms do not always guarantee the rights of Romani women and the protection of such rights even in western countries like Spain (see more below).

It is impossible to generalise and presume that the role of women and issues of protection in all Romani communities are identical. These communities are diverse from one country to another, and one continent to another.²⁴ Nevertheless, and however scarce, current evidence suggests that these issues (a diminished status within the community, lack of protection) underlie the lives of many Romani women throughout Central and Eastern Europe where traditional Romani structures remain dominant.

²³ Details of this case were obtained by RWRP through personal correspondence (see details below in **V.2.3 Autonomous legal system in practice: domestic violence**).

²⁴ In addition to about 8 to 10 million Roma in Western and Eastern Europe, there are also about 10 million Roma living in other parts of the world including Australia, India, North and South America. See details in 'The case of the Roma', *in equal voices*, op. cit., pp. 13-14.

PART II THE TRADITIONAL NORMS/STRUCTURES THAT SHAPE THE LIVES OF ROMANI WOMEN

According to Rozalija Ilić, programme director of the Roma Informative Centre (Kragujevac, Yugoslavia), *'Romani women are the most vulnerable ones, and hardly anyone cares about our protection and education. In Yugoslavia, patriarchy has built up a hierarchy of power, based on age and gender, in which Romani women and girls have very little control, if any, over their sexual or married life, the number of children they have and the time between births. The consequences are short lives and a vulnerable physical and mental state'*.²⁵

Patriarchal community structures, early marriage and the central role of Romani women in bringing up their children and reproducing traditional Romani cultural norms are central characteristics of the lives of Romani women.

II.1. Gender roles dominated by patriarchal norms In many Romani communities, the roles of men and women are clearly divided along patriarchal structures: whilst legal and customary norms deprive Romani women of their rights (see also below on one of the Roma customary legal systems),²⁶ they are still expected to fulfil traditional functions such as maintaining the household in order and looking after the children. In some countries, they may also be the main breadwinners, although unemployment rates for women are particularly high.

Sabina Xhemajli, a Romani activist and volunteer for *Rom e.V.*, a Romani organization based in Cologne (Germany), thinks that *'[Romani] women have drawn the losing card. Their lifestyle is comparable to what it was five hundred years ago'*.²⁷ Rozalija Ilić from Kosovo claims that in the context of patriarchal structures and marginalisation from the wider society, Romani women's lives are reduced to *'biological reproduction and care of their children and the family'*,²⁸ whilst Isabel Fonseca notes: *'Gypsy women, whatever the earnings of their husbands, are ultimately charged with supporting and feeding their children'*.²⁹

²⁵ Ilić, R., in *Roma Rights: 'Women's Rights'*, Number 1, 2000, p.30.

²⁶ Ilić, R., *ibid.*

²⁷ Xhemajli, S. 'Everything we don't want to hear!' in *Roma Rights, 'Women's Rights'*, *op. cit.* Sabina Xhemajli, whose parents are Roma from Kosovo, was solicited by ERRC to write an article on the status of Romani women, in order to stimulate debate on the issue amongst Romani activists.

²⁸ Ilić, R., *op. cit.*

²⁹ Fonseca, I., *'The truth about Gypsies'*, *op. cit.*

One has to stress that Romani women's role as mothers and educators of their children is very powerful within the community, as family is one of the strongest traditional Romani institutions.³⁰

The patriarchal structures that shape the lives of Romani women are exposed by Ivan Ivanov, formerly a staff attorney at the European Roma Rights Center, who also worked for *Human Rights Project* (Sofia, Bulgaria): *'traditionally an adult Romani woman does not have the option of living independently: she must live either in her father's home or in her husband's home'*.³¹ Whilst he notes that the situation is changing in some areas, he also reflects in the following terms on the situation of Romani women: *'A Romani woman does not have an easy time in her various roles in the Romani community and Romani family. She faces difficulties from early childhood. For the greater part of the Romani community, the honour of the family is the most important thing, and the chastity and the purity of women is central to that honour. Public opinion is a very important part of the life of Roma. To maintain a good public image, Romani parents exercise strict control over the girls of the family from an early age'*.³²

The situation of Romani women in Serbia is described in the following terms by Zorica Mršević and Ana Prodanović: *'Men are the undisputed owners of assets and are the primary decision-makers. Roma women are faced with double discrimination – as members of a marginalized minority and as women in a patriarchal community. Roma customs mean that many women are sold to husbands or escape with them at an early age. The woman is owned by the male head of household, and may be mother of many children'*.³³

Alex Jones, reporting on the roles of Roma men and Romani women in Bosnia-Herzegovina, notes that despite the changes brought about by the conflict in the region, *'there remains a very clear distinction between concepts of "men's work" and "women's work"'*.³⁴

However in Bosnia-Herzegovina, one of the main determinants of gender roles, it seems, is not so much who is the breadwinner, but who is in control of the economic resources. This can potentially be a

³⁰ Cahn, C., 'Nexus: domestic violence, Romani courts and recognition', in *Roma Rights: 'Women's Rights'*, op. cit.

³¹ Ivanov, I., in *Roma Rights: 'Women's Rights'*, op. cit., p. 35.

³² Ivanov, I., *ibid.*

³³ Mršević, Z., Prodanović, A., 'Roma Women Speak out' in *Gender Newsletter – Links*, Oxfam, GB, November 2000 at www.oxfam.org.uk/policy/gender/00nov/1100roma.htm.

³⁴ Jones, A., 'Migration, ethnicity and conflict: Oxfam's experience of working with Romani communities in Tuzla, Bosnia-Herzegovina', in *Gender and Migration*, Oxfam, Oxford, 1998, p. 59.

source of domestic conflict (and violence against women). According to Alex Jones, *'in male-headed households, even while women are increasingly the main providers of income, it is still the men who have control over the economic resources. Respondents felt that, by placing the burden of economic provision on women without giving up control of the resulting resources, men are trying to maintain their power; in this light it appears that the status of women has decreased in Roma society, rather than increased'*.³⁵

II.2. Early marriage and social responsibilities for girls Early marriage and the burden of social responsibilities within the community can, in some communities, contribute to the high levels of illiteracy amongst Romani girls and women.

Early marriage is still widespread amongst some Romani communities. In Romania for instance, the International Helsinki Federation for Human Rights (IHFHR) notes: *'The cultural tradition of marrying young girls when they are 13 or 14-years-old is quite spread all over the country, in various Roma communities, regardless of how different they are'*.³⁶

Sabina Xhemajli stresses that Romani girls are *'disadvantaged as a result of their early marriage'*, when they are sometimes as young as twelve years old.³⁷ As a result, they attend school irregularly or drop out altogether.

Social responsibilities mean that many girls are also deprived of education. Alex Jones writes that *'children's attendance is restricted if, as is often the case, they are expected to take on the role of providers for the family (...). The discrimination in service provision links with the strongly patriarchal culture of Roma communities and expectations of girl children to work rather than attend school, to the disadvantage of women and girls'*.³⁸ The result is a discrepancy in school attendance between Roma boys and Romani girls.

An example is provided with the testimony of two girls spending their days begging on the streets of Tuzla, Bosnia-Herzegovina: *'we have to help my mother, we cannot go to school, it is our responsibility as women to provide for our brothers and father'*.³⁹

³⁵ Jones, A., *ibid.*

³⁶ IHFHR, *'Women 2000: An Investigation into the Status of Women's Rights in Central and South-Eastern Europe and the N.I.S'*, Vienna, July 2000, pp. 367-368.

³⁷ Xhemajli, S., in *Roma Rights: 'Women's Rights'*, *op. cit.*, p. 29.

³⁸ Jones, A., *ibid.*, p. 61.

³⁹ Masic, D., *'Report on the situation of Roma people in Tuzla municipality'*, July 1996, Oxfam unpublished document, quoted by Jones, A., *ibid.*, p.61.

PART III TRADITIONAL BELIEFS/CONCEPTS IN RELATION TO WOMEN

III.1. The marime/mokadi code and the notion of pollution of the woman's body Central to the cultural code of many Romany communities are the concepts of romaniya (Gypsy laws), customs and 'marime' or 'mokadi'. These laws are crucial for women not least because *'the character and quality of a Gypsy woman is largely judged by whether she is perceived to be respectable, which is determined by whether she follows Gypsy laws and customs'*.⁴⁰

What are these laws (known as 'Romaniya') and why are they so important to Roma? ⁴¹

Roma rely heavily on a set of rules that distinguishes between *'behaviour that is pure (vujo) and that is polluted (marime).'*⁴² They believe that non-Roma are ignorant about these rules on purity and impurity, and this belief is a main factor in keeping them separate from their 'host' society which also serves their determination not to assimilate. According to Weyrauch and Bell, the *marime* concept which *'refers both to a state of pollution [...and] to the sentence of expulsion imposed for violation of purity rules or any behavior disruptive to the Gypsy community (...) minimizes and regulates association between Gypsy and non-Gypsy.'*⁴³

Liegeois, Director of the Gypsy Research Centre based at Université René Descartes (Paris), also argues that the marime code enables Romany subgroups to distinguish among themselves, and also to keep separate from *gajikane* (or non-Roma) groups.⁴⁴

⁴⁰ Weyrauch, W., and Bell, M., 'Autonomous Lawmaking: the case of the "Gypsies"', in *Yale Law Journal*, November 1993, footnote 107.

⁴¹ An article available at www.selinakyle.com/D&D/roma6.html (author unknown) explains: *'Romaniya sets the standards and enforces the beliefs most Roma adhere to. This system of acceptable behavior and beliefs is central to Roma society. The beliefs of the Roma are varied from country to country and family to family, but many beliefs are common to Roma everywhere, varying only in the degree in which they are observed or practiced. The Roma have always enforced a cultural and social separation from gajikane societies to maintain social and cultural strength. They do not want to be part of societies that would involve compromise of their basic beliefs. It is Romaniya that makes such separation possible'*.

⁴² Marime (Mokadi according to Trigg whose work focused on European Gypsy, or Moxadi amongst Romanichal Gypsies in England) is a universal concept within Romani communities. It refers to the concepts of 'pollution', 'impurity' or 'corruption'. See Caffrey, S., Mundy, G., 'Informal systems of Justice: The Formation of Law within Gypsy communities', in *American society of Comparative Law*, 1997.

⁴³ Weyrauch, W., and Bell, M., *ibid.* p. 9.

⁴⁴ Highlighted by Weyrauch W. O., and Bell, M. A., *ibid.* Liegeois is the author of numerous books and articles on Roma/Gypsies and since early 1980s has been working in close collaboration with the European Commission and the Council of Europe on issues relevant to the Gypsy/Roma and Traveller communities.

Marime or pollution taboos may be different from one Roma group to another, however the concept of cleanliness and associated rituals are a common feature central to the identity of the Roma.⁴⁵ Romaniya considers that the human body is '*fundamentally pure and clean*' above the waistline and impure below it as the lower parts of the body (the genital areas, legs and feet) may cause '*pollution and defilement*'. As a result, '*any unguarded contact between the lower and upper bodies is marime*', with the exception of the hands.

These concepts apply to the life cycle and seems to be more particularly relevant to women: Indeed, according to Trigg, the *marime* rules fall into four overlapping categories: contamination by women, sexual taboos, hygienic matters, socially disruptive behaviour.⁴⁶ Almost all of these categories refer to women's body or women's behaviour, sometimes exclusively.

III.2. Contamination by Women The female genitalia are considered impure for two main reasons: menstruation and giving birth. In fact, from puberty to menopause, women are considered '*impure*' as the fact that they menstruate or bear children is considered *marime*.⁴⁷ For these reasons, women are deemed a potential source of contamination by men. Many examples of contamination are given by Weyrauch and Bell:

'A severe state of marime befalls any man if a woman lifts her skirt and exposes her genitals to him ("skirt-tossing"). A woman must never walk by a seated man because her genitals would be at the same heights as his face. A man may not walk under a clothesline where women's clothes are hanging. Women cover their legs when they sit down and, in mixed company, single women keep their legs together when seated. (...) Some Roma will not rent a lower floor apartment for fear that a woman living upstairs will at some point pollute them by walking overhead. Similarly, a woman may get out of the car if her husband has to look under it because of mechanical trouble.

'(...) During her menstrual cycle, a woman is marime and must avoid contact with others. (...) With the onset of menstruation at puberty, a

⁴⁵ Weyrauch, W. O., and Bell, M. A., note that '*there may be class distinctions among some Roma, based on how strictly individuals or families maintain distinctions between purity and impurity. All these taboos involve rules that are aspirational. The actual behavior of the Gypsy people is likely to fall short of the communal expectations expressed in the taboos*'. Op. cit., p. 9.

⁴⁶ Weyrauch, W. O., and Bell, M. A., Ibid.

⁴⁷ There are a whole sets of rules around women who are menstruating, not dissimilar to that of Jewish or ancient Christian beliefs.

girl's clothing cannot be washed with men's, boys', or premenstrual girls' clothing'.

*'(...) Pregnancy also signals danger of pollution for others. A pregnant woman may not prepare food for other Gypsies. She is expected to eat by herself [as for a menstruating woman among some Roma groups] and her food must be cooked in her own pots and pans. She cannot share a bed with her husband. Even after birth, there is still a period of time, up to six weeks, during which a woman is unclean.'*⁴⁸

A newborn baby is also 'marime' for six weeks after birth because 'the birth canal is a polluting site' (Until puberty children have a privileged status, after that they are subjected to marime taboos which are determined according to the gender of the child).

III.3. Sexual Taboos are extremely important in Romaniya and as far as women are concerned, Weyrauch and Bell note that '*marime rules are particularly harsh*'.

Indeed sexual taboos and marriage are closely interlinked (especially since early marriages remain common in the Romani communities. According to Weyrauch and Bell, '*marriage for the Gypsies has occurred early, after age nine but usually before age fourteen*').

Marriage is seen as the end of a woman's innocence⁴⁹ as the '*potential for defilement*' is even greater with sexual intercourse. As confirmed by Sylwia Ingmire of the Romany Support Group, '*already, the woman's body from waist down is considered as "polluted". Any sexual intercourse is considered "impure" and is for procreative purposes only. A man does not touch a woman's body other than for this purpose*'.⁵⁰

Weyrauch and Bell add that '*even "appropriate" sexual activity between husband and wife may be "tinged with shame"*'. The authors also note that '*most Roma follow strict rules of sexual behavior [and] prostitution and infidelity are unusual*'. Women are expected to be virgins when they marry and to be faithful to their husband until death.

⁴⁸ Weyrauch, W. O., and Bell, M. A., 'Autonomous lawmaking...', op. cit., pp. 9-10. Roma are reported to be favourable to hospitals as places to give birth because this is where non-Roma dispose of 'polluted' items relating to the birth of a child.

⁴⁹ But not a man's. It is tolerated that boys seek sexual relationships outside of the Romani community in order to gain sexual experience.

⁵⁰ Interview with RWRP, 3rd September 2001. Sylwia Ingmire works closely with Romani communities from Central and Eastern Europe through RSG which is based in London.

Infidelity within marriage can lead to mutilation or a sentence of *marime*.

While it is acceptable for a Roma man to marry a non-Romani woman, '*it is a worst violation of the marime code for a Gypsy female to marry a gajo (non-Gypsy male)*'.⁵¹

One does not mention even implicitly issues around sexual intercourse, '*especially when both sexes are present*', as it brings shame. To illustrate this, and according to Sylwia Ingmire, girls and boys do not get any form of sex education. Girls are not educated about their periods either. Contraception is not discussed. The only potential person to talk about these issues is a friend. There is also the possibility of talking to someone from the local clinic but one has to pay for a consultation and the consultation will have to be kept secret.

It has also been reported that the reason why women do not send their daughters to school is because they fear that they will get sex education and learn about '*bad things*': Ivan Ivanov writes on the subject that '*In order to control female sexuality education for girls is limited, and soon after the onset of puberty, often Romani girls are married to prevent sexual experimentation*'. Sylwia Ingmire confirmed that many teenage Romani girls were given the opportunity to learn about sexual issues for the first time in the UK.⁵²

Peer pressure ensures that behaviour characterised as '*impure*' is pointed out and fellow Roma will take specific action to avoid becoming polluted.⁵³

⁵¹ Weyrauch, W. O., and Bell, M. A., op. cit.

⁵² RWRP interviews, September 2001. See also Ivanov, I., in *Roma Rights: 'Women's Rights'*, op. cit., p. 35.

⁵³ According to www.selinakyle.com/D&D/roma6.html, '*there are remedies or punishments for a person who has become infected, or marime. Minor offenses, clearly unintentional ones, can be forgiven by those present at the time the offense is committed. More serious ones must be dealt with by the community and, in some cases, by the kris*' [i.e. a Romani court] (see below for more details on the *kris*).

PART IV DOMESTIC VIOLENCE AND SEXUAL ABUSE AGAINST ROMANI WOMEN⁵⁴

IV.1 Violence within the community

As Nicoleta Bitu stresses, violence against Romani women is not specific only to Roma but it occurs in much the same way and to a similar extent as in other social/ethnic groups.⁵⁵ As Monica McWilliams puts it, *'irrespective of the conflict or the culture, it is now generally accepted that violence is a part of life directly, or indirectly, for women in almost all societies and that it is perpetuated by dominant beliefs, traditions, and institutions wherever it occurs'*.⁵⁶

The difference in the case of Romani women however, is that the societies in which they are living in Central and Eastern Europe have little tolerance for Roma people in general; it is therefore more than likely that Romani women will find even fewer avenues for state protection than women of the majority group in such societies. In addition, as mentioned above, certain traditional values may add to the obstacles Romani women face when they need to access protection and justice. It is therefore important to try to state what is currently known about the scale of the problem.

IV.1.1 Prevalence of domestic violence There are few or no statistics available on the prevalence of domestic violence in Romani communities (see also below on why violence against Romani women remains under-reported). The lack of information on the subject (and other forms of violence) is however not so surprising in a context where the authorities have not shown much interest in Roma people and the well being of Romani women in particular or women in general (see **Section II** for information specific to the situation in the Czech Republic, Poland and Romania).

Despite this, evidence of the incidence of domestic violence is slowly but surely emerging. In 1999, Nicoleta Bitu wrote that *'even if we should not victimise too much the Roma/Gypsy women, it is true that*

⁵⁴ We do not address in this section the issue of prostitution or trafficking of Romani women forced into prostitution.

⁵⁵ Wife beating has been found in approximately 85% of societies studied. See McWilliams, M., 'Violence Against Women in Societies under Stress', in Dobash, R. E., Dobash R. P. (editors), 'Rethinking Violence Against Women', London, Sage Publications, 1998, p.119. General statistics range from about 20% of women experiencing domestic violence in their lifetime in countries such as Canada, England and Wales or Switzerland, to up to about 40% (e.g. Korea and Uganda). Source: www.womensaid.org.uk/dv/dvfactsh1.htm

⁵⁶ McWilliams, M., *ibid.*

they are often victims of violence, either domestic or resulting from the majority population discriminatory attitudes'.⁵⁷ In her view, domestic violence occurs in Romani communities 'especially when the man wants to prove his social virility and his power as the head of the family. Domestic violence is either a cultural habit or the result of a bad social and economic situation'.⁵⁸

Indeed, the risks of domestic violence in Romani communities are said to be exacerbated by high unemployment rates and alcoholism problems, as well as the conflictual situations resulting from racism and xenophobia (see also below).⁵⁹ As Romani communities are more likely to be represented in the poorest social categories in Central and Eastern Europe, such factors need to be taken into consideration when trying to estimate the incidence of domestic violence amongst Romani communities, especially when more reliable statistics are not readily available.

Drawing from her experience as a volunteer for a women's helpline, Zorica Msrevic writes: *'I discovered that virtually every Gypsy woman who has visited women's groups I work with in Belgrade has been a victim of domestic violence'.⁶⁰ She also notes that 'while conditions of poverty may exacerbate violence, abuse exists even in wealthier Gypsy families'.*

A women's organisation called *Medica Zenica*⁶¹ published in 2001 a book on the experience of Romani women based on interviews done in the region.⁶² The book, entitled *'How we live(d)'*, reveals that 38% of women interviewed said that they were threatened with violence by their partner; 44% were beaten by their partner, 33% were repeatedly beaten by their partner.⁶³

Anecdotal evidence of the incidence of domestic violence *'as an alarming present phenomenon'* according to Tatjana Peric, was also

⁵⁷ Bitu, N., op. cit., p. 4.

⁵⁸ Bitu, N., op. cit., p. 10.

⁵⁹ UNICEF also notes that the incidence of domestic violence in Central and Eastern Europe is linked to higher consumption of alcohol. See UNICEF, *'Women in Transition, 1999'* (Regional Monitoring Report No.6), at www.eurochild.gla.ac.uk/documents/monee/pdf/monee6/chap-5.pdf

⁶⁰ Mrsevic, Z., op. cit., p. 172.

⁶¹ *Medica Zenica* is based in Zenica, Bosnia-Herzegovina and offers long-term assistance to women and girls traumatised by war. The organisation also offers therapy services and resources for women victims of domestic violence, incest or violence on the streets. See www.medicamondiale.org.

⁶² This information and the following details were kindly provided by Tatjana Peric, consultant for ERRC in Serbia (personal correspondence).

⁶³ *Medica Zenica, 'How we lived'*, Zenica, 2001, p. 22. The book is available in English and Serb.

gathered for another publication, 'Romkinje' (Romani women), published by the Women's Studies and Research in Novi Sad, Serbia. The book (in Serbian) is a collection of testimonies of elderly Romani women from the region.

These documents are exceptional because Romani women themselves do not readily speak about domestic issues. Anna Pomykala, of the European Council, testified that it was 'very difficult to get Romani women to talk about [domestic violence]' and that it was in fact 'not in their interest' given the way it is resolved by the community or family members.⁶⁴

IV.1.2 Social discrimination and/or conflict and domestic violence

There are indications that Romani women suffer from domestic violence as a result of the stressful environment their communities are living in (in terms of social rejection including racism, discrimination and poverty, or conflict).

For instance, referring to the situation in former Yugoslavia, Rozalija Ilić writes that 'poverty brings conflicts between spouses, and women suffer physical and mental abuse at the hands of their husbands. Today the most drastic example of the abuse of women has been seen in Kosovo. Romani women in Kosovo are raped, and physically and mentally mistreated'.⁶⁵ She writes on: 'throughout our lives, Romani women suffer enormous violence, coming from both our family and the society (...). We have to speak about this publicly, raise awareness of this problem, and make both the Romani men and the society around us help Romani women escape torture and slavery.'

There is also evidence that conflicts have a detrimental impact on the incidence of domestic violence, as either 'conflict accentuates the scale of domestic violence or (...) adds other dimensions to it'.⁶⁶

Indeed conflicts, and the disintegration of society (both socially and economically), mean that access to resources is dramatically reduced. In the case of the war in former Yugoslavia, Romani women have been put under extreme pressure to provide an income for their husbands and children; if they failed, they were subjected to violence. In such

⁶⁴ Anna Pomykala is currently doing a research on behalf of the Council of Europe on 'Romani Women's access to mental health' in nine countries in Western and Eastern Europe.

⁶⁵ Ilić, R., op. cit., p. 31. Such crimes have been documented by a report published by the Belgrade-based organisation *Humanitarian Law Centre*, 'Kosovo Roma: Targets of Abuse and Violence, 24 March – 1 September 1999'.

⁶⁶ McWilliams, M., op. cit., p. 119.

situations, some Romani women have recourse to prostitution to provide for their family, if there is no other alternative.

Oxfam reports on the situation in Bosnia-Herzegovina: *'Roma men find this abhorrent, but at the same time expect women to provide for the family'*. A married woman mother of three testified to Oxfam: *'my husband knows I do this and he beats me every time, but he still expects me to earn enough money to buy food and alcohol for him. I have no choice, this would never have happened before the war. Before the war, if we had no means of income, we would have simply moved on, now it is not possible, I am trapped'*.⁶⁷

Oxfam also reports that domestic violence in Romani communities in Tuzla *'has been a feature of life (...) since before the conflict; respondents attributed the causes to the economic position of Roma people, lack of education, and male alcoholism'*.

According to Ivan Ivanov, *'a Romani woman suffers triple discrimination: for being poor, for being Romani and for being a woman. Her situation is caused not only by being the weaker member of the family, and not only because of the persistence of patriarchal stereotypes. It is also due to the fact that since Romani men face daily humiliation and discrimination, they are often unable to communicate and to express sentiments. (...) They can often explode at home, the only place a Romani man can feel powerful. This can result in domestic violence. Domestic violence is the result of the serious social and economic problems which affect the Roma community more than other communities. Alcoholism and other addictions, as well as the serious financial problems faced by most Romani families, can increase such aggression'*.⁶⁸

The changing roles – women becoming breadwinners – are also potentially a source of conflict and domestic violence. Anna Pomykala of the Council of Europe found in the course of her research that Roma men's demands put a lot of pressure on women who already have to do household chores (including, sometimes, bringing an income), which men don't want to do.⁶⁹ According to her, such demands exacerbate the risks of domestic violence with further consequences for the mental health of Romani women.

⁶⁷ Jones, A., op. cit., p.60.

⁶⁸ Ivanov, I., in *Roma Rights: 'Women's Rights'*, op. cit., pp. 35-36.

⁶⁹ Personal interview, 25 October 2001. Anna Pomykala's on-going research on Romani women's access to mental health was planned to be completed in 2002.

IV.1.3 Incest and sexual assault Information on the prevalence of incest is very limited. Zorica Mrsevic in her role as a volunteer for SOS Hotline and the Autonomous Women's Center against Sexual Violence in Belgrade, came across a number of cases. On the subject, she writes: *'another aspect of family violence is incest, which is believed to happen more frequently among Gypsies than among other groups'*.⁷⁰ Zorica Mrsevic illustrates the phenomenon through the testimonies she collected:

'An enraged mother explained her reaction: "He did everything he wanted to me: cut me with the knife, burnt me with cigarettes and beat me as if I was an animal. But when he came after my oldest daughter (...) I grabbed the knife, the biggest we had in the house, and told him to go out of my house and never return. This is something Gypsy women rarely say to their men"'.

A woman also testified about her childhood experience: *'when I was ten years old my father replaced my mother with me, explaining that she was too ugly and too old for him and couldn't satisfy his needs'*.

Another woman reported being abused by her brother: *'it all started when I was three and finally stopped when I was ten – when he was sixteen and got married'*.

The phenomenon seemed to be common in her community so she did not find it 'abnormal': *'Similar things were happening to a couple of friends in the yards where we lived, so I figured it was just part of growing up. Boys were expected to be experienced before marriage, but where could they find available girls? Sisters were the solution to the problem'*.

IV.2 Sexual violence perpetrated by non-roma

Whilst sexual assault *within* the Romani communities is slowly emerging, there is also evidence of sexual violence and rape committed by non-Roma. As we show in Section II (country-studies), such incidents are not isolated. According to Sylwia Ingmire of the Romany Support Group, the prevalence of sexual assault and rape amongst Romani women is high.⁷¹ Already, a survey carried out in 1994/1995 in the Czech and Slovak Republics had revealed that the data gathered in *'a special section in the questionnaire [on] sexual harassment and sexual violence towards Romani women (...) were shocking'*.⁷²

⁷⁰ Mrsevic, op. cit., pp. 172-173.

⁷¹ Ibid.

⁷² The survey was carried out by the Roma National Congress and the Soros Roma Foundation who interviewed 1,200 Roma from 44 communities. See Roma National

In July 2000, the Medical Foundation for the Care of Victims of Torture reported that a quarter of the Roma clients (at least 25) they had examined over few years were women who had been raped by local men, sometimes on several occasions.⁷³ The Roma were from Bulgaria, the Czech Republic, Poland, Romania and Slovakia.

The attacks are generally perpetrated by skinheads or youth but there is also evidence of sexual assault by police agents. Sylwia Ingmire confirmed that it was not unusual for the police to threaten Romani women with rape. This is another element deterring Romani women from having recourse to police protection, especially in a context where Roma and women in general are often faced with inaction from state authorities when their rights are being infringed (See also below. In addition, **Section II** covers the issue of lack of state protection in cases of women's rights violations in the Czech Republic, Poland and Romania).

Congress, 'RNC-survey "Roma in the Czech and Slovak Republics"', at www.romnews.com/3_13.html.

⁷³ 'Torture survivors' charity verifies Roma Persecution', 6 July 2000 at <http://www.torturecare.org.uk/archive2000/07-06-00.rtf>.

PART V TRADITIONS & EXTERNAL CONSTRAINTS: THE IMPACT ON ROMANI WOMEN'S ABILITY TO SEEK THEIR RIGHTS

Whilst incest and domestic violence are perpetrated against them in the privacy of their homes, Romani women find both cultural and social (or political) obstacles in trying to seek redress. We have identified three major factors:

- Cultural rules mean that certain subjects such as domestic violence and any subject relating to sexual issues are not talked about. Ultimately such cultural notions undermine Romani women's human rights (as internationally recognized) and prevent recourse to adequate protection.
- The shortcomings of the legal system internal to the Roma (for example, the *kris*) in protecting Romani women's rights.
- The lack of trust of the Romani communities in non-Roma law and state agents due to the perceived necessity to preserve the integrity of the Romani culture,⁷⁴ partly as a result of past persecution (including policies of extermination, resettlement and/or sterilization) and present racial discrimination and violence (authorities unwilling to intervene to protect the rights of Roma).

V.1 The weight of traditions

V.1.1 Domestic violence & sexual abuse: taboo subjects Violence against Romani women from within the Romani community is a taboo that remains to be challenged and the full extent of which remains to be revealed. The debate on how Romani women's rights should be addressed (see above) has already shed some light on why Romani women will not talk about domestic violence from a cultural point of view. One of the immediate and on-going consequences, as already mentioned, is that at this stage very little is known about domestic violence within the Romani communities in Central and Eastern Europe. The same can be said about rape and other forms of sexual violence.⁷⁵

⁷⁴ 'The Roma are suspicious and afraid of being corrupted by gajikane influences [whilst...] many fear that over time integration could lead to assimilation, and the eventual disappearance of their culture'. See www.selinakyle.com/D&D/.

⁷⁵ However, to be fair, it is generally accepted that even in countries where domestic and sexual violence have been the subject of a specific focus attention and national survey, the phenomena remain largely unreported. In addition, in the case of sexual violence, Liz Kelly and Jill Radford write for instance that 'several studies have noted that naming and reporting sexual harassment were seen by most women as worsening the situation'. The result is that sexual violence against women remains

Another consequence, with major implications, is that Romani women's rights remain undermined by a 'culture of silence' around such issues.

Besides the fact that one does not mention domestic violence so as not to threaten 'the integrity and the good name' of the family,⁷⁶ (marital) rape, incest and all sexual issues in general, are taboo within the Roma family and community. One does not talk about such issues (see details above **PART III**).⁷⁷ And as Dr Clarke testified,⁷⁸ based on her 30 year-long experience in this field, clients from cultures where discussions of sex and sexuality are taboo are particularly vulnerable: 'I see clients who are adamant that they do not want their husband to know what they have endured. (...) They feel they cannot unburden themselves to the one person with whom they share a common past'.

V.1.2 The stigmatization of victims of sexual assault Sylwia Ingmire reports that a victim of rape may be considered as a criminal, or as someone who has cooperated in the crime.⁷⁹ She adds that a woman who is raped is seen as a *polluted* woman and as such has to be rejected by the family and the community. A woman who is not married will have to keep it a secret otherwise her chances of getting married will be extremely slim. If a married woman is raped and the husband finds out, he will almost certainly leave his wife. Even in this case, he will always be remembered as the man whose wife had been raped. The same stigma applies to the children and the grandchildren. Yet without the support of a husband and/or her community, a Romani woman is condemned to die or to what some call 'social death'.

For this reason, it is common that women victims of sexual assault do not report the attack to the police, as they fear the news will reach their communities and they will be socially rejected. RWRP was told that only in cases where an underage girl has been seriously injured by

under-reported. See Kelly, L. and Radford, J., 'Sexual Violence Against Women and Girls: An approach to an international overview', in Dobash & Dobash, op. cit., p. 61.

⁷⁶ Sztojka, K., in *Roma Rights: 'Women's Rights'*, op. cit., p. 33.

⁷⁷ Indeed scholars have recognised the crucial efforts of female scholars in collecting details of intimate or sexual nature in the Gypsy law. Such details were deemed to have been revealed 'fairly recently' in 1993. There are two main reasons for this highlighted by Weyrauch and Bell: 'the guardians of romaniya [Romani law] are primarily Gypsy women who orally transmit knowledge to their children. Gajikane males [i.e. non-Roma] could not have obtained this confidential information, because Gypsy women would never reveal many important aspects of Gypsy law, including those which relate to sexual taboos and other highly intimate matters, to a non-Gypsy man'. See Weyrauch and Bell, 'Autonomous Lawmaking...', op. cit.

⁷⁸ Dr Clarke works for the Medical Foundation for the Care of Victims of Torture (UK) and is a Fellow of the Royal College of Obstetricians and Gynaecologists with some 30 years practical experience. Source: www.medicalfoundation.org.uk/client9.htm.

⁷⁹ Personal interview, 3 September 2001. The information in this paragraph is extracted from this interview.

an attack and was subsequently sent to a hospital, would her case be brought to the attention of the police (by medical staff). Otherwise, women will do anything to conceal it.⁸⁰

V.2 The limitations of traditional roma justice

V.2.1 'Autonomous Romani legal system' How are the rights of Romani women protected within Romani communities?⁸¹ It is difficult to answer the question specifically as different Romani communities will have their own autonomous legal system. In Eastern Europe, among many Romani communities,⁸² Romani behaviour is regulated by a system of public tribunal or court, the kris, which regulates all civil and criminal disputes, such as theft, adultery, acts of physical violence, or complicated disputes between two Romani parties.

This system is however not homogeneous across the Romani communities that abide by it: as Weyrauch and Bell stress, the kris is based on oral tradition and *'may vary from case to case and depending on what particular Romani group is involved'*.⁸³

*'The Kris is a public assembly held by many groups of Rom, and in particular those Rom whom the Gypsyorists call Vlach, and the Khorakhane call Gajikane, and who refer to themselves as the four natsiya of the Kalderash, Lovari, Churari and Machavaya.'*⁸⁴ [The kris] can be held either to hear and resolve an accusation by one person or group of persons against another, or it can be held without there being a specific plaintiff or defendant to resolve some general issue of public policy which might become a cause of conflict, such as the allocation of business territories, or degree of reward permitted to those who

⁸⁰ Interview with RWRP, 3 September 2001.

⁸¹ Most of the details below are drawn from studies carried out amongst Vlach Roma in the USA who are historically mostly migrants from Central or Eastern Europe (the term 'Vlach' or 'Vlach' is derived from 'Wallachia' a region in Romania. Some Vlach in the USA come directly from this region whilst others have migrated further to other regions in Central Europe with which they identify. See Weyrauch W., and Bell, M., 'Autonomous lawmaking...', op. cit., footnote 35). Other sources of information (in particular RWRP's interview with Sylwia Ingmir and ERRC's *Roma rights*, Nr. 1, 2000) confirm that some of the Roma in Central and Eastern Europe follow similar rules. However, as many scholars working on Roma issues are anxious to underline, there can also be great diversity amongst different Romani communities and this diversity should be kept in mind when looking at individual cases.

⁸² According to Acton, T, Caffrey, S. and Mundy, G., 'especially the great Vlach Rom natsiya (ethnic groups), the Kalderari, Lovari, Churari and Machavaya, both in the Romanian-speaking territories of their original settlement and in their worldwide migrations of the last two centuries', see 'Theorizing Gypsy law', in *American Journal of Comparative Law*, 237, Spring 1997.

⁸³ Weyrauch W., and Bell, M., 'Autonomous lawmaking...', op. cit., footnote 138.

⁸⁴ Acton, T, Caffrey, S. and Mundy, G., op. cit.

assisted Romani holocaust survivors to make successful claims for individual war reparations.

These assemblies are presided over by a small number of judges⁸⁵ (krisnitoria) who possess no formal qualifications, but are agreed and invited by the parties to the kris, some leaning to the plaintiff, some to the defendant, with an impartial president. These judges, however, do not deliver judgment as such, but rather preside until the assembly reaches a consensus, with all the adult men present able to speak and be heard until the issue is exhausted. Sometimes women are excluded, but varying degrees of female participation are sometimes found.(...) The kris can bring women in if it wishes, because the kris makes its own rules but only by unanimity.'

The kris system regulates both economic and marital affairs.

In fact according to Claude Cahn, *'the overwhelming majority of cases heard by krisa involve domestic disputes'*.⁸⁶ For instance, where arranged marriages are the norm, the father of the groom will pay a bride price to the father of the bride. If a discord occurs in the marriage (or divorce is requested), a kris might be held to find a solution or to arrange for the repayment of the bride price. Also, *'in some cases, a kris may be called – usually by the concerned father of a Romani woman - over allegations of abuse or neglect by the husband'*.

V.2.2 Women's issues dealt by the kris Caffrey and Mundy write that Romani laws can often *'be repressive and unfair (especially for women)'*.⁸⁷ A Romani woman may use the state courts to get a more favourable divorce settlement but this is considered as a violation of Romaniya and may result in a kris.⁸⁸ In practice, Claude Cahn writes that *'case law indicates that courts are extremely reluctant to interfere in family issues unless the family has specifically indicated that it seeks the involvement of the court, such as in divorce cases'*.⁸⁹

⁸⁵ Krisa is the plural for kris. Claude Cahn writes that Traditionally krisnitoria (or judges) are male heads of households; in the USA only there have been recent cases in which women participated (see: Cahn, Cl., *'Nexus: domestic violence, Romani courts and recognition'*, in *Roma Rights: 'Women's Rights'*, op. cit.). In other words, it is very likely that in Central and Eastern Europe, Romani women do not have access to such position of power *within* Romani communities.

⁸⁶ Cahn, C., *ibid.*

⁸⁷ Caffrey, S., Mundy, G., *'Informal systems of Justice: The Formation of Law within Gypsy communities'*, op. cit.

⁸⁸ Weyrauch W., Bell, M., *'Autonomous lawmaking...'*, op. cit., footnote 132.

⁸⁹ Cahn, C., op. cit.

The nature of punishment handed down does not seem to provide justice for abused Romani women. In terms of domestic violence for instance, Claude Cahn writes that '*banishment is almost never handed down as a punishment in domestic violence cases*'.⁹⁰ The most common sentence is a monetary fine. This situation has led Romani women in the USA in particular to seek justice outside the Romani community.

As Reismar puts it, '*some of the Romani elite's specific claims for authority over group members are not compatible with international human rights standards*'.⁹¹ He further specifies: '*Romani practices that effectively subordinate women and train them to believe that for most to their lives they are "polluted" and sources of pollution for others are not compatible with the international human rights code. The contention that suppressing the marriage practices that subordinate women may weaken Romani cohesion is about as compelling as the argument that prohibiting female mutilation in East Africa will undermine the indigenous cultures of the peoples who practice it*'.

V.2.3 Autonomous legal system in practice: domestic violence Lack of protection for Romani women suffering domestic violence was particularly documented in the case of a Spanish Gypsy woman who sought asylum in the USA:⁹² On 10 April 2001, a Spanish Gypsy woman who had fled a 7 year abusive marriage and sought asylum in York, Pennsylvania in the USA, was granted refugee status by a Judge who described her situation in her community as similar to being 'enslaved'. The woman had suffered numerous incidents of physical abuse, including sexual assault, having boiling water poured on her and being kicked by her husband. She had been '*pulled out of school in the 5th grade*' and was married in an arranged marriage at the age of 15. She described her wedding night '*more like a rape*' and reported being beaten on a number of occasions since then. She could only work alongside her husband and was not allowed to go out on her own or have friends.

Despite her ordeal Gypsy elders, also known as '*patriarchas*', told the woman to return to live with her husband. The Judge heard that the *Gypsy Council*, the lawmaking body of the community, was all male

⁹⁰ Banishment from the community is the heaviest sentence that can be handed down by a *kris*: '*the guilty party [is found] "unclean" and therefore expelled from the community*'. See Cahn, C., op. cit.

⁹¹ Reisman, M., 'Autonomy, Interdependence, and Responsibility', in *Yale Law Journal* 401, November 1993.

⁹² Information on this case was kindly provided by Ms Bernstein Baker, legal representative on the case (personal correspondence, May 2001).

and did not allow her to speak. If she had, she said that her father would have beaten her.

The woman's legal representatives claimed persecution based on ethnicity and imputed political opinion and membership of a particular social group, which they defined as '*Gypsy women who reject male domination or immediate family*'.

In addition, the evidence provided showed that, as a member of a Gypsy community, the woman could not have sought protection from the Spanish authorities who are said to have a 'hands off' approach to matters they consider internal to the community. Whilst the Gypsy community's legal structure did not provide her with protection, her case would have also been ignored by society at large. Likewise, she would not have been able to blend into mainstream Spanish society and as such would have been easily tracked down by her family. Thus future persecution could not be ruled out.

It is difficult to establish what autonomous system of justice an individual Romani woman may have recourse to when she feels her rights are being violated, as such systems vary from one community to another. However the above information and in particular the Spanish case suggest that there are in fact few avenues and little adequate remedies for Romani women. This means that they may want to turn to justice *outside* the community.

V.3 Obstacles to recourse to state justice

In this case, they are likely to face additional obstacles, *in addition to* the current obstacles faced by women of the majority society (see **Section II** for the specific situation in the Czech Republic, Poland and Romania). Not only can traditional Romani legal structures prove insufficient in providing women with protection, but the social status of women – as a result of traditional values and traditionally defined gender roles – may also constitute an important obstacle to the recognition of their rights *outside* traditional Romani structures. Other constraints, such as the prevalence of patriarchal values in the *host* society, will also play a role in this respect.

When traditional values are predominant, it is likely that Romani women's ability to seek their rights will be hindered accordingly. For instance early marriage, or a lack of opportunity to go to school due to social/economical constraints (or social discriminatory policies in the form of '*special*' schools for Roma children), means that many Romani women are unlikely to be aware of their human rights or legal avenues to access protection.

As Rozalija Ilić puts it, commenting on the situation in Yugoslavia, the combination of traditional Romani values and existing patriarchal structures in the majority society, as well as overall social discrimination, denies many Romani women the right to get their women's rights respected: *'legal and customary norms on the position of women are very archaic and they deprive many Romani women of rights'*.⁹³

The International Helsinki Federation also highlights the links between traditional values and lack of opportunities for Romani women to enjoy their rights: *'the gender roles are traditionally defined in most Roma communities. As such women are largely responsible for managing the daily needs of the family. Consequently, Roma women face a dual challenge arising from their ethnicity and gender. The still limited information and research available on the status of Roma women reveal that the most significant disadvantage faced by Roma women is related to the enjoyment of social and economic rights in particular'*.⁹⁴

The context, both *internal* and *external*, also determines the opportunities to seek protection. Anna Pomykala, of the Council of Europe, found in the course of her on-going research that it was unlikely for women to go to seek advice, even if the support services are available, given the isolation to which Romani communities are subjected to, but also because of family and community pressure.⁹⁵

These comments suggest that Romani women's willingness and/or opportunities to seek and access protection when such rights are violated can be greatly undermined by their status and what is expected of them within the community/family, as well as external factors such as social discrimination and rejection. The fact that many are illiterate (80% in Yugoslavia, according to Rozalija Ilić), or dependent on their family or community for resources, is all too often detrimental to the pursuit of such rights.

At the same time, despite the existence of Romani women's organisations, they are said to have little *'access to existing international remedies in case of violations of women's human rights'*.⁹⁶

⁹³ Ilić, R., in *Roma Rights: 'Women's Rights'*, op. cit, p. 30.

⁹⁴ IHFHR, op. cit. pp. 367-368.

⁹⁵ Personal interview, 25 October 2001.

⁹⁶ Bitu, N., op. cit., p. 10.

V.4 Roma mistrust and authorities unwilling to interfere

Police unwillingness to deal with violence against Romani women is demonstrated by the evidence provided in this report on the situation in the Czech Republic, Poland and Romania. It suggests that when sexual crimes are reported to the police, Romani women have very little possibility of obtaining legal redress or protection from state authorities who do not provide adequate protection for women from the majority society in the first place.

In terms of domestic violence, and apart from the parallel lack of state remedies, Nicoleta Bitu notes that the situation for Romani women is made worse by the fact that *'the image created by the police [is one that] spreads the idea that Roma women are beaten by their husbands in the Romani communities'*. In other words, domestic violence amongst Roma is seen as a problem *'internal'* to the Romani community and the police should not interfere.

This approach from the authorities (denying the *'universality'* of Romani women's rights) was at the basis of the asylum claim by the Spanish Gypsy woman who successfully sought asylum in the United States in April 2001 (see above). A Romani woman, from Hungary, was also granted refugee status by the Canadian Immigration and Refugee Board in March 2000 when it was found that she had unsuccessfully sought protection from the authorities in Hungary, where state protection is *'rarely available to victims of domestic abuse'*. In addition as a Roma she was *'more likely to be treated with direct hostility'* by the authorities, therefore even less likely to find adequate protection, and at risk of further persecution if sent back to her country of origin:⁹⁷

'The claimant (...) was subjected to numerous assaults until she left. However, after she left, the abuse of the claimant continued. There were problems surrounding their child. The claimant was threatened and assaulted. Her former spouse abducted and detained the claimant, subjecting her to physical assaults and death threats. She contacted the police and the Ombudsman after this incident but no one intervened. She had also contacted authorities at other times. According to the documentary evidence, state protection is rarely available to victims of domestic abuse in Hungary, and courts often find domestic abuse by men to be acceptable, evaluating whether the abuse was in proportion to the behaviour of the wife or children. The claimant made efforts to obtain state protection, and was not taken seriously. She was also Roma. The documentary evidence

⁹⁷ Immigration and Refugee Board, CRDD T98-08454, Ellis, Jackson, March 28, 2000, available at: www.irb.gc.ca/Legal/reflex/issues/refugee/141_e.htm .

indicates that while non-Roma women who complain of domestic violence suffer indifference, Roma women are more likely to be treated with direct hostility. There was more than a mere possibility that she would be persecuted if she returned to Hungary, and adequate state protection was not available'.

Rape victims are also denied protection from the police. The Medical Foundation for the Victims of Torture mentioned the case of a Bulgarian Romani woman who, along with her husband, had been subjected to repeated physical assaults in the street after the fall of the totalitarian regime. In 1995, five masked men broke into her home and raped her: *'The following day she went to a woman police doctor, who refused to examine her. When she went to the police station to try to report the rape, they ignored her'*.⁹⁸

Zorica Mrsevic writes about the case of a teenage girl from Serbia raped by several boyfriends and also a victim of a gang rape, who was told by her perpetrators: *'nobody would believe you – you are a Gypsy'*.⁹⁹ The young woman was particularly vulnerable because she was an orphan and had been raised by several foster families. When she reported the rapes and denounced her perpetrators (providing names and addresses), the police allegedly told her: *'You Gypsies always ask for trouble, and you are particularly notorious. How many times do you think to come here reporting that you were raped? We have a lot of other things to do'*.

Referring to the police in Serbia Zorica Mrsevic explains the duality of the relationship between the police and Romani women, as the inaction of the police in cases of abuse of Romani women is seen as an expression of their hostility towards Roma:

'The police are on the "other side"; officers are enemies, and they are not to be involved in a Gypsy's internal matters. Thus for Gypsy women, the legal system is traditionally believed to exist to oppress and deny their rights'.¹⁰⁰

⁹⁸ *'Torture survivors' charity verifies Roma persecution'*, op. cit.

⁹⁹ Mrsevic, Z., op. cit., p. 170.

¹⁰⁰ Mrsevic, Z., ibid.

CONCLUSION

The silence around reproductive and sexual and domestic issues in general means that Romani women may feel oppressed within their own communities. In situations such as that of domestic violence and sexual assault, they suffer as women as well as members of a minority group targeted by racially motivated violence, especially because access to protection for them is in practice extremely limited, if not non-existent.

The fact that sexual issues and domestic violence are taboo *within* Romani communities will also have an impact on a Romani woman's willingness or ability to talk about it in the context of an asylum claim. It is therefore important that legal representatives/advisers and Home Office officials be aware of such cultural norms and values (and generally speaking the status of Romani women in their community) as, as stressed by the Refugee Women's Legal Group (RWLG), *'the failure to appreciate cross-cultural differences may jeopardize the quality of the information revealed by a woman and prevent an effective interview taking place'*.¹⁰¹

In addition, interviewers should be careful in the way they conduct their interviews and the questions they ask: *'the failure to appreciate cross-cultural differences may jeopardise the quality of the information revealed by a woman and prevent an effective interview taking place'*.¹⁰² RWLG also recommends the use of *'non-confrontational open and/or indirect questions'* before asking *'more direct follow-up questions (...) to ascertain details of the woman's full experiences'*.

Other issues, including *inter alia* the need to organise a separate interview (if the husband is the main applicant), the use of a female interpreter and interviewer, and indicating that the woman's statement will be treated as confidential, are also crucial for the full discussion of experiences relating to a Romani woman's claim

¹⁰¹ RWLG, *'Gender Guidelines for the Determination of Asylum Claims in the UK'*, RWLG, London, July 1998, p. 22.

¹⁰² RWLG, *ibid.*

SECTION II

ROMANI WOMEN IN THE CZECH REPUBLIC, POLAND AND ROMANIA

ROMANI WOMEN IN THE CZECH REPUBLIC

Calling her 'black swine', 'black whore', and 'stinking dirt', two skinheads attacked a mother of four, beat and kicked her, and pushed her into the river where she drowned.¹ According to the appeal court that dealt with the case, her death amounted to a mere '[public] peace disturbance'.

INTRODUCTION

Romani women in the Czech Republic are subjected to discrimination and racist violence as much as Roma men. However a review of some of the incidents reported in various sources indicates how Romani women's experience of persecution and racial discrimination differ in a number of respects from that of Romani men.

Prejudices that affect Roma men in terms of police and judicial protection affect Romani women in the same way. If they are not victims themselves, they and their children may witness the beating and sometimes deaths of their male relatives. They may be the ones who have to go to the police for protection following such incidents.

In other circumstances, the impact on Romani women may be greater due to their physical vulnerability (e.g. attack on pregnant women, sexual assault), or there may be social consequences for them (e.g. rape resulting in pregnancy or if rape is known to the community, risks of rejection). Social discrimination may affect them to a greater extent or can have a greater impact on their health and well-being (for instance difficult access to specialist medical services). They may also suffer other forms of abuse such as domestic violence at home.

This report constitutes an update on the situation faced by Roma in the Czech Republic with a specific focus on the experience of Czech Romani women. The report is by no means exhaustive on the subject (information on violations of Romani women in the Czech Republic is generally speaking

¹ The incident happened in February 1998. See Patrin Web Journal, 'Anniversary of the Murder of Hassan Elamin Abdelradi', www.geocities.com/Paris/5121/abdelradi.htm; see also www.errc.org/rr_wint1998/snap3.shtml.

lacking and not available in English),² nor does it intend to cover thoroughly issues that affect Roma people in the Czech Republic in general. Other reports, which have been recently published (see **Section III**), have focused on such questions.

The report intends to highlight a number of issues that arise from Czech Romani women's experience of racist discrimination and violence. PART I for instance draw attention to the specific experience Romani women may face when confronted by racist violence, including their experience when seeking protection from the authorities. PART II provides a picture of the other forms of violence against women in the Czech Republic as there is evidence (even if disparate) that Romani women will be also victims/survivors of such forms of violence. Unfortunately this study is not in a position to provide detailed information on any form of domestic violence against Czech Romani women but we thought it might be useful to provide details of incidence and available protection should an asylum case on that basis arise.

Part III provides a review of the case law in the UK and around the world in relation to Czech Roma claims for asylum.

² Due to a number of restrictions, RWRP was not able to collect information in other languages. It is hoped however that the current deficit in terms of information relating to Romani women's rights will trigger enough interest to stimulate further research in the field.

PART I: ROMANI WOMEN'S EXPERIENCE OF RACISM AND XENOPHOBIA

I.1 Background

I.1.1 The Roma Minority The great majority of Roma living in the Czech Republic were originally moved from Slovakia in the context of a dispersal programme.³ Official statistics gathered in national surveys indicate that the number of persons who declared their Roma ethnicity was 32,903 in 1991 and is estimated to have dropped to 11,716 in 2001.⁴ In reality, current demographic estimates⁵ indicate that there are between 250,000 and 300,000 in the country, representing about 2% of the total population.

Fear of persecution which is rooted in Roma historic experience – including the Holocaust where the great majority of Czech Roma were exterminated⁶ – explains why many Roma prefer not to disclose their ethnicity. However, this significant drop over a ten year period in claiming Roma ethnicity constitutes, according to the Open Society Institute (OSI hereafter), a '*blow to the government*'. Indeed the authorities had taken steps to increase representation in the result of the 2001 survey, including the recruitment of Roma assistants in some of the localities with high numbers of Roma, in order to collect the demographical data.⁷

OSI adds that this drop indicates '*a massive loss of confidence in the last decade*'. It echoes *de facto* reports on the deterioration of the experience of Roma during the 1990s up to today.

³ O'Nions, H., 'Bonafide or Bogus?: Roma Asylum Seekers from the Czech Republic', Web Journal of Current Legal Issues, 1999, at <http://webjcli.ncl.ac.uk/1999/issue3/onions3.html>. See also Guy, W. (ed.), 'Between Past and Future: the Roma of Central and Eastern Europe', University of Hertfordshire Press, Hertfordshire, 2001, 429p.

⁴ The 2001 figure is an early estimate. See OSI, 'Minority Protection in the Czech Republic', October 2001, p.174. Available at www.eumap.org/

⁵ Now officially accepted by the Czech government in 1999, see Guy W., 'The Czech lands and Slovakia: another false dawn', in Guy W., (edit.), op. cit., p. 316.

⁶ The great majority of Roma are of Slovak origin, with approximately ten per cent believed to be Vlaxiko Roma and a smaller minority Hungarian Roma. Czech, Moravian and Sinti (or German) Roma were almost exterminated during the Nazi genocide.

⁷ OSI, op. cit., p.174.

I.1.2 Racism and Xenophobia against Roma

One of the most depressing findings of the sociological survey [conducted on behalf of the government], carried out in the spring of 1997 before the migratory waves, was that 'almost two-thirds of all respondents (...) think that (...) problems with co-existence will continue to increase, regardless of the efforts devoted to preventing and solving them (...) [since] the Romani population is growing faster than its ability to integrate'.⁸

According to a number of organisations and institutional bodies monitoring the human rights and racial discrimination situation in the country, the Czech Republic is still at a stage characterised by of serious racially-motivated crimes of which Roma are the main victims. In addition, social discrimination means that other rights such as civil rights or protection from legal authorities are considerably undermined.

I.1.3 General public opinion towards minorities and Roma In his 2000 report, the Czech government Commissioner for Human Rights notes that '*public opinion polls, according to which [...] xenophobia and intolerance as a whole is certainly not falling, but remaining significantly higher than in countries of the European Union towards which the Czech Republic is heading. Intolerance towards the Romany in particular remains, despite a partial decline, a distinctly major characteristic of the Czech population*'.⁹

An opinion poll conducted in 1998 by the Public Opinion Research Institute¹⁰ showed that a quarter of Czech citizens said they had '*feelings of racial bias towards others*' and 16% admitted to be intolerant towards others for reasons of nationality.¹¹ Two-thirds of those polled said Roma were the object of such feelings while the poll also revealed that the level of intolerance were highest in cities with populations over 100,000 and in particular in northern Bohemia.

⁸ Emphasis in original text. Guy, W., op. cit., p. 307.

⁹ 'A report of the government commissioner for Human Rights on the current situation of Romany communities', 14 June 2000. Quoted by OSI, op. cit., p. 130 (at www.eumap.org/reports/content/10/203/minority_czech.pdf)

¹⁰ Formerly IVVM, the Institute was an independent division of the Czech Statistical Office since 1993. In 2001 it was incorporated to the Institute of Sociology Academy of Sciences and it is now known as the Public Opinion Research Centre (CVVM).

¹¹ Statistics quoted by the Institute for Jewish Policy Research, 'Czech Republic', 1999, at www.axt.org.uk/antidem/countries/czechrepublic/czechrepub.htm.

Ina Zoon also reports that the Institute for Criminology and Social Prevention 'found that 80 percent of secondary school student said they would resent having a Romani family as a neighbour'.¹²

A more recent opinion poll suggests in fact that public's tolerance towards extremism is actually increasing: 78 per cent of interviewees thought that skinheads were 'harmful' in 2001, against 86 per cent in 2000. In fact 9 per cent said they thought skinheads were 'beneficial' to society (6 per cent in 2000).¹³ OSI summarises the situation by pointing out that 'it is becoming clear that a six-month "Tolerance " publicity campaign, which ended in mid-2000, has not altered entrenched negative public attitudes toward Roma'.¹⁴

1.1.4 Racially motivated crimes: update on incidence, number and origin

'There is a joke making the rounds in contemporary Czech Republic: 'Q.: What's ultimate bad luck? A.: When a hitchhiking band of Gypsies gets picked up by a busload of skinheads'.¹⁵

The current situation: Evidence suggests a deterioration of the situation in the last few years alone. In November 1998, the Institute for Jewish Policy Research wrote that

'there is a perceptible rise in racially-motivated crimes perpetrated mainly by far-right skinheads and often with backing from the far right (...) Association for the Republic-Republican Party of Czechoslovakia'.¹⁶

The report adds: 'Roma, against whom considerable popular resentment exists, remain the principal, though by no means sole, victims of racially-motivated offences'.

Human Rights Watch in its latest reports notes that despite the fact that the government has taken a number of positive steps (see below), there is 'increasing racial violence against the ethnic Roma minority'¹⁷ and 'the Czech Republic continued to lag in redressing a number of serious human

¹² Zoon, I., 'On the Margins. Roma and Public Services in Romania, Bulgaria, and Macedonia, with a supplement on Housing in the Czech Republic', OSI, April 2001, see endnote 34 (p.228 of endnotes section). Available at www.soros.org/

¹³ RFE-RL Newline Vol. 5, No.128, Part II, 10 July 2001 citing CVVM institute poll.

¹⁴ OSI, op. cit., p.125.

¹⁵ Joke that, according to Ivan Sever, 'is making the rounds in contemporary Czech Republic', see 'The Never Ending Roma Question', posted on the *Patrin Web Journal* on 1st February 1999 at: www.geocities.com/Paris/5121/never-ending-question.htm

¹⁶ See Institute for Jewish Policy Research (1999), op. cit.

¹⁷ HRW, 'Human Rights Watch World Report 2001', www.hrw.org/wr2k1/europe/czech.html

rights issues, most notably the widespread discrimination against the ethnic Roma minority'. The problem is so severe that it has led to 'growing concern that Czech accession to the European Union might be delayed'.¹⁸

In its 2002 report, HRW writes: *'Racist attacks on Roma continued, but police and prosecutors frequently failed to adequately investigate and prosecute Roma complaints'.¹⁹*

The government of the Czech Republic has also recognized that racist attacks against minorities and Roma in particular are prevalent while also accepting to a certain extent that the justice system has dealt inadequately with such crimes.²⁰

In 1998, the Ministry of Interior indicated that the *'security organs have paid attention to the problem of extremist manifestations since 1990'²¹* whilst the police have started to keep a record-keeping on racially motivated crimes in 1996.²² Official records of such attacks (i.e. that with a final criminal-law qualification) indicated that throughout the 1990s all regions of the Czech Republic were affected.²³ The government recognised then that *'racially motivated clashes have not been successfully eradicated'* whilst it also said that *'even when the circumstances indicate that the criminal offence has been based on racial or ethnic intolerance, this motive is hard to prove during the investigation'*. It also referred to the *'inconsistent work of police, courts, state and voluntary organs'*.

Three years on, the UN Human Rights Committee in its concluding observations (24/07/2001) also remains *'concerned at violence and harassment by some groups with respect to the Roma minority'.²⁴* A year before (August 2000), the Committee on the Elimination of Racial Discrimination had noted that many attacks against the Roma may not even be reported.²⁵

¹⁸ HRW, *'Human Rights Watch World Report 2000'*, at www.hrw.org/wr2k/Eca-08.htm .

¹⁹ HRW, *'Human Rights Watch World Report 2002'*, at www.hrw.org/wr2k2/europe8.html .

²⁰ UN Committee on the Elimination of Racial Discrimination (CERD hereafter), *'Fourth periodic report of State parties due in 2000: Czech Republic. CERD/C/372/Add.1'*, 14 April 2000, (in particular par. 72 and 79).

²¹ Ministry of Interior of the Czech Republic, *'Report on state strategy in punishing criminal offences motivated by racism and xenophobia or committed by supporters of extremist groups'*, Prague, March 1998, p.15.

²² The procedure was first introduced in 1995 and entered into force on 1st January 1996. *Ibid.*, p.15.

²³ Ministry of Interior of the Czech Republic, *Ibid.*, p.17.

²⁴ UN Human Rights Committee, *'Concluding Observations of the Human Rights Committee: Czech Republic. 24/07/2001. CCPR/CO/72/CZE'*, p. 3 of 6.

²⁵ CERD, *'Concluding Observations of the Committee on the Elimination of Racial Discrimination: the Czech Republic. CERD.C.304.Add.109'*, August 2000.

Numbers : Statistics provided by the Ministry of Justice, Ministry of Interior and Bureau of Investigation reveal that there is an increase in racially motivated attacks: There were 131 police recorded crimes of an extremist character in 1996 and 120 by mid-1997. The Bratinka report records that the Czech Police reported 779 racially motivated crimes for the period 1996 – 1997.²⁶ The *Documentation Centre for Human Rights* – a Prague civic group monitoring human rights abuses - recorded 1,500 racially motivated crimes from 1991-1999.²⁷

There were 285 crimes in 1998 (138 racially motivated crimes recorded by the police according to the US State Department report for 1999) and 371 in 1999.²⁸ From 1989-1999, there were at about 30 racially motivated killings (US State Department, 25 February 2000).²⁹

Origin and other 'contributing' factors: Skinheads are the main perpetrators of racially motivated crimes whose activities include public rallies, anti-Semitic and anti-Romani proclamations. There were an estimated 5,000 far-right skinheads in 1999 and 6,200 in 2000.³⁰ Information provided by the Ministry revealed that 'extremist' crimes rose by 15 per cent in 2000.³¹

This intolerance and xenophobia has become an issue for Roma as far as the protection of their civic, social and economic rights are concerned. They are discriminated against in the provision of services or denied adequate state protection not only by the police, lawyers or members of the judiciary, but also medical staff, teachers, social workers, etc. In addition, by the government's own admission,³² there are a number of organisations and political parties which are legally registered as civic

²⁶ Bratinka Report, Appendix 2, Section E, p.112. Quoted by OSI, op. cit., p. 229.

²⁷ Statistics compiled by the centre up to 1998 showed that effectively a racially or ideologically motivated incident occurs in the country every other day. See Penc, S. and Urban, J., 'Extremist Acts Galvanise Roma population', in *Patrin Web Journal*, posted 17 March 1999 (www.geocities.com/Paris/5121/extremist-acts.htm).

²⁸ Counselling Centre for Citizenship/Civil and Human Rights (hereafter CCC/CHR), *Comments on the Report of the Czech Republic on Performance of the Obligations Arising from the Convention on the Elimination of All Forms of Discrimination*, (periodic report IV, regular date for submission: 22 February 2000), p. 6., at: www.poradna-prava.cz/english/COMMENTS_TO_THE_REPORT.html. (CCC/CHR is a non-governmental organisation registered as a citizens assembly that monitors the observation of human rights and draws attention to discrimination and human rights violations in the Czech Republic). The Ministry of Interior report produced in 1999 records 316 such incidents. See OSI, *ibid.*, p.154.

²⁹ Crowe reports that 27 Roma have been killed between 1989 and 1996, 'more than the combined total in Bulgaria, Romania, and Slovakia'. See Crowe, A, 'The Czech Roma: Foreigners in their Own Land', in *Patrin Web Journal*, quoting European Update Online, Vol.4, Nr.2, November 1996, at www.geocities.com/Paris/5121/foreigners.htm

³⁰ Radio-Prague, 'Interior Ministry: rise in support for extremist groups', 16 July 2001, quoted by OSI, op. cit., p. 132.

³¹ OSI, *ibid.*

³² This is recorded in a report of the Ministry of Interior, 'Report on State Strategy...', op. cit.

associations but promote racial hatred and superiority (including the Republican Party of Czechoslovakia and its weekly publication *Republika*).

Extremist doctrines are also reported to be spread through illegal publications and sometimes using the latest technology available and even encouraging people to kill Roma. In February 2000, a computer game whose goal is 'to fight for the rights of the white race', proclaimed: 'the only good gypsy is a dead gypsy'. The aim of the game is to shoot at non-white figures attempting to dismantle a wall: the game is a direct reference to the Usti nad Labem wall incident in which local authorities allowed the construction of a wall separating Roma communities from other local residents. OSI also reports the fact that in September of the same year, users of a mobile phone network were flooded with a message offering free network access for each Roma killed.³³

As OSI points out, in the current climate it is not surprising that 'according to a recent poll, 46 per cent of Czech Roma live in fear and one in four is contemplating seeking asylum elsewhere'.³⁴

1.2 Romani women's experience of racist violence and xenophobia

1.2.1 Right to safety violated Romani women whose relatives are prominent Roma activists are targeted or put under pressure.³⁵ In other cases, they are vulnerable to racist attacks in and outside their homes, or live in fear of such attacks. As one of the examples below demonstrates, they are also verbally abused.

In January 1998, Emilie Žigová was attacked in her home in the northern Moravian town of Krnov when three men threw a firebomb on her residence. Four other people (all Roma) were present in the flat.³⁶ Ms Žigová consequently sustained life-threatening burns which have required extensive long-term medical treatment. According to the European Roma Rights Centre (ERRC), she is still in pain to this date. A Roma man was also injured in the attack whilst the property was seriously damaged.

On 20 November 1999 a group of 40 Roma, mostly women and children, were attacked in a restaurant in the town of České Budějovice by a group

³³ OSI, op. cit., p. 132, citing an article published on 25 February 2000.

³⁴ RFE-RL Newswire, 'Czech Romany Population Lives in Fear', 8 August 2001.

³⁵ Romani National Congress (RNC), 'Report on the Condition of Roma in Europe', commissioned by the OSCE for presentation October 2000, p. 7 of 21., at: www.romnews.com/a/Rkeport.htm.

³⁶ ERRC, 'Failure to provide justice to Roma in the Czech Republic', in Roma Rights, Nr.1, 2001 available at www.romarights.com/rr_nr1_2001/snap16.shtml

of skinheads who shouted abuse such as 'Gypsies to the gas' and 'we will kill you'. Many were too scared to testify at the trial.³⁷

ERRC reported that on 27 July 2000 a group of men attacked nine Roma at a petrol station in the town of Houzna.³⁸ Most of the victims were children and women who were verbally abused with racist slogans including 'go back to India' and 'black whores' and were threatened with being killed. One Roma man was cut with a power saw.

When not directly victims and survivors of racist attacks such as beatings or attacks on their homes or in their homes, many Romani women and their children witness helplessly the beating and sometimes killing of their husbands in horrendous circumstances (*'In one case, a man was clubbed to death by skinheads while his wife and five children watched'*).³⁹

Children are particularly vulnerable to attacks too. In October 2000, six Romani secondary school children were attacked in the town of Most by a group of skinheads armed with knives and baseball bats.⁴⁰ One of the children was gravely wounded in the head. When not physically attacked, children may suffer bullying at school prompting many Roma families to withdraw their children from mainstream education (see below).

1.2.2 Evidence of sexual assaults and rape

Romani women are particularly vulnerable to beatings and sexual assault, although this remain largely undocumented. A survey conducted in 1995 by the Roma National Congress (RNC) and the Soros Foundation in the Czech Republic and Slovakia included a special section on sexual harassment and sexual violence towards Romani women.⁴¹ Romani women were asked three questions by female interviewers and the authors said that the data collected were 'shocking'.

Romani women reported that they were *'regularly victims of violence and rapes by the majority of the population. Alarmingly high was the percentage of women who reported of being raped and ill-treated by policemen'*.⁴²

³⁷ Fletcher, K., 'No problem here: The plight of the Roma is all too often ignored by Czech police' in 'Central Europe Review', Vol. 2, No.41, 27 November 2000.

³⁸ ERRC, 'Roma attacked in the Czech Republic', in Roma Rights, Nr. 3, 200, at http://errc.org/rr_nr3_2000/snap7.shtml

³⁹ Crowe, A., 'op. cit.

⁴⁰ ERRC Newsletter, Roma Rights, Nr. 4, 2000 at www.errc.org/rr_nr4_2000/snap5.shtml

⁴¹ RNC-survey 'Roma in the Czech and Slovak Republics', 1995, p.2 of 3, at www.romnews.com/3_13.html

⁴² RNC, 'Report on the Condition of the Roma in Europe', op. cit. Unfortunately we did not find any more details on the results of the survey.

These findings were recently corroborated by the Medical Foundation for the Care of Victims of Torture's own report on the treatment of their Roma clients. The organisation talked about '*numerous testimonies of official complicity, that at best describe indifference by Czech authorities to these [racist] attacks and at worst highlight their participation in anti-Roma violence, including rape of Roma women*'.⁴³

A Romani woman sought and gained asylum in Canada in 1998:⁴⁴ She and her family had been attacked over a two year period by skinheads. She had been raped by a non-Rom and then by the police when she reported the attack.

The prevalence of racist crimes or simply the permanent threats of racist attacks on them and members of their family must have a tremendous impact on the mental health of Romani women living in the Czech Republic.

As mentioned in our report on Poland, there is very little information available on the health situation of Romani women from Central and Eastern Europe generally speaking, and in particular the incidence of mental health problems. Yet this is not to say that the problem does not exist, quite the opposite.⁴⁵

The marginalisation and violence to which Romani women and their family are confronted would undoubtedly add to the deterioration of their mental health and overall well-being.

1.2.3 Social discrimination Racial discrimination against Roma remains a major obstacle to the realization of Roma's social rights, safety, well-being and overall economic and social development in Czech society. Nathalie Mivelaz, of the World Organisation Against Torture (otherwise known as OMCT), recently wrote that

'the real situation of the Roma living in the Czech Republic is not improving. The Roma population continues to be subjected (...) to strong discriminatory practices with regard to the enjoyment of their economic social and cultural rights'.⁴⁶

⁴³ The Medical Foundation's report refers to the treatment of 59 Czech Roma from 1996 to 2001. See Carroll, S., 'Don't ban flights to safety', letter to the Guardian, Tuesday 31 July 2001 at www.guardian.co.uk/Archive

⁴⁴ CRDD T97-01775 et al. Evelyn, Avrich-Skapinker, April 29, 1998.

⁴⁵ The Council of Europe is currently undertaking research on 'Roman Women and Access to Public Health Care' which might help to shed the light on this particular issue. Interview with Anna Pomykele, COE, 25 October 2001.

⁴⁶ OMCT, 'The Roma in the Czech Republic', OMCT, Geneva, July 2001, p. 3 of 24.

The UN Committee on the Elimination of Racial Discrimination reported 'de facto segregation in the areas of housing and education'.⁴⁷ Other areas where Romani women may be particularly affected by discrimination include access to social services, medical services and employment.

Access to Education There are no legal provisions that discriminate against women's equal access to education. Public education is free of charge at all levels and generally speaking girls are more successful than boys in completing their secondary education.

Yet Roma children are reported to be much less well educated than their other Czech counterparts, again simply because '*participation of members of the Roma/Gypsy community in education beyond the primary school level is extremely rare*'.⁴⁸ One of the main reasons is that, as acknowledged by the Czech government, the great majority of Roma children – between 70 and 80 per cent against a national average of about 5% - attend special schools.⁴⁹ Education in schools for pupils with intellectual deficiencies is not considered as complete as that provided in primary schools which means Roma children have even less chances to get an education beyond the primary level.⁵⁰

ERRC research also indicate that a number of educational authorities and experts agree that a large number of Roma in remedial special schools are wrongly placed: '*The majority of interviewees for this report working professionally with Romani children accept without reservation that remedial special schools are full of Romani children without learning disabilities*'.⁵¹

By its own admission, the government has acknowledged that Romani children were segregated in a way that, it said, indicated a system where '*these schools are understood as forced segregation, an evil foretaste of a*

⁴⁷ CERD, '*Concluding observations of the Committee on the Elimination of Racial Discrimination: Czech Republic*', 01/05/2001. CERD/C/304/Add.109, 1st May 2001, para.10.

⁴⁸ European Commission against Racism and Intolerance (ECRI hereafter), '*Second Report on the Czech Republic*', 21 March 2000, (referred as CRI, 2000(4)), par. 35., at www.ecri.coe.int/en/sommaire.htm .

⁴⁹ OMCT, op. cit., p.13.

⁵⁰ In June 1999, the European Roma Rights Center produced a thorough report on the topic of Roma and special schools. It indicates that although there is a lack of up-to-date statistical data on Roma in education, several reports (including empirical evidence) indicate that Romani children were '*approximately fifteen times more likely to have been judged to have "intellectual deficiencies" and thus be placed or transferred to a special school*'. And '*no one interviewed during ERRC research in the Czech Republic considered that the proportion of Roma in remedial special schools had decreased since 1990*'. See ERRC, '*A special remedy: Roma and Schools for the Mentally Handicapped in the Czech Republic*', Budapest, June 1999, 71p (rtf version) at www.errc.org/ .

⁵¹ ERRC, *ibid.*, p.16.

tendency towards apartheid'.⁵² 25,000 Romani children are believed to be currently affected by this practice that amounts to the violation of several international and national provisions for the protection of social, economic and other human rights in the Czech Republic. Restrictions on right to education for Roma constitute, according to OMCT, '*a form of inhuman, cruel and degrading treatment*' (recognized as such as well in court case in NZ?).

The long-term social consequences of such a policy are multiple, not only for Roma people but for the society as a whole. First of all, the resulting lack of skills and qualifications represent a major obstacle in Romani women's ability to find a job and provide for their children. In the long term, it also constitutes an impediment to a better position for Roma people in general (given the current level of access to primary and secondary education to Roma, Romani women's chances of accessing higher education are even more restricted).⁵³

Secondly, the World Organisation Against Torture stresses the fact that there is a strong correlation between lack of education opportunities, high unemployment and degradation of the social situation which might lead many Roma towards criminal activities. As a result, this reinforces not only general public prejudices but also '*police repression, which often involves ill-treatment*'.

Employment Women represented 44.4% of the workforce in the Czech Republic in 1998 but women's average earnings represented only 70% of men's.⁵⁴

Very few women hold leading positions in either the public or private sectors. Unemployment was recorded at 9.3% for women in the last trimester of 1998 and has risen dramatically in the last ten years⁵⁵. Women are likely to be fired more easily than men, in particular in areas of high unemployment. (i.e. where Roma are living). Women living in economically deprived areas have great difficulties finding paid work and have access to little services (childcare, schools, transport).⁵⁶

⁵² Government of the Czech Republic, Resolution No.279, April 7, 1999, unofficial translation by the ERRC, *ibid.*, p.17 and 22.

⁵³ The International Helsinki Federation for Human Rights (IHFHR) notes that there is '*a deficit in the number of women who receive university education (both graduate and post-graduate)*. (...) *Certain quotas often limit the chances women have to study at university*'. See IHFHR, '*Women 2000: An Investigation into the Status of Women's Rights in Central and Southern Europe and the Newly Independent States*', IHFHR, Vienna, 2000, also at: www.ihf-hr.org.

⁵⁴ IHFHR, *ibid.*, p.138.

⁵⁵ Information in this paragraph is drawn from HFHR, *ibid.*, pp.138-140.

⁵⁶ Which can have an impact on their well-being and that of their children's.

The International Helsinki Federation for Human Rights (IHFHR hereafter) notes that '*certain categories of women in the Czech Republic (...) are discriminated against in the labour market [including] women with only primary education [who] represent the most vulnerable groups.*

Romani women will be for the great majority part of this group. Unemployment rate for Roma in general is, according to World Bank figures, estimated to be as high as 70 per cent; in some areas, it is even higher.⁵⁷ Training opportunities only exist to registered unemployed citizens which exclude most Roma.⁵⁸

Housing Human rights lawyer Ina Zoon details in her recent report on housing in the Czech Republic how local authorities segregate housing policies abusing de facto the Czech Roma's human and social rights. She explains that the process is double: that of evictions of Roma from certain areas and the creation of ghettos whilst preventing Roma to have access to municipal housing and leading to their overrepresentation in '*holobyty*' or housing for '*socially unadaptable*' citizens.⁵⁹ The racially-discriminating measures taken by local authorities are both direct and indirect: From refusal to rent municipal apartments, the relegation to unsafe areas or refusal to allocate resources when Roma's dwellings were damaged by skinheads;⁶⁰ to the use of seemingly neutral administrative rules which result in Roma being refused help in housing because they are unemployed, beneficiaries of social support or need permanent residence permits.⁶¹ Due to their very poor social conditions, Roma are generally more likely than any other groups to be affected by such requirements.

According to the author, evictions and ghettoisation of Roma are found across the whole country and in the last two years alone, she reports that '*residents in several areas have signed and circulated anti-Romani petitions urging local authorities to find, for instance, [a] solution of the Gypsy Question in the City*'.⁶² Demands to displace Romani neighbourhoods have been supported by government officials in some cases. According to the Bratinka report (1997), a third of housing department employees were 'in

⁵⁷ OMCT, op. cit., p.12.

⁵⁸ In the past many Czech Roma were prevented from gaining Czech citizenship (after the separation of Czechoslovakia in two separate republics) following the adoption of a restrictive and discriminatory law in 1993. The law was substantially amended in July 1999. See Guy, W., 'The Czech lands and Slovakia...', op. cit., pp. 297-298. On social discrimination see also Zoon, I., '*On the margins...*', op. cit.

⁵⁹ Interview with Ina Zoon, 'Roma face housing segregation in the Czech Republic, new report says', reported in *Roma News* of Radio Prague, April 2001, www.romove.cz/roma/01-04.html; also Zoon, I., '*On the margins...*', op.cit., pp.176-180.

⁶⁰ Zoon, I., *ibid.*, pp. 168-170.

⁶¹ Zoon, I., *ibid.*, pp. 171-174.

⁶² Zoon, I., *ibid.*, p.165.

*favour of concentrating the Roma*⁶³ yet the government refuses to admit the existence of racial segregation as suggested by its statement to UN CERD in February 2000 according to which it was *'not aware of any other efforts [than the building of the wall in Ustí] in the Czech Republic to subject Roma to certain form of isolation'*.⁶⁴

The author further declared that, because of this lack of recognition of racial segregation, the Czech government has not taken so far any measures to redress the situation, by way of revising current discriminatory legislation and current decision-making processing, implementing EU anti-discrimination directives and the adoption of an independent monitoring system with regards to social rights.

Access to Health Services Although there are currently no thorough reports (such as the two reports on housing and education respectively) on the racial discrimination experienced by Roma in terms of access to health services, there is evidence – as reported by the UN Human Rights Committee⁶⁵ - that it is widespread in this area too.

Difficulties in accessing health services may be the result of *'direct'* discrimination; or *'indirect'* when such access is linked to administrative requirements;⁶⁶ also the fact that women and children are living in deprived or isolated areas (with no transport facilities for instance) can also have a detrimental effect on their attempt to access such services. Yet lack of access to health services and the availability of basic resources (such as food) might have a long-term impact on Romani women's reproductive capacity and the development of Roma infants and children. For instance, denial to access or be provided with adequate [reproductive] health services may result in complications for both infant and mother.

Save the Children's report (2001) reads: *'Research has consistently shown that a healthy mother is the best guarantor of her child's health. (...) One of the most serious consequences of poor maternal nutrition and health on the newborn is premature birth and/or low birth weight. (...) Low birth weight, in turn, has many consequences for the newborn, including a greater likelihood of death in infancy or childhood, stunting, mental retardation and chronic health problems'*.⁶⁷

Given the current level of social discrimination, there is a real danger that this might have an impact on Romani children's development, potentially

⁶³ Cited by Zoon, I., *ibid.*, p.166.

⁶⁴ *Ibid.*

⁶⁵ UN Human Rights Committee, *'Concluding Observations...'*, 24 July 2001, *op. cit.*

⁶⁶ Such as obstacles in claiming Czech citizenships. See in particular OSI, *op. cit.*, p.161 but also Zoon, I., *ibid.*

⁶⁷ Save the Children, *'State of the World's Mothers report 2001'*, p. 9, at www.savethechildren.org/mothers/pdf/sowm2001_pt1.pdf

resulting in their placement in special schools, with the implications in terms of future employment possibilities and social integration.

I.3 Evidence of lack of state protection

There is 'no redress for the victims of these crimes against their attackers or against the government agency that fails to recognise the problems'.⁶⁸ As far as Roma are concerned, there is no 'right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution' in contravention to Article 5(b) of the Convention on the Elimination of All Forms of Racial Discrimination.

In order to establish a well-founded fear of persecution, Romani women seeking asylum will usually have to demonstrate that the state has failed to protect them. State failure to provide adequate and meaningful protection is illustrated in the following situations:

If '*serious harm*' has been inflicted by the authorities or by associated state organisations or groups;

If '*serious harm*' has been committed by '*non-state actors*' and the authorities are *unwilling* or *unable* to give effective protection.⁶⁹

Courts both in the UK and abroad have acknowledged the difficulty to establish state protection. In addition, as seen in recent UK asylum cases and other cases around the world (e.g. *Harakal v Secretary of State CO/2000/3901*), courts have also acknowledged that lack of effective state protection is one of the major obstacles Roma people have to face when faced with racially motivated crimes.

Romani women may face additional obstacles in seeking protection from the police and judicial authorities for social or economic reasons. They may not have taken the necessary preliminary steps to report to the police due to cultural taboos especially if there has been sexual assault (see **Section I**), the trauma they endured or due to their experience of lack of police

⁶⁸ CCC/CHR, op. cit., p. 6.

⁶⁹ Refugee Women's Legal Group, '*Gender Guidelines on the Determination of Asylum Claims in the UK*', RWLG, London, July 1998.

protection and action; or they may have even less means to obtain justice in the absence of a free legal aid system, as many belong to the poorest groups of Czech society.

1.3.1 Official measures to fight discrimination⁷⁰ Officially, the Czech government has acknowledged the existence of discrimination against Roma. One can argue that there has been a breakthrough in the government's approach to the Roma issue when the government accepted the conclusions of the '*Report on the Situation of The Romani Community in the Czech Republic*' produced in 1997 by the Chairman of the Government Council of Nationalities and Minister without portfolio, Pavel Bratinka.⁷¹ The results, which were based on '*a wide range of evidence including a sociological survey among local authority officials and Romani representatives as well as a study of media treatment of Romani issues*', led the government to admit for the first time that '*it had simply failed the Roma and that, "in the light of practical experience, ... it must be conceded that overall the criticisms are substantiated"*'.⁷²

Following the European Commission's Opinion on the Czech Republic and the '*Bratinka*' report (both in 1997), a number of positive steps have been taken by the government, including widening Roma access to public administration (both as employees and service recipients), through the introduction of Romani advisors and assistants in the schools and the civil service.⁷³ Other positive steps include the launch of a government anti-racism campaign; the establishment of a new advisory body on Roma issues; the amendment of laws relating to citizenship and access to secondary education; and the adoption of a law establishing minority rights, recognising, *inter alia*, the Roma minority.

In January 1999, the government created a Human Rights Council to advise the government on human rights issues and propose legislation in order to improve the human rights situation nationally. The HRC is headed by the Commissioner for Human Rights.⁷⁴

In April 1999, the government approved another report outlining a draft of long-term policy toward Roma while the Minister of Interior admitted that

⁷⁰ Unless otherwise stated, information in this paragraph is drawn from the latest OSI report on '*Minorities Protection in the Czech Republic*', op. cit., pp. 122-173. Issues relating to citizenship are not covered in this report as the discriminatory law in this regard was finally amended in July 1999. For more see Guy, W., '*The Czech lands and Slovakia...*', op. cit., pp. 297-298.

⁷¹ Governmental Resolution No.686, of 29 October 1997. See Guy, W., '*The Czech lands and Slovakia...*', *ibid.*, p. 301.

⁷² Guy, W., *ibid.*

⁷³ OSI, *ibid.*, p.124.

⁷⁴ US Department of State Report, 25 February 2001 at www.state.gov/.

Roma refugees were 'right when justifying application for asylum abroad by saying they are persecuted by skinheads'.⁷⁵ In July of the same year, a new amendment to the 1993 citizenship law allowed Roma to regularize their status as permanent citizens of the country. In April, the government passed Resolution 279 laying down a program aiming at improving minority relations and more specifically decreasing Roma unemployment and better integrating them into society.

These positive steps were somewhat undermined in 2000 when a new law on the residence of 'aliens' effectively provided police with arbitrary powers but 2000 was also the year when a governmental decree concerning the 'Concept for Government Policy Towards the Roma Community', was issued, proposing a 20 year plan for the integration into society.⁷⁶ Other positive steps recorded by the Open Society Institute since 1997⁷⁷ include a government anti-racism campaign in 1999-2000,⁷⁸ amendment to the legislation on access to secondary education; a new Minorities Law enforced on 1st July 2001⁷⁹ and the opening of an Ombudsman's Office whose activities also started in 2001.

The 'Public Defender of Rights [or 'Defender' as the Ombudsman is known] works to defend the public in relation to the actions of official bodies and other institutions listed in this Law, should such actions be inconsistent with the law, in contradiction to the principles of a democratic legal state and good administration and also in the event of inaction by these Offices, thereby contributing to the defence of fundamental freedoms'.⁸⁰ Official bodies and administrative offices over which the Defender can exercise its powers include the Czech Republic police Force (but not Czech Police investigators), the Prison Service, and offices providing protective or institutional education, protective medical treatment, and the public health companies.⁸¹

1.3.2 Anti-discrimination legislation inadequate Despite the positive measures taken, all reports to date criticize the government for failing to have adopted and implemented anti-discrimination legislation.

⁷⁵ Grohova, 1999 quoted by Guy, W., op. cit., p. 302.

⁷⁶ OSI, op. cit., p.124.

⁷⁷ Year of the European Commission's Opinion and the first report by the government on problems faced by Roma. OSI, ibid.

⁷⁸ The campaign was named 'Tolerance' and promoted multiculturalism through advertisements, training programs and campaigns in schools. It only lasted six months. See OSI, ibid., p.132.

⁷⁹ Ibid., p.161-163.

⁸⁰ Par.1, Law of 8th December 1999 On the Public Defender of Rights. Full details of the Law are available at www.ochrance.cz/z349en.htm.

⁸¹ Par. 2, Law of 8th December 1999 On the Public Defender of Rights, ibid.

'The [UN] Committee notes lack of monitoring mechanisms in relation to legislation to combat discrimination in employment and a lack of legislation prohibiting discrimination in other social fields such as education, housing and the provision of health care services and other services (i.e. in contravention to articles 2, 3 and 26 of the Covenant)'.⁸²

With the exception of consumer law and employment law, there are currently no legal provisions against discrimination in the Czech Republic: This means that Roma and other members of minorities who are discriminated against in the provision of health, housing, education, the prison service, the army, have no recourse to legal redress because *'specific guarantees against racial discrimination in individual areas of life [...] are missing from the legal code'*.⁸³

The Open Society Institute opinion is that anti-discrimination legislation in the Czech Republic remains inadequate, falling far short of the requirements of the EU Race Equality Directive⁸⁴ although it reports that the Law on Minorities recently adopted envisages to amend the Law on Misdemeanours to incorporate a definition of discrimination as per the EU Race Equality Directive.⁸⁵

The Institute notes that there are a number of laws – including the Civil Code and Code of Civil Procedure, the Administrative Code, the Law on Associations, the Law on Court and Judges, the Radio and Television Law and the Advertising Law - that contain clauses guaranteeing equal treatment but they do not mention discrimination or remedies in such instances.⁸⁶

However, OSI also reports a number of factors that prevent the application of anti-discrimination legislation, such as the prohibition on collecting ethnic data in areas such as education and employment, on the basis of the *'civic principle'* enshrined in Article 3(2) of the Charter of Fundamental Rights and Freedoms.⁸⁷ A second major obstacle is the lack of enforcing bodies and a third one is *'a widespread ignorance of rights among Roma and others likely to be victims of discrimination'*.

In terms of racial discrimination and practical provision of social services, OSI states:

⁸² UN Human Rights Committee, *'Concluding Observations ...'*, op. cit., p.3 of 6.

⁸³ *'A report of the government commissioner ...'*, op. cit., quoted by OSI, op. cit.

⁸⁴ OSI, *ibid.*, p. 124.

⁸⁵ The law was approved by the Czech Chamber and entered into force on 1st July 2001.

Ibid., p. 135 and p. 158.

⁸⁶ *Ibid.*, p. 135.

⁸⁷ *'Everyone has the right to a free choice of his or her nationality. Any form of influencing this choice is prohibited'*.

'A 2000 amendment addressing access to secondary education has yet to alter the relegation of a majority of Roma into special schools, or significantly to improve educational opportunities for special school graduates. The Concept proposes measures to improve conditions at special schools, an option that is unlikely to eliminate systematic segregation. No legislative amendments addressing access to housing are envisioned: the Concept calls for research into existing conditions and continued construction of cheap housing for Roma. It does not directly address discrimination by municipal authorities, which is a contributing factor in the widening gulf in housing conditions between Roma and non-Roma. In addition, the government has to date resisted the introduction of independent institutions, as recommended by its primary advisory bodies, the Inter-ministerial Committee for Roma Community Affairs (IMC) and the Commissioner for Human Rights. The IMC itself remains under-funded and unable to oblige ministries to fulfill their obligations in the field of minority protection'.⁸⁸

1.3.3 Political commitment 'unproven' The level of discrimination is such that many have questioned the government's willingness to address the issue.

In fact, according to Pavel Bratinka himself, 'the cabinet (...) was not pleased by the negative tone and non-standard style of the [Bratinka] report, which drew information from non-governmental sources'.⁸⁹ His deputy went as far as saying that 'previous obligations were not fulfilled. I am afraid the government doesn't really want to solve [the Roma] issue'.⁹⁰

Moreover, the fact that there is a political agenda behind this relatively new official position vis-à-vis Roma affairs, with the Czech Republic being a candidate for EU integration, is openly stated by the government when they conclude in their latest Conception of Government Policy towards Members of the Romani Community Designed to Facilitate their Social Integration:

'The way in which this conception is accepted (...) and its goals realised (...) will have a significant influence on the assessment of the EU Committee for the Czech Republic. (...) The government solution of the integration of Roma into society will influence the integration of the Czech Republic in Europe'.⁹¹

Another example of how the government's position remains ambiguous and sometimes less than sympathetic to the plight of Roma people is the publication in late 2000 of the 'Conception of the Ministry of Foreign Affairs

⁸⁸ Ibid., p.125.

⁸⁹ Guy, W., op. cit., pp. 320-321.

⁹⁰ Guy W., ibid., p. 321.

⁹¹ Quoted by Guy W., ibid., p. 303.

in Relation to the Romani Problematic'.⁹² The document presents a list of 'Goals and Tasks for the Organs of the Ministry of Foreign Affairs Connected with the Romani Problematic' including the 'denial of exaggerated racial and discriminatory criticism from abroad' and 'denial of the distortive description of the Romani problematic exclusively as a human right issue'.⁹³

This can explain why such practices - like the segregation of Roma in housing provision or placement of Roma children in special schools - continue unabated and indicates clearly a lack of government commitment and political will to remedy the situation. This lack of commitment was highlighted by the UN Human Rights Committee report (July 2001):

'Although the [Czech] delegation acknowledged the problem, the Committee was not provided with detailed information regarding discrimination in employment, education, health care, housing, penitentiaries, social programmes and in the private sphere, as well as participation in public life. The steps taken by the State party to improve the socio-economic condition of the Roma do not appear to be adequate to address the situation and de facto discrimination persists (articles 26, 27)'.⁹⁴

The Committee criticizes the Czech government for not taking appropriate measures to fight 'de facto discrimination' against minorities and in particular Roma, and 'to enhance the practical enjoyment of their rights under the Covenant'.⁹⁵

OSI notes that, so far, 'a number of key recommendations of official advisory bodies have been rejected or ignored by the government',⁹⁶ whilst HRW also reports: 'De facto discrimination against ethnic Roma in the country remained the most disturbing human rights problem in 2001, affecting access to justice, education, housing, employment, and public services. Little progress was made in implementing the Czech government's long-term strategy to improve the situation of the Romani minority, adopted in June 2000'.⁹⁷

1.3.4 No enforcement powers locally Another factor which may be characteristic of a lack of political will by government authorities is the lack of enforcement powers: There is a real concern that the decisions and

⁹² Published by the Czech Foreign Ministry. See ERRC, 'Czech Republic accepts the competence of United Nations race discrimination body', in *Roma rights*, Nr1, 2001.

⁹³ Ibid.

⁹⁴ UN Human Rights Committee, op. cit., p.2 of 6.

⁹⁵ The UN Committee refers to the UN International Covenant on Civil and Political rights. For details see www.hrweb.org/legal/cpr.html

⁹⁶ OSI, op. cit., p.124.

⁹⁷ HRW, 'Human Rights Watch World Report 2002', op. cit.

legislation taken at the national level to combat prejudice and discrimination against Roma are not enforced at the local level.

Whether the government is trying to find solutions to the Romani situation for purely politically based reasons or not, the real obstacle to the fair and equal treatment of the Roma people resides at local levels.

According to Will Guy, *'the inability, or reluctance, of central governments [in the Czech Republic and Slovakia] to impose their political will on local authorities might continue to frustrate attempts to improve the situation of Roma. ... [This] would undoubtedly lead to further intensification of inter-ethnic pressures'*.⁹⁸

A dramatic example of this reluctance or inability to enforce legislation locally was provided with the incident relating to the building of a wall separating a Roma housing compound from other communities in Usti nad Labem.⁹⁹ Whilst the Czech cabinet had voted against its construction on the basis that it was promoting racial discrimination, the local authorities claimed that the cabinet did not have judicial authority locally and proceeded with the construction of the wall on 13 October 1999. Although the Parliament immediately voted a decree to override this decision, the local authorities said they would appeal to the Constitutional Court.¹⁰⁰ Whilst the decree was debated, construction workers walked to the site accompanied by 80 police officers.¹⁰¹

A EU warning that the wall could be a major obstacle in the EU integration of the Czech Republic (in addition to other international pressures) convinced the government to intervene. The wall was finally demolished in November 1999.¹⁰²

1.3.5 International provisions not enforced In theory, the protection of Roma rights should be guaranteed through international legislation. The country has ratified all international treaties addressing discrimination and minority rights which are given precedence over domestic law in the national Constitution.¹⁰³ Also incorporated in the Constitution is the 1991 Charter of Fundamental Rights and Freedoms on basic human rights. In addition, a minorities law recently adopted provides for Roma rights in the field of education and language use.¹⁰⁴

⁹⁸ Guy, W., op. cit., p.287.

⁹⁹ What amounts to *'municipally sponsored ghettos'* according to Will Guy, *ibid.*, p. 292.

¹⁰⁰ HRW, *'Human Rights Watch World Report 2000'*, op. cit.

¹⁰¹ IRR European Race Bulletin, No.32, March 2000, p.10.

¹⁰² *Ibid.*

¹⁰³ Constitution of the Czech Republic, Law No.1/1993, Art. 10. For full text of the Czech Constitution, see www.psp.cz/cgi-bin/eng/docs/laws/constitution.html .

¹⁰⁴ OSI, op. cit., p.133.

In addition, the Czech Republic recently accepted the competence of the Committee on the Elimination of Racial Discrimination to hear individual cases (Art. 14 of the Convention).¹⁰⁵

Despite this, in practice, Roma rights have remained largely unprotected as demonstrated by the number of reports published on the issue. Most worrying is *'the lack of independent mechanisms for monitoring the practical implementation of rights'* guaranteed under the ICCPR.¹⁰⁶

I.4 Police's failure to protect against racist crimes

So far, the outcome of the prosecution of the great majority of racially motivated crimes has failed to provide Roma victims with adequate legal redress.

Failure to prosecute perpetrators adequately range from improper investigations by the police to refusal by the courts to recognize that such crimes are racially motivated. Only in cases when the perpetrators are overheard using racist abuse do the authorities view the crime as racially motivated.¹⁰⁷

I.4.1 Failing to investigate & prosecute The police has the main role in preliminary investigation in the Czech Republic.¹⁰⁸ The investigation is described as being of *'utmost importance since the collected information is fixed in a file [...] which is then submitted to the court. Information included in the file can be heavily relied on by the trial court when passing its judgment'*.¹⁰⁹

As far as Roma are concerned, ECRI notes a number of malpractices, including *'deliberate prolonging of investigations, wrongful arrests and ill-treatment of [Roma] detainees'*.¹¹⁰ In addition, the Counselling Centre for Citizenship, Civil and Human Rights reports that Roma who report racial

¹⁰⁵ ERRC, 'Czech Republic accepts the competence of United Nations race discrimination body', in *Roma Rights*, Nr1, 2001.

¹⁰⁶ UN Human Rights Committee, op. cit., p.2.

¹⁰⁷ CCC/CHR, 'Comments on the Report of the Czech Republic on the Implementation of the International Covenant on Civil and Political Rights', 10 July 2001, at www.poradna-prava.cz/eng_frame.html.

¹⁰⁸ The investigator is a member of the police and is appointed by the Minister of the Interior. See Bard, K. and Terzieva, V., 'Legal Services for Indigent Criminal Defendants in Central and Eastern Europe', 5 in *Parker School Journal of Eastern European Law*, 209 (1998). Police activities are governed by the Law of Police (Ministry of Interior).

¹⁰⁹ Ibid.

¹¹⁰ ECRI, report released in March 2000, quoted by ERRC in 'Written comments of the European Roma Rights Center Concerning the Czech Republic', June 2001 at www.errc.org/publications/legal/hrc_czech_republic_june_29_2001.rtf

crimes are 'often treated as the perpetrators of the crimes and their testimony, concerns and basic human rights are dismissed'.¹¹¹

HRW World Report 2001 on the Czech Republic also concludes that the rise in racially motivated crimes 'demonstrated an alarming pattern of neglect on the part of police and legal authorities in failing to investigate and prosecute hate crime. This pattern included lenient sentences for perpetrators of hate crimes, incompetent and protracted investigations, and little recourse for victims who in many cases feared reprisals'.¹¹² HRW World Report 2002 reiterates the same conclusion.

The pattern of the police inaction seems to be a lack of measures to proceed with arrests when such attacks occur or even to take the names of the alleged perpetrators. This has also been condemned by the UN Human Rights Committee in its July 2001 report:

'the Committee remains concerned at (...) the failure on the part of the police and judicial authorities to investigate, prosecute and punish hate crimes (articles 2, 20,26). The State party should take all necessary measures to combat racial violence and incitement, provide proper protection to Roma and other minorities, and ensure adequate investigation and prosecution of cases of racial violence and incitement to racial hatred'.¹¹³

Similar concerns had already been expressed a year before by the UN Committee on the Elimination of Racial Discrimination (August 2000).

1.4.2 Major obstacles to guarantee protection for Roma Racism in the police force is a major obstacle to adequate investigation of racially motivated crimes. The Movement for Civic Solidarity and Tolerance, a human rights organisation based in Prague, claimed in 1998 that it had 'indications that former police officers, even members of the elite police crack force, organize armed groups motivated by racist ideology.'¹¹⁴ It added: 'Research among the police shows that up to one-third is sympathetic to the skin[head]s. We also know of cases of former skins becoming members of the police. They are attracted by being able to possess arms, by the possibility of using them and getting reasonable pay'.

This would explain the fact that apart from the public, it has also been reported that anti-Roma violence is notably perpetrated by police forces. In 1999, ECRI noted in its second report that 'it is claimed that racist attitudes

¹¹¹ CCC/CHR, 'Comments on the Report of the Czech Republic on Performance of the Obligations Arising ...', op. cit.

¹¹² HRW, 'Human Rights Watch World Report 2001', op. cit.

¹¹³ UN Human Rights Committee, 'Concluding Observations...', op. cit., p. 3.

¹¹⁴ Institute for Jewish Public Research, 1999, op. cit.

are widespread among the police, some of whom sympathise with right-wing extremist groups'.¹¹⁵ This observation was confirmed by the Czech government as recently as 2000 when it wrote that '*many policemen like quite a substantial portion of the general public – perceive Romanies as a criminal subculture, whose members are a priori to be distrusted*'.¹¹⁶

There are persistent allegations of police harassment '*particularly of the Roma minority and aliens*'.¹¹⁷ The UN Committee on the Elimination of Racial Discrimination also expressed concerns about the degrading treatment suffered by minority groups at the hands of some police members.¹¹⁸ A recent report from the Medical Foundation for the Care of Victims of Torture talk about '*official complicity..., indifference..., [or/and] participation*' of the police in committing racist crimes against Czech Roma, including the rape of Romani women. Yet, the Czech authorities have dismissed the phenomenon as '*resulting from lack of sensitivity*'.¹¹⁹

A recent example of police brutality against Roma is that of the attack on a 13 old Romani child by two police officers. The child, who had broken a window in an abandoned laundry house, suffered injuries to the spine and needed hospitalisation.¹²⁰

1.4.2.1 Police complaint procedures There is currently no independent body to investigate complaints against abuses or excessive use of force by the police. Complaints against the police are currently handled by an internal police inspectorate.¹²¹ The Interior Ministry is responsible for criminal investigations. As stressed by the UN Human Rights Committee, '*this system lacks objectivity and credibility and would seem to facilitate impunity for police involved in human rights violations*'.¹²² The World Organisation Against Torture also concluded that '*there is currently no independent mechanism to investigate allegations of police brutality as it is the police itself that conducts [such] investigations and decides on the disciplinary measures to be taken*'.¹²³ OMCT notes that '*the whole procedure has also been criticised by the European Commission Against Racism and Intolerance for its lack of transparency*'.¹²⁴

¹¹⁵ CRI 2000(4), op. cit., parag.16.

¹¹⁶ 'A report of the government commissioner ...', op. cit., quoted by OSI, op. cit.

¹¹⁷ ERRC, 'UN HCR "Deeply concerned" about the Czech government's treatment of Roma', Press Statement, 2nd August 2001, at: www.pili.org/lists/piln/archives/msg00792.html

¹¹⁸ CERD, 'Concluding Observations...', op. cit., para. 14.

¹¹⁹ The Medical Foundation's report refers to the treatment of 59 Czech Roma from 1996 to 2001. See Carroll, S., op. cit.

¹²⁰ ERRC, 'Written Comments of the European Roma Rights Center Concerning the Czech Republic For Consideration by the United Nations Human Rights Committee at its 72nd Session', July 11-12, 2001 at www.errc.org/publications/legal/.

¹²¹ UN Human Rights Committee, op. cit., para. 16

¹²² Ibid.

¹²³ OMCT, op. cit., p.5 of 24.

¹²⁴ Ibid.

ECRI wrote that 'measures to counter such actions seem to be inadequate. The police itself conducts investigations into misconduct by its officers and appears reluctant to acknowledge any incidence of racist behaviour on its part. In addition, a serious lack of transparency is reported'.¹²⁵

1.4.2.2 Police training standards Evidence of police training in human rights can be found in the Czech Republic's participation to the European wide programme 'Police and Human Rights 1997-2000'. According to the Council of Europe, the Czech Republic 'benefited from Council of Europe programs of governmental cooperation aimed at training police in Council of Europe standards'.¹²⁶

In the above context, further reporting on the training of the Czech police force provide the following details:

'In March and April 1998, the United Nations High Commissioner for Refugees, supported by the Council of Europe, organised a series of human rights seminars for police in the Czech Republic. The visit of the Programme Manager to Prague in March 1998 to participate in this series provided the opportunity to discuss involvement in Programme activities with the police authorities. This did not immediately result in the expression of clear commitment to the Programme. However, by late 1999, the Czech Republic's commitment had become clear by the appointment of a Human Rights Co-ordinator at the Ministry of the Interior'.

'Subsequent to that visit, a number of international seminars on police and human rights issues were organised by the Police College in Prague. The Programme has provided support in the form of training materials and human rights documentation. A seminar in April 1999, organised by the Police College in Prague in co-operation with the Raoul Wallenberg Institute, provided the impetus for consideration of the adaptation of the Council of Europe 'Police and Human Rights' Workbook and Reference Brochure for practice-oriented training in human rights to reflect the particular challenges within the Czech context'.

'This impetus was further developed in December 1999 during a workshop which focused specifically on training materials. Organised by the Police College in Prague and supported by ADACS,¹²⁷ the workshop enabled the Czech police to translate and examine three elements of the Trainer's Supply Kit ("A Workbook for Practice Oriented Teaching", "Police Practice and Human Rights – A European introduction", and "Discussion Tools"). All three documents have been produced under the auspices of the Programme with the specific aim of relating the theory of human rights

¹²⁵ CRI, 2000(4), op. cit., para. 17.

¹²⁶ Source: <http://www.humanrights.coe.int/police> .

¹²⁷ The programme of assistance with the development and consolidation of democratic stability. See more on www.coe.fr/ADACS/indexEN.htm .

protection in policing to everyday police practice. Modern 'adult training' techniques were also introduced at the workshop'.

'One important contribution by the participants was to write case studies to be incorporated into the Czech version of the Workbook. It was then further developed following the workshop until May 2000, when the preliminary version of the 'Police and Human Rights Textbook', the first training manual of its kind in the Czech Republic, was completed and distributed to all police colleges. The aim was to allow time for the textbook to be evaluated by trainers and experts before printing a final version. The Programme has been notified that the Czech Workbook, the Reference Brochure and the Pamphlet for Police have now been published. The CPT¹²⁸ and Police Brochure was published by the Prague Information and Documentation Centre on the Council of Europe in co-operation with the Ministry of the Interior'.

'The Czech Police Academy contributed actively to the compilation of an inventory of police and human rights materials which was undertaken by the NGO, the Association for European Law Enforcement Co-operation (ELEC) under the auspices of the Programme. (...)'

'During 'Police and Human Rights Week' (November 2000) a major conference entitled "Police and Human Rights Achievements and Future Perspectives" was organised by the Ministry of the Interior in which the Minister and the Chief of Police underlined to more than 150 senior officials the importance of translating the theory of human rights into everyday police practice'.

'The Ministry of the Interior has not yet made any concrete proposals to the Programme for activities in 2001. However, the Netherlands Helsinki Committee has proposed two seminars on training for police college instructors for which it has requested experts and documentation from the Council of Europe'.

The above reporting indicate the level of awareness on human rights issues that the police have been exposed to in the last three years alone. In addition, there has also been a recent drive to recruit Roma amongst the police force: 20 are currently employed in police departments whilst as many are studying in the Police Academy.¹²⁹

Despite these positive measures, and specifically in relation to the policing of racially motivated crimes, Barbora Bukovská - a staff attorney working for the Prague-based human rights organization CCC/CHR - notes:

¹²⁸ CPT stands for European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. For more see www.cpt.coe.int/.

¹²⁹ OSI, op. cit., p.162.

'As a necessary step towards the creation of workable remedies is recognition of the problem and identification of its extent and dimensions, the government should be encouraged to collect data from criminal law enforcement authorities regarding investigation, charging and sentencing practices and the racial impact of those practices. These studies should not only determine whether Romani offenders receive harsher treatment than non-Romani offenders for the same criminal behaviour, but should also demonstrate whether cases involving non-Romani victims were prosecuted more vigorously than cases involving Romani victims. The data should also indicate whether similarly-situated defendants and victims of different ethnic origin are treated the same at each step of the process'.¹³⁰

1.4.2.3 No trust in police protection Not only do Roma people lack confidence in police protection, they also fear further reprisals or they know that some members of the police are directly involved in the violence against Roma. This is a strong factor in undermining their willingness to recourse to the police when their safety is put at risk.

1.4.2.4 Protection denied for Romani women victims of sexual crimes Evidence also suggests that Romani women will not find support from the police when sexual crimes are committed against them in the context of racism, not only because they are women (see **PART II**) but also because they are Romani women – in fact they might be threatened with sexual violence at the hands of the police themselves (see **Section I**).

On the other hand and as mentioned in Section I, it is very unlikely that Romani women would go to the police to report sexual crimes: sexual issues may be taboo according to their cultural norms and talking to a non-Roma (man) about such issues might be as equally culturally reprehensible (a Roma person becomes polluted if s/he recourse to non-Roma for matters that are deemed to be *'internal'* to the community).

Given these cultural norms, it is not clear whether sexual assault would be considered as something to be disclosed to non-Roma: for instance a woman who has been raped can be considered as a source of shame for her family, or may be seen as a criminal or someone who has cooperated in the crime, so she might not report the crime to the police at all out of fear that her family or community will find out.¹³¹

¹³⁰ Bukovská, B., 'Romani men in Black suits: racism in the criminal justice system in the Czech Republic', in *Roma Rights*, Nr. 1, 2001 at www.errc.org/rr_nr1_2001/noteb4.shtml.

¹³¹ As explained in **Section I**, the degree to which Romani beliefs are observed or practiced varies from one community to another, and in many cases, from one family to another. It is therefore impossible to generalise on the issue.

1.5 Why the legal system fails roma people

'Thorough reform steps which would anchor internationally recognized fair trial standards in the Czech legal order have not yet been undertaken'.¹³²

1.5.1 Legislation about discrimination and racist crimes

Provisions re: racist discrimination There are currently two provisions relating to discrimination in the provision of services (law on customer protection and law on employment which was implemented on 1st October, 1999).

There are no provisions against racial discrimination in other areas. Moreover, CCC/CHR notes that *'the legal mechanisms that make racial discrimination illegal do not even define what behaviour constitutes as racial discrimination'*.¹³³ There is no provision for personal remedy whatever administrative procedure is followed. This is in contravention to the constitutional provisions and international treaties that, according to Article 10 of the Czech Constitution, have priority before the domestic law.

In CCC/CHR's view, the Czech government has not taken the necessary action to remedy the problem of discrimination and should adopt a number of measures and legislation that will outlaw racial discrimination. Such legislation should also ensure equal access to social services and support (such as health care, housing, employment, education, the justice system and others) to all Czech citizens.

In terms of customer's rights protection, the victim of discrimination is not directly involved in the procedure. Her role is limited to the filing of a complaint with the relevant authority such as the Czech Commercial Inspection who decides whether or not to follow-up the complaints by sending inspectors to the discriminating entity. Yet, there are only four Roma inspectors in the whole country. As a result, the CCC/CHR notes that the Czech Commercial Inspection recorded only 3 instances of racial discrimination against Roma between 1996 and 1999 out of 43 complaints. The other avenue is to file a complaint directly with the Trade License Office who investigates itself whether or not trade laws have been infringed. It has the authority to revoke a business license but according to CCC/CHR, this has never happened. There is no compensation for damages and no protection for the victims.

¹³²Thieroff, M. and Krutina, M., 'Access to Legal Aid for Indigent Criminal Defendants in Central and Eastern Europe; Country Report: The Czech Republic', in *Parker School Journal of East European Law*, Vol. 5, 1998, Nos. 1-2, at www.pili.org/library/access/jeel1998/preface.htm

¹³³ CCC/CHR, 'Comments on the Report of the Czech Republic on Performance on the Obligations...', op. cit. Unless otherwise stated the following information is drawn from the same report.

The law about racist crimes In theory, racially motivated crimes should be punished under the provisions of the Criminal Code. In 1995, sentences relating to racial hatred – if a criminal offence is committed due to a person's race or national identity - were increased.

The Czech Republic also recently accepted the competence of the Committee on the Elimination of Racial Discrimination and of the Committee Against Torture to hear individual cases (art.14 of CERD and art.22 of the CAT).¹³⁴

Very limited remedies CCC/CHR reports that *'there are very limited legal remedies [in the law] for victims of discrimination to seek recompense against their attackers or discriminators'*. It concludes: *'The Czech government has failed to provide effective protection and remedies against acts of racial discrimination, to protect the rights of victims and their rights to reparation'*.¹³⁵

1.5.2 Denial of justice: from access to the courts to judicial interpretation

According to OSI, *'it appears that in the absence of concentrated pressure from international and other bodies, judges/courts remain reluctant to find racial motivation'* behind crimes against Roma.¹³⁶

There are two sets of obstacles: those that relate to the issue of access to the court and others that relate to the court handling of racism and racist crimes in particular.

1.5.2.1 Discrimination in accessing the justice system According to CCC/CHR, *'many aspects of judicial procedure lead to serious inequalities before the courts. Such procedures, moreover lead to serious discrimination against Roma within the criminal justice system'*.¹³⁷ OMCT has reached similar conclusions in its July 2001 report and notes that *'access to justice and discrimination in the justice and prison systems also remain factors of concern'*.

Procedural barriers As ECRI explains clearly, one of the first problems Roma face in seeking justice against racist violence is to get access to the court in the first place:

¹³⁴ OMCT, op. cit., p. 3 of 24.

¹³⁵ CCC/CHR, op. cit.

¹³⁶ OSI, op. cit., p.157. OSI provides two examples of cases that received heavier sentences following substantial media and international attention.

¹³⁷ CCC/CHR, ibid.

*'Problems arise at different levels of the judicial process. Firstly, police and investigators appear often to misclassify racially motivated crimes and do not follow through investigations. Secondly, problems arise at the level of prosecutors. These often seem to have difficulties gathering and organising the evidence necessary to prove such motivation, partly due to the unwillingness of witnesses to testify. A certain reluctance has also been noted in some cases to prosecute this type of crime.'*¹³⁸

Access to quality representation constitutes another factor contributing to the discrimination Roma face in the provision of justice.¹³⁹ Even when Roma are aware about their rights, the great majority of Roma do not have financial means to obtain quality representation:

*Barbora Bursková wrote: 'Unfortunately, due to low income and lower legal awareness, the majority of Romani defendants in the Czech Republic, as well as in other countries in central and Eastern Europe, depend on defence attorneys appointed by the state. At the same time, many lawyers who represent Roma in criminal cases perceive Roma as living on crime and thus believe that prison is where Roma should be kept. Such prejudice hinders the defence of Roma and increases the probability that Roma will be prosecuted and sentenced harshly'.*¹⁴⁰

'It is true that Roma are not often formally denied legal representation at trial or at any of the other critical stages in the criminal process. However, questions have been raised about the quality of legal representation at trial or at any of the other critical stages in the criminal process. In the Czech Republic, improvement of the situation would require modification of the existing system of ex officio legal representation in a way that would at very least limit the personal preferences of judges in the appointment of legal representative and assure quality access to legal aid for indigents'.

Because the Law on Advocacy currently prohibits an advocate from being directly employed by a firm or organization, the role of NGOs is limited to providing legal counselling and assisting individuals in finding attorneys.¹⁴¹ NGOs cannot legally provide actual courtroom representation.

¹³⁸ CRI, 2000(4), op. cit., par. 30.

¹³⁹ For more details on access to legal representation, see Thieroff, M., and Krutina, M., 'Access to Legal Aid...', op. cit. Also Rekosh, E., and Terzieva, V., 'Access to justice in Central and Eastern Europe: too little for too few', in *Roma Rights*, Nr.1, 2001, at www.errc.org/rr_nr1_2001/noteb2.shtml.

¹⁴⁰ Bursková, B., 'Black men in suit...', op. cit.

¹⁴¹ 'The law establishes that the profession of advocate is by definition exercised in an independent, entrepreneurial manner, and that legal services are to be provided and remunerated on a per-unit basis' (par. 11). See Thieroff, M. and Krutina, M., op. cit., p12. of 23.

1.5.2.2 No remedy when racism is denied in court In ECRI's own words, '*the interpretation of "racial motivation" rendered by some judges is a very restrictive one*'.¹⁴² In other words, there is denial in court that crimes against Roma people are racially motivated (see also examples of court cases below). This denial is reflected in one particular ruling when a district court decided an attack could not be racist because '*the injured Roma are of the same Indo-European race as the perpetrators*'.¹⁴³

Evidence of such a denial is thus found in the leniency of the sentences given out: ECRI writes for instance of a lenience that extends '*from police investigators, who do not want to investigate such cases as racial crimes, to state attorneys and judges, who pass the lowest possible sentences*'.¹⁴⁴

This is confirmed by ERRC who notes that when defendants are charged on the basis of racially motivated violence and found guilty, local district courts tend to return lenient sentences.¹⁴⁵ The World Organisation Against Torture concluded the same as it noted in July 2001 that '*punishment for racially motivated crimes remain relatively light when the charges are not abandoned altogether while the victims do not receive proper compensation, restitution and rehabilitation*.' Another report had already highlighted the fact that the number of conviction is lower than that of abuses reported¹⁴⁶ while the European Commission Against Racism and Intolerance noted that despite an increase in racially motivated violence in the 1990s, '*official statistics show that in recent years the number of prosecutions and convictions for most racially motivated crimes involving acts of violence has dropped*'.

Examples in practice In the case of Emilie Žigová who was attacked in her home in 1998 (a firebomb was thrown at her),¹⁴⁷ three men were charged with endangering public safety under Penal Code Article 179(1); violence against a group or individual under Penal Code Article 196(2); racially motivated intentional bodily harm under Penal code Article 222(1) and 222(2)(b) and racially motivated damage to property under Penal Code article 257(2)(b).

However, in December 1999, the local District Court (Bruntal) acquitted all defendants of all charges. The decision was overturned by the Regional Appeal Court (in Ostrava) which annulled the verdict five months later and ordered a re-trial. On February 22, 2001, the District Court returned a second verdict according to which all three defendants were acquitted as

¹⁴² CRI, 2000(4), op. cit.

¹⁴³ Guy, W., 'The Czech lands and Slovakia...', op. cit., p. 294.

¹⁴⁴ CRI, 2000(4), op. cit.

¹⁴⁵ ERRC, 'Failure to provide justice to Roma in the Czech Republic', op. cit.

¹⁴⁶ 1998 Report of the Committee on the Elimination of Racial Discrimination, as quoted by OMCT, op. cit.

¹⁴⁷ See above **1.2.1 Right to safety violated**.

'while it was proven that the defendants had clear links to neo-Nazi groups, there was no concrete evidence linking them to the specific attack in question'.¹⁴⁸ ERRC observers said that there was *'numerous inadequacies in the investigation'*.

Another example is that of 26 year-old mother of four Helena Biháriová who drowned in February 1998 when she was forced into the river Labe by at least two skinheads.¹⁴⁹ Initially, the police investigators charged three suspects with causing bodily harm with racial motive and detained them. A week after the attack, the charge was changed to racially motivated murder against two of the three suspects (the third was cleared of charges) who were sentenced by a regional court to 8 1/2 years and 6 1/2 years imprisonment. However the court ruled out any racial motivation. Yet the appeal court went even further: According to its ruling, her death amounted to a mere *'[public] peace disturbance'* and, accordingly, the man who had been charged and sentenced to 6 years and a half imprisonment saw his sentence reduced on appeal to 15 months only (for disturbing the peace).¹⁵⁰

These few examples demonstrate what CCC/CHR call a failure *'to guarantee the Roma and other minorities equal protection of the law'* or that *'equal treatment in the criminal justice system does not exist'*.¹⁵¹

The situation in such cases is compounded by the fact that there are no mechanisms to ensure quality of the judiciary (in the form of disciplinary proceedings) Indeed, the judiciary has received substantial criticism with reference to its disciplinary rules. One of the main source of complaint is the fact that the disciplinary system *'fails to rid the judiciary of those who, even though they might comply with the formal requirements for judicial office, are simply not suitable for office'*.¹⁵² Normally, a judge cannot be subjected to criminal prosecution for acts or omissions in the exercise of his functions. In this case, judicial disciplinary proceedings are initiated.

There is a lack of definition in terms of rules of conduct that render the current provisions inefficient: standards for conduct of judges are defined in a very general way (they are required to *'exercise their duties with due care, increase their professional competence and respect judicial ethics both in the exercise of their judicial functions and private life and to refrain*

¹⁴⁸ ERRC, *'Failure to provide justice to Roma...'*, op. cit.

¹⁴⁹ Patrín Web Journal, *'Anniversary of the Murder of Hassan Elamin Abdelradi'*, p.2 of 4 (no date), see op. cit.

¹⁵⁰ IRR European Race Bulletin, op. cit., quoted by ERRC, *in Roma Rights*, No.3, 1999.

¹⁵¹ In contravention to Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). See CCC/CHR, *'Comments on the Report of the Czech Republic on Performance of the Obligations Arising ...'*, op. cit., p.5.

¹⁵² This immunity may be lifted by the authority that appointed a judge. See OSI, op. cit., p.142.

from anything that might discredit the dignity of the judicial office or threaten the trust in independent, impartial and fair judicial decision-making').¹⁵³

Under-representation of Roma in the justice system Roma, whilst over-represented as defendants in the criminal justice process, remain 'dramatically underrepresented among the staff of most criminal justice agencies and much hostility can be traced to this fact'.¹⁵⁴

'Criminal law agencies are often seen as a force against rather than a service to the community, and the veritable absence of Roma among the ranks of law enforcement officials increases the distrust of Roma towards the system as a whole. If people believe that justice and fair treatment are not "on offer" for them, this may influence their attitudes and approach to the institutions of justice. They may also expect to encounter ignorance about their own cultures and backgrounds or stereotypical assumptions'.¹⁵⁵ Incidentally, popular confidence in the judiciary is reported to be very low amongst the general public. Many doubt both court's independence and the 'weakness of law enforcement'.¹⁵⁶

In order to tackle the lack of Roma confidence in the judiciary – as well as discrimination in the provision of legal protection - the human rights lawyer Barbora Bursková suggests that 'serious attention should therefore also be paid to efforts to recruit and retain Romani staff in criminal law enforcement authorities. Diversity will most certainly require some sort of affirmative action. The government should include minority recruitment and hiring practices in its crime prevention policy and provide adequate funding for such programs'.

1.5.2.3 Human rights and discrimination yet to be 'understood' by judges

'Insufficient Human Rights Training'¹⁵⁷ Roma's experience of racial discrimination clearly represents a breach of their human rights, as a minority

¹⁵³ Law on Judicial Discipline. OSI provides the example of delaying individual cases that may be a cause for disciplinary proceedings, however the concept of delay is not defined, *ibid.*, p.106.

¹⁵⁴ Bursková, B., *op. cit.*, p. 9 of 14.

¹⁵⁵ Bursková, B., *ibid.*, p.10 of 14.

¹⁵⁶ 'A recent opinion poll showed that only about a quarter of the population had confidence in the Czech judiciary (...). Some people also criticised light sentences for crimes or made critical comparisons between the effectiveness of judges and their salaries'. The Open Society Institute highlights that most of the general public mistrust relates to financial criminal matters but concludes: 'the judiciary is blamed for failed efforts to control the levels of criminality and for the weakness of law enforcement'. OSI, 'Judicial Independence in the Czech Republic', October 2001, pp. 117-118.

¹⁵⁷ Information summarized from Thieroff, M., and Krutina, M., 'Access to Legal Aid ...', *op. cit.*

and as citizens of a country that provides equality of citizens before the law and other protection as defined in international Conventions.

Despite this, Thieroff and Krutina write that '*neither Czech law faculties nor the Czech Bar Association have endeavoured to provide current and future attorneys with the training necessary to understand what the notion of protecting human rights actually implies. Moreover, the general level of knowledge among attorneys of international human rights instruments is strikingly low, notwithstanding the domestic applicability of these instruments in the Czech Republic*'.¹⁵⁸

Yet, the lack of knowledge of what '*protecting human rights actually implies*' can be a major impediment to the recognition that Roma people's rights as a minority have been breached and in the way violations of these rights should be punished.

There seems to be no prospect of a change of the situation in the near future. It is the opinion of experts on Roma issues that although the government introduced heavier sentences for racially-motivated crimes,¹⁵⁸ such measures are deemed to remain 'largely ineffectual' and to fail to define racist crimes, resulting in a lack of recognition of such crimes at the local judicial level.¹⁵⁹

Need for anti-discrimination training Barbora Bursková adds: '*The programme to combat racial inequities in criminal justice must include appropriate training for decision-makers in the criminal justice process – both anti-discrimination training and training in rigorous structured decision-making*'.

'I believe that most police officers, prosecutors or judges would vehemently deny that they have ever discriminated against minority defendants or that they take Romani ethnicity into account in any way in the exercise of their duties'.¹⁶⁰

Bursková challenges the fact that Roma defendants or even victims do not suffer discrimination when dealt with by the criminal justice system: '*Too often the public has been content to believe that bias and prejudice towards Roma does not exist in the sacred sphere of court rooms*'.

1.5.3 Racism in the penitentiary system The discrimination that Roma face in the justice system also affect them as defendants. '*The Roma suffer*

¹⁵⁸ Following a highly publicised murder in 1995.

¹⁵⁹ Guy, W., 'The Czech lands and Slovakia...', op. cit., p. 294 and p. 317.

¹⁶⁰ Bursková, B., op. cit., p. 10 of 14.

widespread discrimination in the criminal justice system and often receive longer or harsher sentences than non-Roma and are not afforded the same opportunities for alternative sentencing and parole. (...) Discrimination in the criminal justice system (...) promote[s] racial segregation and intolerance with little effort from the government to remedy the problems'.¹⁶¹

According to Barbora Bukovská, of CCC/CHR, the number of Roma in the criminal justice system is disproportionate to their percentage in the general population.¹⁶² Based on the evidence gathered by the Centre, and due to the small size of the sample of female defendants available, it is not possible however to make any accurate conclusions as far as Romany women are concerned.

For instance, the Counselling Centre for Citizenship and Human Rights found that in Brno 100% of Romani female defendants had been detained in pre-trial custody. In the same town, only 28.6% of non-Romani women defendants had been in pre-trial detention. But figures for Prague revealed that a higher proportion of non-Romani female defendants had been put in pre-trial detention than that of Romani female defendants.

One finding that can be significant though is the fact that that female Romani defendants were found to have received on average 13.1 months longer imprisonment terms for theft than non-Romani women. (The differential in sentencing for various crimes was also found in the case of Romani men).¹⁶³

Overall (i.e. looking at Roma and non-Roma cases) the 'First Step' project also found some disparities in terms of the length of imprisonment and this whether the crime be murder, bodily harm or robbery.¹⁶⁴

The '*Bratinka*' Report concludes that this disparity is partly due to discrimination Roma face, including from institutions. The fact that '*a significant portion of the Romani minority (...) belongs to the lowest social level with high unemployment, a low level of education and, compared to the total population, a disproportionately high crime rate*' is, from the report writer's point of view, a factor in the '*seriousness of the problems*'. According to one of the surveys conducted for the report, Roma believe that '*they receive disadvantageous treatment at the hands of the state authorities which indirectly strengthens the Roma's mistrust of the majority population*'.¹⁶⁵

¹⁶¹ CCC/CHR, '*Comments on the Report of the Czech Republic on Performance of the Obligations Arising ...*', op. cit., p. 1.

¹⁶² Bursková, B., *ibid.*, p. 2.

¹⁶³ Bursková, B., *ibid.*, p. 4.

¹⁶⁴ Bursková, B., *ibid.*, p. 6 of 14.

¹⁶⁵ Czech Government, '*Report on the Situation of the Romani Community and on the Present-day Situation in the Romani Community*', (known as '*Bratinka*' report), 1997,

In any case, CCC/CHR reports that *'currently, there is no outside control of the prison system and there is no independent and impartial body for the review of the prisoners complaints. (...) There are only a formal provisions both in the Law on Pre-trial Detention and in the imprisonment Law that give the possibility to forward their complaints to bodies of the State administration. In practice, the review is entirely internal (...) including in cases involving suspicion of criminal behaviour by prison officers. [... Due to the] defects of the system, only a small number of complaints is approved'*.¹⁶⁶

1.5.4 Meaningful state protection non-existent

'We will demand financial compensation from the state because the reason for our emigration is that the majority government is persecuting us for racial reasons and is consistently violating our human and civic rights'.¹⁶⁷

Lack of means to enforce legislation and monitor human rights, as well as ignorance of minorities and human rights mean that, as highlighted by the government Commissioner on Human Rights 2000 report, *'achieving redress through the legal system in civil cases is virtually impossible for citizens without legal education and financial backing'*.¹⁶⁸ Given their social background (social isolation, poverty, poor education) there is no doubt that the great majority of Roma in the Czech Republic fall in one of these two categories.

As the World Organisation Against Torture (OMCT) writes, the fact that there is tacit consent from society as well as a failure from the authorities and the justice system to conduct adequate investigations, prosecute the perpetrators and give out appropriate sanctions, indicates a complacency and a tolerance of crimes against Roma that *'cannot be solely attributed to right-wing groups'*.¹⁶⁹

There is an undeniable responsibility of the government in the lack of protection of Roma rights which extend much further than that of their physical safety: Such discrimination in the provision of justice system has an

Resolution 686, Prague: Office of Minister without Portfolio, (accepted 29 October). See Guy, W., *'The Czech lands and Slovakia: another false dawn'*, op. cit.

¹⁶⁶ CCC/CHR, *'Comments to the Report of the Czech Republic on Performance of the Obligations arising from the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment'*, April 2001, p.3 of 6. (www.poradna.prava.cz/english/).

¹⁶⁷ Statement from a group of West Bohemian Romanies who demanded compensation from the Czech Government in March 2000. Source: *Migration News*, May 2000, Volume 7 Number 5.

¹⁶⁸ *'A report of the government commissioner ...'*, op. cit., quoted by OSI, op. cit., p. 136.

¹⁶⁹ OMCT, op. cit., p. 5.

impact on the way Roma people are perceived by the rest of the population, including the implicit sanction of violence against Roma, and reinforces existing prejudices: *'Violence perpetrated by private individuals or the police is, to a great extent, often fuelled by prejudices regarding the socio-economic status of the Roma. In turn, it is often the Roma's poor socio-economic status, resulting from violations of their economic, social and cultural rights, which stimulates these prejudices'*.¹⁷⁰

One cannot separate the two issues of violations of one's civil and political rights from that of one's socio-economic rights. Evidence indicates that there is currently no meaningful state protection in the Czech Republic to protect either of these sets of rights as far as Roma are concerned.

¹⁷⁰ Ibid.

PART II CONTEXT OF ROMANI WOMEN'S RIGHTS IN THE CZECH REPUBLIC

There are no specific reports on the violations of Romani women's rights in the Czech Republic. Despite this, OMCT notes that '*the situation of Roma women (...) also remains a subject of concern (...) as they are often overwhelmingly affected by [the significant degradation of the Roma situation] be it in terms of employment, education, or health. Moreover, their gender makes them much more vulnerable to torture and other forms of violence*'.¹⁷¹

Details of women's rights (or failure to protect such rights) in the Czech Republic can be found in the International Helsinki Federation for Human Rights Report 'Women 2000'.¹⁷² Despite providing thorough details in the social, political and economic field, there are no specific details with reference to Romani women's rights and abuses.

However, given the current '*attitudes*' towards Roma, it is expected that when it is found that women's rights in the Czech Republic are restricted, these rights will be even more restricted as far as Romani women are concerned. This applies equally in terms of recourse to protection and redress from the police and/or the justice system.

II.1 General legal provisions re: women's rights

Despite the fact that the principle of the equal rights of women and men is enshrined in Articles 3 and 10 of the Czech Constitution and that there are three bodies dealing with discrimination against women and equal opportunities, there are no financial resources in the Czech State budget assigned to promote the improvement of women's status.¹⁷³

The Czech Republic is party to the Optional Protocol to the international Covenant on Civil and Political Rights and to the Optional Protocol to the Convention on the elimination of All forms of Discrimination Against Women, both providing for individual complaints procedures.

II.2 Romani women facing sexual crimes and abuses

In some Roma families or communities, Romani women will not raise the issue of domestic violence outside of their communities. However even if a Romani woman decides to do so, the current provisions and general

¹⁷¹ OMCT, *ibid.*

¹⁷² Unless otherwise stated, information in Part V is drawn from IHFHR's report, '*Women 2000...*', *op. cit.*

¹⁷³ For full details of provisions, see IHFHR, *ibid.*, p.136.

attitudes towards domestic violence suggest that she will not get the help she needs, in addition to the fact that police attitude towards Roma in general is extremely unsupportive.

II.2.1 Domestic violence The (UN) Human Rights Committee recently raised its concerns on the issue of domestic violence against women and in particular *'the absence of specific protection in law and in practice'*.¹⁷⁴

The Committee also condemned the absence of official statistics on domestic violence¹⁷⁵ despite a number of reports highlighting the extent of the problem.

Whilst there has been public information campaigns and training of the police, domestic violence is generally speaking not considered to be a problem by the authorities. It is rarely mentioned and there are no statistics available although IHFHR writes that *'experts estimate the situation and figures to be similar to those in Western European countries'*.¹⁷⁶

According to IHFHR, the government started to mention violence against women in its Priorities for Equal Opportunities of Men and women in 1998 but very few practical steps were taken to protect women from violence: There is currently no special legal provision addressing the problem, no public campaigns on the issue and no support provided to centres which help women victims of domestic violence.¹⁷⁷ IHFHR records a lack of shelters and a lack of professionals – including the police, doctors and social workers – trained to deal with victims of domestic violence.

The Committee on Economic, Social and Cultural Rights requested the Czech Republic to provide clarification on the provision of specific protection in law and in practice, in particular with regard to provisions for temporary shelters and prosecution of perpetrators of violence.¹⁷⁸

Romani women victims of domestic violence will at the very least face the same obstacles as other women in the Czech Republic: *'A woman victim of a violent husband can go to the police station to report the crime but she usually has to face policemen's lack of understanding and will to deal with the case'*. Police officers view domestic violence as a private matter

¹⁷⁴ UN Human Rights Committee, op. cit.

¹⁷⁵ At least none were submitted to the UN Human Rights Committee in 2001 despite making a specific request. See UN Human Rights Committee, *'List of Issues: Czech Republic. 18/05/2001 E/C.12/Z/CZE/1'* and *'Concluding Observations...'*, op. cit., p. 4.

¹⁷⁶ IHFHR, *'Women 2000...'*, op. cit., p. 147. About 20% of women are reported to have experienced domestic violence in their lifetime in countries such as Canada, England and Wales or Switzerland. Source: www.womensaid.org.uk/dv/dvfactsh1.htm.

¹⁷⁷ IHFHR, *ibid.*, p. 147.

¹⁷⁸ UN Committee on Economic and Social Rights, *'List of Issues: Czech Republic. 18/05/2001, E/C.12/Q/CZE/1'*, 14-18 May 2001, p. 3 of 4.

without witnesses that is too difficult to deal with. *'Sometimes [they] even blame the victim or persuade her not to start the case etc.*

Voluntary seminars on domestic violence have started to be organized at the Police Academy in Prague. However IHFHR writes that policemen¹⁷⁹ who did not complete their training at the Academy or those who have already qualified from the Academy do not receive the training.

If a woman decides to go to court, *'there is no special legal aid (free of charge) available and judges are not informed of the specifics of the problem.*

'A woman victim of domestic violence also faces pressure from the offender, his family and sometimes even her own family. She must approve of the prosecution and consent three times throughout the process'.¹⁸⁰

'Women victims of domestic violence are often persuaded to stay with a violent partner as violence is often seen as something which (...) ought to be tolerated.'

II.2.2 Rape¹⁸¹

II.2.2.1 Legislation Rape is punishable by law (Art. 241 of Criminal Law) and carries a sentence ranging from 2 to 8 years (5 to 12 years if the woman is 14 or younger or if the attack caused a major health detriment; 10 to 15 years in the case of death). There are also provisions in terms of marital rape (Art. 241 and 163 of the Czech Criminal Law).

II.2.2.2 Prevalence According to the Police Presidium of the Czech Republic, 80% of cases of rape were resolved in 1998 (541 out of 675). Apart from police records, there are no other data or research conducted on rape. In terms of marital rape, the police reportedly don't treat it as a serious offence, data are not kept as far as the identity of the perpetrators is concerned.¹⁸² The result is that information on marital rape is even more scarce.

Rape in the Czech Republic has however been described as one *'among the most hidden criminal acts'* in the country but according to a local NGO, *White Circle of Safety*, it is not seen as a major problem mainly because the overwhelming majority of cases remain under-reported: A survey carried

¹⁷⁹ IHFHR mentions policemen only (op. cit., p. 148). It is not known whether there are policewomen in the force, or indeed what is the proportion of policewomen in the force.

¹⁸⁰ IHFHR, *ibid.*, pp. 147-149

¹⁸¹ Unless otherwise stated, all information in this sub-chapter are extracted from IHFHR, pp.147-149

¹⁸² See Stastna, K., *'Of Sexologists and Strangers in the Steamy Summer Night'*, in *Central Europe Review*, Vol. 0, No.38, 14 June 1999 and IHFHR, op. cit., p.149.

out at the beginning of the 1990s revealed that 3 out of 100 women who had been raped admitted to have reported the crime. However, one of the factors contributing to the under-reporting of rape is attributed to the lack of sensitivity and adequate measures taken by the police (see below, on procedures).

II.2.2.3 Public perception There is also a public stigma towards victims of rape, and the blame is often put on the victims themselves who are held to a certain extent responsible for the attack.¹⁸³ An article published in the local press in June 1999 (*'The Number of Rape Cases Rises in the Hot Days of Summer'*) highlights the fact that in the summer *'women attract men's attention with short skirts, exposed shoulders, and scooping necklines. However, the pleasant interest of passers-by can turn into a dangerous situation which can lead to rape'*.¹⁸⁴ The statement was confirmed by the comments of an expert sexologist who claimed *'the fact that women expose themselves (...) also plays a role'*.

Marital rape does not get recognition as it is traditionally believed that it is a woman's obligation to have sexual intercourse with her husband or partner whenever requested.¹⁸⁵

II.2.2.4 Procedure on reporting rape cases IHFHR reports that although *'the Czech Police run a Department for Violent Criminal Offences including rape, there is no special police procedure for questioning rape victims and there are no specialized training course for police and prosecutors investigating rape cases'*. Training on trauma for victims of violence (generally speaking) is occasionally provided by the NGO *White Circle of Safety* at the Police Academy upon the specific request of an institution.

'Normally the woman victim files a complaint at the local police department; the victim is normally questioned for the basic information not in a separate room, but in front of people in the waiting room. Later there is a more specialized questioning by a criminalologist (forensic detective) and then a report is filed. The victim is then taken for a medical examination and evidence is obtained (...). However (...) the police often leave the victim in the hospital after the medical examination without providing or securing her transportation home and when the victim is asked to identify the perpetrator from a group of persons, she often has to face the offender since there are only one-sided mirrors in a few police stations. During the medical examination, victims are not offered a female doctor and the doctors never underwent any training regarding the examination and treatment of rape victims. During the actual investigation, the victim must

¹⁸³ IHFHR, op. cit., p.149.

¹⁸⁴ Stastna, K., ibid.

¹⁸⁵ IHFHR, ibid.

undergo an examination by a sexologist or psychiatrist who often tests her 'trustworthiness' and ask her irrelevant, traumatizing questions'.

Given the treatment of Roma by police force and their unsympathetic approach to violent crimes against women, it is more than likely that Romani women will suffer '*double discrimination*' in the eventuality of seeking police protection and justice as a victim/survivor of a violent crime, including sexual assault.

PART III: CASELAW IN THE UK AND AROUND THE WORLD

'UNHCR's view is [that] while there is no official policy to discriminate against Roma on the basis of their ethnicity, (...) at the popular level discrimination takes place and is fairly widespread. In some instances such discriminatory treatment may lead to consequences of a substantial prejudicial nature so as to amount to persecution(parag. 29a).

'Asylum claims must be assessed **individually** to establish if the discrimination experienced amounts to or creates a reasonable fear of persecution in the context of the 1951 Geneva Convention' (parag.26).¹⁸⁶

A study of the caselaw relating to Czech Republic applicants in the UK and the world reveals a discrepancy in the way cases of racial discrimination and related persecution are handled. It also highlights some of the 'prejudices' that judges could hold against Roma asylum seekers.

Roma applicants from the Czech Republic have been granted asylum in the courts where a combination of severe ill treatment, political activity and evidence of lack of state protection has been demonstrated. The latter is usually present where the applicant has at least reached out to authorities without avail. A positive but highly unusual decision by the Australian Refugee Review Tribunal, noted that "**deprivation of equal opportunities was a form of persecution,**" and **recent efforts by the Government to improve the situation of Roma would not yield effective protection in the foreseeable future.**¹⁸⁷

¹⁸⁶ Our emphasis. Both quotes from United Nations High Commission for Refugees, 'Guidelines relating to the eligibility of Czech Roma asylum seekers, Update-December 1999', UNHCR, Geneva, 10 February 2000.

¹⁸⁷ **Australia -- Refugee Review Tribunal – N97/20303 (3-12-98)** (mixed race couple granted asylum, wife was roma with long history of harassment and husband was threatened due to their relationship; deprivation of equal opportunities can be persecution); **New Zealand -- 71429/99 (31-03- 2000) DIGEST** (applicant active member of pro-Roma rights party; subjected to home searches by the police and beatings by skinheads; no police assistance); **71168/98 and 71169/98 (14-10-99) DIGEST** (applicants experienced discrimination in education and employment; both also attacked and harassed by skinheads, police refused assistance); **71253/99 (8-07-99) DIGEST** (wife (Roma) and husband (non-Roma) suffered persecution due to their marriage. Husband beaten during anti-Roma rally, wife's car was tampered with and husband attacked and burned. No meaningful access to protection).

'Persecution takes many forms including deprivation of equal opportunities' and 'Internal Flight not an option' (Australia)

In case RRT-N97/20303 (**3-12-98**), the court in Australia granted asylum to a couple on the basis of the wife's race and ethnic background and based on the fact that there was **evidence of systematic racist attitudes**; crucially as far as Roma people are concerned, the court also held that **deprivation of equal opportunities was a form of persecution**. The tribunal accepted that her status as a Roma resulted in a pattern of discrimination and harassment that the court held amounted to persecution.

Ms H. had been discriminated against and taunted in primary and secondary school. Despite her efforts and qualifications, she was unable to find any employment in the Czech Republic. On at least one occasion she was attacked by skinheads on a train and badly injured. She was repeatedly taunted and harassed by skinheads on other train rides in the presence of many witnesses who remained silent.

After Mr. T (a non-roma) became romantically involved with her, he was also the target of persecution. On at least two occasions he was beaten because of his association with a Romani woman. Mr. T reported each incident to the police and neither was investigated. He was told he deserved it for dating a Romani girl. Mr. T also started receiving anonymous phone calls threatening his wife's life.

The court accepted that **relocation within the Czech Republic was not an option in a country where racist attitudes towards the Roma are widespread**. The court cited a poll where 87% of Czechs surveyed would object to an Roma neighbour. The court also noted the alarming increase of skinhead attacks on the Roma and found that despite efforts by the Government to curtail the violence and improve the conditions for the Roma, the government was unable to protect the applicants from harm now and in the foreseeable future. In doing so, it cited the futile efforts of applicant Mr. T to seek police assistance, and Ms. H's justified failure to seek any protection in light of the experiences of other Roma at the hands of the authorities.

Significantly, the court noted that persecution may take many forms, from torture to "deprivation of opportunities to compete on equal terms with other members of the relevant society." The latter was relevant in this case and was compounded by the court's finding that it would take some time before any reforms to aid the Roma would result in behavioural and attitudinal changes toward this national minority. Thus, there was a *'real chance that harm amounting to persecution could befall the applicants if returned to the Czech Republic'*.

In addition, the court concluded that **the government efforts to change the situation would not protect the applicants in the foreseeable future.**

III.1 'No Meaningful Access to Protection': New Zealand

In New Zealand, a similar case of a Romani woman married to a non-Roma was granted asylum in 1999 on ground of race when the court held that they had **no meaningful access to protection** (71253/99 (8-07-99)). Although her husband was not a Rom, the court held that he was perceived as Rom by persecutors, and "race is not to be construed narrowly."

Persecution alleged and accepted by the court included sustained discrimination in education and employment, refusal of permission to marry, harassment by local authorities, husband beaten at an anti-Roma rally, tampering with wife's car and attack on husband resulting on chemical burns.

Citing *Refugee Appeal No. 70074/96 Re ELLM* (17 September 1996), the court held that these incidents rose to the level of persecution threatening their right to live and found **no possibility of meaningful government protection, as well as no reasonable possibility of internal relocation** ("persecution is [] the *sustained*¹⁸⁸ or systemic failure of state protection in relation to one or more of the core human rights entitlements which has been recognized by the international community").

For the same reason (no meaningful access to protection), New Zealand granted asylum to another couple (who made two separate applications) who claimed asylum on the ground of race. The court agreed that they had experienced discrimination in education and employment whilst being attacked and harassed by skinheads (a situation that many Roma can relate to). The police had refused assistance (71168/98 and 71169/98, 14-10-99). Although in this case the court found that discrimination in employment and education does not rise to the level of persecution, it ruled that the skinhead attacks do.

III.2 Protection 'available, adequate, and sufficient' according to IRBC

The Refugee Board of Canada however differed in its appreciation of the situation of the Roma in terms of protection. In one particular case based on ethnicity (*Bubencik v. Canada IMM-2027-98 (05/05/99)*) it concluded that even though protection could have been more effective, it was still 'available, adequate, and sufficient'. There was in the case no 'clear and convincing' evidence that it was otherwise.

Other recent cases in Canada show a trend of refusal to grant asylum to citizens from the Czech Republic, although in two particular cases (Mitac

¹⁸⁸ Emphasis in original text.

v.Canada IMM-5988-98 (13/09/99) and Pluhar v.Canada IMM-5334-98 (27/08/99)), the decision to deny asylum was reversed when the court held that one cannot use physical features of applicant as a basis to deny asylum. In Pluhar v.Canada, it was found that the Board erred in relying on its own perception of the applicant's physical features (her skin tone) to determine that she was not Roma. At the same time, her testimony was ignored.

Even in **New Zealand**, despite some positive decisions, there seems to be inconsistency in some of the decisions taken in court. A Romani woman who claimed history of discrimination, harassment, and 10-20 physical attacks was denied asylum in New Zealand because the court ruled that the events did not rise to level of persecution (71163/98, 31-03-99).

III.3 Meaning of Persecution and State Protection in the Czech Republic: UK examples

More recently in the UK, the Court of Appeal reversed a decision of the IAT on one case (*Katrinak v. Secretary of State*, [2001] EWCA CIV 832 (10 May 2001)) noting that it failed to address two key issues: (1) whether the experiences of the applicant would amount to persecution if perpetrated by the state; and (2) the sufficiency of state protection. Moreover, the IAT did not allow the applicant to present his case appropriately. The appeal was therefore allowed.

The applicant and his wife, nationals of the Czech Republic claimed asylum on account of their Roma ethnicity/race. The applicant's wife had been attacked by skinheads in a shopping mall while pregnant. As a result their child was born with chronic kidney problems. The applicant reported the attack to the police who were not interested in pursuing the case. Prior to their flight to the UK, the male applicant was attacked by skinheads losing two teeth and sustaining a cut on his face. Again, he reported the attack to the police who would not help because he "had no proof he was beaten." He later saw his attackers at his place of employment and when attempting to seek police help he was told they (the police) had more important things to do.

The special adjudicator denied the claim for asylum stating that one instance of physical abuse upon the applicant and his wife did not amount to persecution as it was neither persistent nor serious. Moreover, the special adjudicator found insufficient evidence of the state's inability to protect the claimants.

The IAT dismissed the appeal focusing on the fact that the male applicant had only suffered one attack in 29 years and, although acknowledging the event was "regrettable," it held that neither the general situation of the Roma in the Czech Republic nor the degree of increase of hostility and

violence were sufficient to support a finding of reasonable likelihood of future persecution.

The Court of Appeal reversed the IAT decision as it noted that they were **at least at some risk of future harm due to the fact that they were still Roma, that there was no evidence of changes in attitudes of the majority of the Czech population toward the Roma, and that the focus on the one attack upon the male claimant disregarded the effect the attack on his wife had on him** (it is possible to persecute a members of a family by what it is done to other members). Finally, the court noted the point that there was no clear finding **as to whether the police inaction was due to 'lack of evidence or lack of will'**.

Another case (*Harakel v. SSHD C/2000/3901*) which was recently brought to the Court of Appeal highlighted the **issues around state protection**.¹⁸⁹

The appellant who arrived in the UK in 1998 with his family was refused asylum in 1999. His appeal against the directions for removal was allowed by a special adjudicator who accepted his account of persecution and lack of state protection. However, the SoS appealed against this decision to the Immigration Appeal Tribunal on the basis that Mr Harakel had not used '*all reasonable avenues of recourse to national protection*' and was successful. The appellant appealed to the Court of Appeal.

The appeal raised the following question: '*in what circumstances serious violence or ill treatment by non-state agents – in this case the skinheads – can amount to persecution entitling the victim to the protection of the Convention.*'

Background¹⁹⁰

The applicant and his family had been subjected to discrimination and abuse for many years and in 1998 were subjected to serious physical assaults by skinheads (in addition to threats to the safety of his family and his property and theft of his property). Although he had sought police protection, there had been no response from the police, or no will to provide protection partly because, according to the appellant, some members of the local police were themselves skinheads. As a result, he had not reported all the incidents to the local police and did not pursue those he had reported either with the local police or another authority. However when his son who had also been subjected to bullying and racist abuse at school was threatened with abduction by a skinhead during an attack on the appellant's house, he reported the incident to the police.

¹⁸⁹ Information for this case drawn from abstract from Patrick Lewis (13 June 2001), Determination and Reasons from the IAT (Appeal No. CC-51316-99 (OOTHHO2552) and the Judgment of the Court of Appeal, No.C/2000/3901.

¹⁹⁰ His wife is not a Roma.

However, he was not given any report or advice of what further action to take. Feeling that he could not rely on the police for his family's safety, he decided to leave the Czech Republic.

His evidence with regard to lack of protection was supported by that of an expert, Dr Chirico (a Fellow of the Department of Eastern European Language and Culture at the School of Slavonic and eastern European Studies), according to whom **Czech police were either sympathetic to the skinhead movement or directly involved with it**. Also, another expert, a Czech lawyer, Clara Samkova, confirmed that there was **no effective remedy against a failure by the local police to properly investigate incidents of verbal or physical violence (see also below)**.

The Court of Appeal referred first to Lord Hope's statement in Horvath v Secretary of State for the Home Department [2000] according to which: *'the standard to be applied [in terms of state protection] is not that which would eliminate all risk. Rather it is a practical standard which takes proper account of the duty which the state owes to all its own nationals'*. Then they cited Mr Justice Collins, as the President of the Immigration Appeal Tribunal, in Secretary of State for the Home Department v Havlicek (IAT, 18/04/2001), who in addition stated: *'However, the state can only provide the necessary protection through its agents, in this case the police. If the police are unwilling to act when they should and there is no means of making them do their duty, there may be shown an inability to provide the necessary protection'*.¹⁹¹

The Court of Appeal found that in this case, police protection had not been effective and that the discrimination and violence against the appellant amounted to persecution. The Court of Appeal restored the adjudicator's decision.

¹⁹¹ SoS for the Home Department v Havlicek, par.11 quoted by Lord Justice Latham, in Harakel v SoS for the Home Department, par.15.

Conclusion

Three years on, the conclusion of the court in RRT-N97/20303 (**3-12-98**, Australia) according to which government's attempts to change the situation will not protect Roma in the foreseeable future, is consistent with the evidence we gathered in this report.

Lack of protection from racism and xenophobia, including social discrimination, for minorities and the Roma, has in fact been regularly documented by a number of international institutions and bodies, including the recent Open Society Institute's report on the protection of minorities (October 2001) and the UN Committee for the Elimination of Racism and Discrimination's reports.

Romani women are particularly vulnerable: as OMCT puts it, *'their gender makes them much more vulnerable to torture and other forms of violence'*.¹⁹²

In this context, the protection of Romani women against violence is almost inexistent. This is because racially motivated crimes are not adequately dealt with by the authorities but also because of a state failure to provide adequate and meaningful protection to Czech women victims of domestic violence and other forms of gender abuse: there is no reason to believe that Romani women would benefit from a more *'favourable'* treatment from police investigators. And racism will undoubtedly play another part in police *'unwillingness'* to investigate violence against women if these women are Roma.

It is therefore hard to conceive how Romani women could have practical recourse to the authorities for protection or to justice for redress. It is likely that the state's failure to protect them is instrumental in many Romani women's decision not to report abuse against them in the first place. In addition, as explained in **Section I**, cultural beliefs and/or taboos can further influence this decision.

Yet, as the United Nations Development Fund for Women stresses, *'it is precisely these women who have the least access to mechanisms for justice'*,¹⁹³ and therefore protection.

¹⁹² OMCT, op. cit., July 2001.

¹⁹³ UNIFEM, *'Race, Ethnicity and Violence Against Women'*, 2001, 4p., available online at www.unifem.undp.org/racism/issue_vaw.pdf (also in html version).

Annex: Trends in Asylum Application

The UK refuses to admit that racial prejudice and violence that Roma people suffer in the Czech Republic amounts to persecution (as the number of rejections suggests). Yet the Czech Minister of Interior admitted that Roma refugees '*were right when justifying applications for asylum abroad by saying they are persecuted by skinheads*'.¹⁹⁴

Trends in Asylum Application

It is not possible to determine with certainty how many of the Czech nationals who applied for asylum in the UK and elsewhere are Roma or of other ethnicity as statistics only record the nationality of the claimant. It is likely however, given the situation in the Czech Republic as far as minorities are concerned and Roma in particular, that the great majority of applicants are Roma.

In 1996 they were 55 applications, rising to 240 in 1997 and 515 in 1998. In absolute terms, from 1997 to 1998 there was a 115% increase in asylum claims¹⁹⁵ (240 in 1997 and 515 in 1998). This number rose again to 1,790 in 1999 (247% increase) and decreased to 1,200 in 2000. The great majority of applicants applied at port (96% over the four year period).

In comparison, there were 29,645 asylum applications in the UK in 1996, 46,015 in 1998 and 72,155 in 1999.¹⁹⁶ Thus, in 1999 for instance, applications from Czech nationals represented only 2.48% of total asylum applications in the UK.

UK in comparison of the rest of the world Although the UK received almost 69% of total asylum applications in the world from the Czech Republic in 1999, this proportion dropped to 42.50% in 2000 (In 1999, the number of claims from the Czech Republic totalled 2,599 worldwide and rose to 2,822 in 2000).¹⁹⁷

This proportion is likely to have decreased further with the introduction of discriminatory measures targeted at Roma from the Czech Republic such as the posting of British Immigration officers at Prague Airport in summer 2001.

¹⁹⁴ Grohová, J. (1999) quoted by Guy, W., 'The Czech lands and Slovakia...', op. cit., p. 302.

¹⁹⁵ The great majority of these applicants are believed to be Roma, although a breakdown per ethnic group is not available.

¹⁹⁶ Home Office, 'Asylum statistics in the United Kingdom 1999', 12 October 2000. All figures exclude dependents. At www.homeoffice.gov.uk/.

¹⁹⁷ Source: UNHCR, 'Trends in asylum decisions in 38 countries, 1999-2000', Geneva, 22 June 2001, pp.12 & 14/46, at www.unhcr.ch/.

The officers were literally screening Roma preventing them to board on planes to the UK, *de facto* racially discriminating against Roma and breaching their rights to seek asylum and to be treated on an individual basis.¹⁹⁸

Trends on decisions in the UK compared to the rest of the world

There was no positive decision on cases from the Czech Republic in 1997 and 1998 in the UK. 1 or 2 cases were granted asylum in 1999 and 10 in 2000.¹⁹⁹ A similar number received exceptional leave to remain.²⁰⁰ This means that over 99% of claims from the Czech Republic were denied asylum at any time between 1997 and 2000 (in 2000, 11% of total claims in the UK were granted asylum at first instance and 12% Exceptional Leave to Remain).²⁰¹

This compares with 14.6% being granted refugee status worldwide in 1999, 0.1% receiving humanitarian status, and 49% rejected.²⁰² The rate of refusal in 2000 was 71% whilst only 5% of cases were granted refugee status (88 cases) or humanitarian status (7 cases). Given the proportion of asylum claims being processed in the UK, there is no doubt that the UK refusal rates play a major role in the high level of refusals worldwide.

This summary overview of the current trends in applications and decisions demonstrate that very few asylum seekers from the Czech Republic – the great majority of whom are believed to be Roma - are given protection in the UK.

This applies equally to Czech Romani women, whether as principal claimants or dependents on an asylum claim. Yet, as examples of case law in the UK and worldwide demonstrate, that does not mean that Roma do not suffer from persecution in the Czech Republic. In fact, the UK government cannot be unaware of the widespread racial discrimination suffered by Roma in the Czech Republic as the 'Know How Fund' of the British Embassy is one of the main funders of the Counselling Centre for Citizenship/Civil and Human Rights whose main focus is on issues relating to the situation of Roma in the country and to monitor the observance of human rights as guaranteed by International and national provisions.²⁰³

¹⁹⁸ Despite official denials from the British authorities, the nature of the scheme was disclosed by two undercover Roma journalists, one dark skinned and one light skinned. The incidents was widely covered by the Press in the UK and the Czech Republic. See in particular 'Bogus Czechs' in *Travellers Times*, Issue 12, October 2001.

¹⁹⁹ Home Office, 'Asylum statistics in the United Kingdom 1999', op.cit.

²⁰⁰ Home Office, 'Asylum statistics in the United Kingdom 2000', at www.homeoffice.gov.uk/

²⁰¹ Figures on successful appeals were not available at the time of printing.

²⁰² Source: UNHCR, op. cit., p.12-14/46.

²⁰³ CCC/CHR, 'Comments to the Report of the Czech Republic on Performance of the Obligations...', op. cit., p. 2.

ROMANI WOMEN IN POLAND

Introduction

Poland is one of a number of countries from where the Home Office judges that Roma have no basis for seeking asylum.¹ This means that even before their claim is considered, Polish asylum seekers are deemed not to have a ground for asylum. Despite this, over three thousands Polish have sought asylum worldwide in the last couple of years, the great majority of whom are believed to be Roma.² Roma are further discriminated by Home Office policy following a ministerial authorisation dated 23rd April 2001 requiring that '*British officials specifically subject certain groups "to a more rigorous examination than other persons in the same circumstances" upon arrival at a U.K. border*'.³

This report is an update of the situation faced by Roma with a particular focus on Polish Romani women. The report highlights some of the issues faced by Romani women but it does not intend to be exhaustive. First, many of the issues affecting Roma in general have been thoroughly detailed in other reports which are quoted in this study. Also, and unfortunately, most of the contemporary research on women's rights in Central and Eastern Europe fails to document the gendered experience of persecution for women belonging to minority groups such as the Roma. Lack of information on the specific predicament faced by Romani women as members of a minority group and as women within a minority group means that much more needs to be done to provide a full picture of the abuses suffered by Romani women.⁴ There is therefore a burning need to '*bridge the information gap*' in this field too and it is hoped that the report will trigger interest in taking on such a challenge.

This report only intends to draw attention to some of the experiences Romani women may face when confronted by racist violence (PART I). This includes a review of the obstacles they face when seeking protection from

¹ Official guidelines on Poland read '*The harassment and discrimination experienced by most Roma will not amount to persecution within the terms of the 1951 UN Convention. The threshold may however, be passed in individual cases*', Home Office, '*Operational guidance: Poland*', February 2001, p.3 of 3.

² As with all countries, it is not possible to distinguish between Roma asylum seekers from Poland and other Polish citizens as asylum data are not broken down per ethnicity.

³ European Roma Rights Center (ERRC), *Roma Rights*, Number 2/3, 2001, www.errc.org/rr_nr2-3_2001/snap11.shtml.

The authorisation, signed by the then-Minister Barbara Roche, targets in particular Malaysian and Japanese passport holders of Chinese origin as well as Afghans, Albanians, Kurds, Malians, Pontic Greeks, Somalis and Tamils.

⁴ Information on women's rights violations experienced within the Polish Roma communities is currently not available (in English and probably not in other languages too).

racist crimes (PART I) but also other forms of violence against women (PART II) as there is evidence that some of the racist attacks against Romani women include sexual assaults. Other forms of racist violence and how they may affect Romani women are also mentioned.

Racism in the form of social discrimination against Romani women is not covered here in detail due to a lack of information.

As the information is also lacking on the subject, this report does not include information on any form of domestic violence against Romani women in Poland.

PART I ROMA WOMEN'S EXPERIENCE OF RACISM AND XENOPHOBIA

I.1 Background

I.1.1 Roma in Poland There are currently no accurate figures on Roma (and indeed other minorities) in Poland as there has not been a national census since World War II.⁵ The Roma population is estimated to be between 15,000 and 50,000, depending on sources.⁶ According to the largest estimates, Roma would represent 0.13% of the Polish population of 38 million (also an estimate) which is one of the countries with the lowest percentages of minorities in Europe.⁷

The Roma community in Poland is extremely diverse socially. The Polska Roma are natives of Poland and live in the lowland. Kalderash and Lovari – whom the Polska Roma perceive as ‘foreigners’ – have similar lifestyle (the Kalderash are very wealthy whilst the Lovari see themselves as Roma aristocrats).⁸ The Bergitka are also known as ‘Highland Roma’ and live in the Carpathians and Tatra regions. Unskilled, they are extremely poor and it is reported that they are regarded as ‘inferior’ by other Roma.⁹ The Bergitka and other groups do not mix.

Geographically, Roma are also scattered. According to Lech Mróz, they mainly *‘inhabit large towns in central and western Poland. Only the Carpathian Roma live in villages and small towns in the mountains of southern Poland, although some Polska Roma also live in rural areas (...). The other groups are intermingled and dispersed, not occupying particular areas.’*¹⁰

In addition, a number of Roma have emigrated to Poland from other countries, in particular the Balkans and Romania. They have little or no contact with Polish Roma, and are particularly deprived, especially as they

⁵ The next census is planned for May 2002. See Open Society Institute (OSI), ‘Minority Protection in Poland’, October 2001, pp. 349 and 383.

⁶ The government estimates that there are about 30,000-35,000 Roma in Poland. See Ministry of Internal Affairs and Administration, ‘Pilot Government Programme for the Roma Community in the Malopolska Province for the Years 2001-2003’, Warsaw, February 2001, 19p., p. 3.

⁷ Minorities are estimated to represent in total 2.5% to 3% of the total population. See European Commission Against Racism and Intolerance (hereinafter ECRI), ‘Second Report on Poland adopted on 10 December 1999’, Strasbourg, 27 June 2000, para.51 & 54. The report is available at www.ecri.coe.int/

⁸ See Immigration and Nationality Directorate (IND), ‘Poland Country Assessment’, 3 February 2000 at www.asylumlaw.org/docs/poland/ind99b_Poland_ca.thm.

⁹ Ministry of Internal Affairs and Administration, op. cit., p.13.

¹⁰ Mróz, L. ‘Poland: the clash of tradition and modernity’, in Guy, W. (edit.), ‘Between Past and future: The Roma of Central and Eastern Europe’, University of Hertfordshire Press, Hertfordshire, 2001, p. 262.

don't speak Polish and find hard to get a job.¹¹ Their deprivation is also linked to the discrimination they suffer especially in terms of access to social services.

I.1.2 General public opinion towards Roma As reported by the Immigration and Nationality Directorate (Home Office), despite their low number, there is a strong anti-Roma prejudice in Poland.¹² Already Donald Kenrick, an academic and expert on Roma issues, reports: '*a 1994 poll in Poland showed that Romanians and Gypsies were the people most disliked by Poles*'.¹³

Another poll conducted in November 2000 suggest that general public opinion towards Roma (as well as other nationalities) has remained unaltered: 64 percent of respondents displayed negative attitudes towards them.¹⁴

ECRI also notes that: '*Poland remains a society in which the issues of racism, xenophobia, anti-Semitism and intolerance are still relatively unacknowledged (...). The general attitude of society seems rather closed towards difference, and feelings of anti-Semitism remain pervasive*'.¹⁵

A handful of mainstream political parties have reportedly admitted extreme right wing activists into their ranks and advocated nationalist discourses.¹⁶ At the same time, racism and discrimination do not attract interest from other parties or are not deemed important enough to be mentioned in their political discourses.

ECRI has urged the government to take on the issue of awareness raising among the general population, both through formal and informal education.

I.1.3 Minorities rights Poland is signatory to major international legal instruments relevant to the protection of minorities, including the *International Covenant on Civil and Political Rights*, the *Convention for the Protection of Human Rights and Fundamental Freedoms* and the *International Convention on the Elimination of All Forms of Racial*

¹¹ For more details on the living conditions of these Roma, see Mróz, L., op. cit., in Guy, W., (edit.) op. cit., pp. 263-264.

¹² IND, op.cit.

¹³ Kenrick, D., expert opinion report, Asylum Aid sources.

¹⁴ 63 percent also displayed negative attitudes towards Romanians (it is not clear whether this figure include or exclude Roma people from Romania), whilst over 50% expressed negative opinions about Russians, Ukrainians and Belarussians and 49% about Jews. US State Department Report, '*Poland Country Reports on Human Rights Practices – 2000*', February 2001, p.13 of 18, at www.state.gov/.

¹⁵ ECRI, op. cit., para. 51 & 54.

¹⁶ ECRI, ibid., para. 55.

Discrimination. The Constitution provides that international human rights treaties are binding and take precedence over domestic law.

In addition to Article 32 (see above), Article 35 of the Constitution refers to the freedom of national or ethnic minorities to maintain and develop their own language and culture.¹⁷

Poland also recently ratified the *Council of Europe Framework Convention for the Protection of National Minorities* (November 2000).¹⁸ The Ministry of Interior Affairs and Administration notes that it is '*worth emphasising that the Roma community is treated in Poland as a national and ethnic minority, and as such it is entitled to receive full protection and assistance from the state in accordance with international agreements signed by Poland and its national legislation (including the Constitution...)*'.¹⁹

There is also provision in the 1997 Penal Code (or Criminal Code) for punishment in cases of violence against a group of people or a person on the basis of '*nation, ethnicity, or race*'.²⁰ Article 257 of the Criminal Code punishes the '*public insult of a group or person because of their national, ethnic, racial, or religious affiliation*' and Article 256 prohibits and punishes the '*incitation to hatred based on national, ethnic, racial, or religious differences*' and '*the public propagation of fascist or totalitarian systems of state*'.²¹

In addition, anyone who considers that their rights have been violated can file a complaint with the Office of the Commissioner for Civil Rights Protection (Ombudsman).

1.1.4 Racially motivated crimes

'The only good Gypsy is a dead Gypsy'²²

Despite their very low numbers, and according to the Polish government, '*Roma are the national minority which is most exposed to racist attacks (... because of different skin shade or lifestyle)*'.²³

¹⁷ ECRI, *ibid.*, p. 3.

¹⁸ Ministry of Internal Affairs and Administration, *op. cit.*

¹⁹ Ministry of Internal Affairs and Administration, *ibid.*, p.4.

²⁰ The Penal Code came into force in September 1998. See Penal Code of 6 June 1997, Art. 119, (unofficial translation) quoted by OSI, *op. cit.*, p. 363.

²¹ ECRI, *ibid.*

²² Reported statement of three skinheads suspected of an arson attack on several Roma houses. Quoted by OSI, *op. cit.*, p. 364.

²³ Ministry of Internal Affairs and Administration, *op. cit.*, p.15.

However, there is a lack of recognition of the racist nature of the crimes and therefore a lack of acknowledgement of the extent of the problem . The government states that *'Roma are not frequent victims of crimes'*.²⁴ In its December 1999 report, ECRI also states that *'violent attacks on visible minorities are not common; however incidents of verbal harassment occur'*.²⁵

On the other hand, the European Commission also warns that *'many cases of racist attacks and violence may not be considered as such by the authorities'*, highlighting one of the major problems in relation to the investigation of these crimes. This position is reflected in the government's response to ECRI's second report on Poland, when it states: *'police statistical sources confirm incidental occurrences of crimes against people of Asian and African origin as well as representatives of Polish Roma. It is difficult to determine, however, whether the offences were racially motivated'*.²⁶

Then it goes on: *'Investigations generally indicate the hooligan nature of such offences. (...) A breeding ground for misdemeanours or felonies are conflicts with local communities or incidental acts of a hooligan nature which may affect Polish citizens or white aliens to the same degree'*.

In fact, the Open Society Institute notes that *'racially motivated violence continues to be one of the biggest problems faced by the Roma community in Poland. Fifteen such incidents were reported by NGOs and Roma Associations during 1999 and 2000, and the actual figure may be considerably higher given the reluctance of many Roma to report violence, which is rarely sanctioned.'*²⁷

The attacks are on the rise in concordance with a rise in *'white supremacist ideology'* and a number of organised groups of skinheads are said to actively *'seek out Romani families and individuals for harassment, intimidation and violent assault'*.²⁸

1.2 Romani women's experience of racist crimes

1.2.1 Violation of their right to safety Many Polish Romani women are affected by racist violence both outside of and in their homes: OSI reports the case of a mother of seven who was forcibly removed from her home with her family in June 2000. The family was moved to a small suburban

²⁴ Ministry of Internal Affairs and Administration, *ibid.*

²⁵ ECRI, *op. cit.*, para. 43.

²⁶ Appendix to ECRI Second Report on Poland, *'Observations provided by the Polish authorities concerning ECRI's report on Poland'*, June 2000.

²⁷ OSI, *op. cit.*, p. 363.

²⁸ OSI, *ibid.*

location. Two months later, a group of about 20 Polish youths gathered in front of her flat, shouting abuses and threatening to kill the family. One of the sons who attempted to call the police from a public phone box was beaten by 4 other youths. At the end of August, a number of attackers broke into the flat using an axe, and subsequently severely injured several members of the family. The mother was hospitalised.

On 27 August 2000, a Romany woman in Tarnow was attacked in her home with an axe by two men wearing masks. She believed they were skinheads. She suffered serious injuries and needed hospitalisation. Police detained two suspects but were reportedly unable to proceed with the case for lack of evidence.²⁹

RWRP attended a workshop in June 2001 during which Polish Romani women testified of how the fear of racist attacks or the actual physical attacks led them to leave their country.³⁰ They said they had everything they needed, money and a house they loved, but they just did not feel secure enough even in their own homes to stay on. Most of the women who testified were elderly and had spent most of their lives in Poland.

1.2.2 Sexual abuses in the context of Racism Although physical attacks against Roma are reported to be rare, we have come across some appalling examples of such attacks in the course of this research: Albeit very limited, these examples suggest extreme levels of violence against women that include rape, and often gang-rape.

One barrister told RWRP about the case of 'K', a Romani women gang-raped in a forest by racist thugs. Despite reporting the incident to the police, she was turned away and no forensic investigation was conducted at the location of the crime.³¹ A solicitor firm mentioned the case of a woman who had also been raped in her own home when it was broken into by three assailants.³² Her family had been subjected to a number of attacks but did not find adequate protection from the police who also failed to investigate the case.

Crossroads Women Centre relates the case of a woman whose family experienced many years of racism and abuse because of their Roma

²⁹ The case was reported by the Tarnow-based *Cultural Centre of Roma in Poland* and quoted by the Home Office Country information report on Poland (para.6.68), April 2001.

³⁰ The testimonies were given during a workshop on the situation of Polish Roma held on 25 June 2001 during the East London Refugee Conference 'Crossing Borders and Boundaries' organised by Social Action for Health.

³¹ Her account was accepted and the Immigration Appeal Tribunal also accepted that she had been persecuted (she had suffered serious harm and been denied the protection she sought) in her locality.

³² RWRP/Asylum Aid's correspondence, 9 August 2001.

ethnicity. The woman was gang-raped when she was a teenager and also injured in another racist attack. Her daughter was racially abused at school.³³ Another woman had fled to the UK after her daughter was also gang-raped when she was 12.

Despite the gravity of such crimes, many cases of sexual violence against Romani women will remain unreported or not investigated (see also sections on sexual abuses and police protection below). Besides feelings of guilt and shame that can affect anyone subjected to sexual assault, sexual matters are extremely taboo amongst Roma people.³⁴ These factors can impact on Romani women's willingness to go to the police or to disclose such attacks to the police. In addition, Romani women may not trust the authorities to support and help them to get justice as they may have been or may have known Roma to have been subjected to mistreatment by the authorities.

Lastly, there may be another strong factor, which is a mistrust of the legal system to deal with such crimes or any crimes for that matter (see below).

1.2.3 The impact on Romani women's mental health Beyond anecdotal instances, it is currently not known to what extent Romani women have been affected by the climate of racial hatred in which they live as the psychological impact of such violence against Roma on Romani women in particular has not yet been measured.³⁵ Yet whether their family is attacked in the intimacy of their homes or their children bullied and beaten at school, or merely the fear of being assaulted in any such circumstances, the anxiety and trauma caused must have a tremendous effect on Romani women's mental health.³⁶

One man who sought asylum in the UK reported how his wife and daughter were attacked in their home on different occasions whilst he was away travelling for work. Most of the attacks occurred in the evening and his wife was terrified.

Sylvia Ingmire, of the Romany Support Group, suggested that a great majority of Romani women from Central and Eastern Europe would need psychological support in the form of trauma counselling.³⁷

³³ Account reported in www.ncadc.org.uk/letters/news24/rape.html

³⁴ For more details, see **Section I**.

³⁵ A directly related research is the Council of Europe on-going study on Romani women's access to mental health in Eastern and Western Europe. See below.

³⁶ The mental health consequences of violence against women can include depression, fear, anxiety, low self-esteem, sexual dysfunction, eating and sleeping disorders, obsessive-compulsive disorder, post-traumatic stress disorder or suicide. See UNICEF, 'Women in Transition', 1999, Chapter 5 (p.3 of 16), at:

<http://eurochild.gla.ac.uk/documents/monee/pdf/money6/chap-5.pdf>

³⁷ Interview with RWRP/Asylum Aid, 3rd September 2001.

The Council of Europe is currently undertaking research on access to mental health for Romani women in both Western and Eastern Europe. It is hoped that the research will provide more information – even if limited - on the extent of mental health problems suffered by Romani women and the roots of the problems.³⁸

1.2.4 Brief overview of Social discrimination In addition to physical assault, Roma and Romani women in particular face discrimination on a daily basis through access to social and welfare services, such as education, employment, housing, medical support, or protection from the authorities, but also any other mainstream services such as access to restaurant or bank services (for instance, a bank was reported to have instructed its branches not to provide credit to Roma customers³⁹).

There is no current data available to document such discrimination but one of the problems is that when discrimination occurs, it is rarely acknowledged that it occurs on ethnic grounds.⁴⁰

Employment and Education Levels of unemployment amongst Roma are disproportionately high, especially amongst the Bergitka.⁴¹ Amongst the reasons provided, the government states that it results from '*the passive approach taken by Roma themselves [who] are reluctant to or do not enrol in retraining courses organised by district labour offices*'.⁴² The discrimination that Roma may face in employment or even in enrolling in such training courses is not seen as a possibility. Low education level is also mentioned as one of the roots of the problem – along with a lack of command of the Polish language.

Lech Mróz estimates that the lack of education is one of the most serious problems that affect Polish Roma today. He notes that the Polish authorities still do not know how to educate Roma children.⁴³ The government specifies that '*parents underestimate the role of education at a later stage of life and treat school as a repressive institution and as a threat to the*

³⁸ The research, conducted by Anna Pomykala, is not expected to be published before Summer 2002.

³⁹ ECRI, op. cit., para. 59.

⁴⁰ OSI writes: '*there is no systematic government monitoring of discrimination against Roma or other minorities and few official measures to encourage awareness of racism in the general public or among law enforcement officials. The Ombudsman 's Office has limited competence and authority to enforce and promote anti-discrimination norms. The establishment of an independent body capable of providing legal assistance to victims of discrimination, in line with the requirements of the Race Directive, is necessary*'; op. cit., p. 352.

⁴¹ Also this will not apply to all Roma (see paragraph on Background, **PART I**).

⁴² Ministry of Internal Affairs and Administration, op. cit., p.12.

⁴³ Mróz, L., op. cit., in Guy, W. (edit), op. cit., pp. 264-265.

Roma identity'.⁴⁴ On the other hand, it recognizes that a lack of funds to pay for pre-primary education means that Roma children are usually not enrolled at nursery level.

Roma from urban areas, mixed marriages or well-off families are more likely to complete primary education, go on to secondary education and for a few, even to college or university. These are generally a minority among Roma people.

Despite the lack of statistical data on the subject (hence preventing the situation from being monitored), ECRI reports that '*Roma/Gypsy children face particular disadvantage and most do not even complete primary school*'.⁴⁵ On the other hand, some schools have introduced '*preparatory classes*' for Roma children only, on the basis that Roma children are usually behind their Polish schoolmates when starting school, due to their families' economic background, their parent's illiteracy and the language barrier.⁴⁶

As women are particularly discriminated against in employment in Poland, it is very likely that Romani women will suffer from '*double*' discrimination. The lack of employment opportunities may in turn have an influence on the opportunities available to their children.

Discrimination in the provision of health services and housing can constitute a particular problem for Romani women, for instance if they are pregnant, single mothers, unemployed, etc. The government reports for instance that there is '*no tradition to monitor pregnancy among Roma women [and] prenatal care is non-existent among Roma*'.

At the moment, there are no provisions in the law to protect Polish citizens from discrimination in access to health care and housing on grounds of race/ethnicity.⁴⁷

According to one source, Roma suffer from a number of diseases that are not found amongst the Polish population at large. Discrimination in the provision of housing means that many Roma are living in very poor conditions (including lack of access to running water, lack of sewage systems or heating commodities) which have a direct impact on the health problems they faced. Also social deprivation means that many Roma cannot afford health insurance thus limiting their access to medical care. Life expectancy in one particular area, the Malopolska province (where

⁴⁴ Ministry of Internal Affairs and Administration, op. cit., p.9.

⁴⁵ ECRI, op. cit., para. 37

⁴⁶ ECRI, ibid.

⁴⁷ Along with education, racial discrimination in the provision of housing is said to be one of the biggest problems faced by Polish Roma. See OSI, ' ', op. cit., pp. 356-358.

Roma are particularly deprived and living in poor health conditions), is 55 years old (as opposed to 73.1 nationally).⁴⁸

Social discrimination is also evident in the experience of **mixed marriages**. Donald Kenrick has written that '*Partners in mixed marriages have special problems as they are generally not accepted by the majority community. I interviewed an ex-army officer with a Gypsy wife. Because of continued insults from fellow officers he was forced to quit the army. I have also seen reports of another case where a Polish woman married to a Gypsy was called a 'Gypsy whore' and attacked in her home. These couples have the additional problem that they may not get support from the family of the Romany partner.*'⁴⁹

I.3 Police protection

I.3.1 No adequate protection Police are often criticized for providing a slow response to racially motivated crimes against Roma (or black students) and for failing to conduct adequate investigations into such crimes.⁵⁰ It is reported that on various occasions, police fail to recognize the nature of such crimes, and as a result, no adequate investigation is conducted, rendering it impossible to prosecute the perpetrators.⁵¹

On one occasion, local police accused Roma of enacting '*bogus attacks*' on themselves by spraying racist graffiti on their windows (which were broken during repeated attacks by skinhead groups in December 2000) in order to support their claims for asylum elsewhere.

This is not a problem recognized by the authorities though: According to the Ministry of Interior, '*crimes committed against [Roma] bring a rapid reaction of the Police*'.⁵² Yet, according to the government's own account, there is a discrepancy between what non-governmental and Roma organisations claim to be a '*sluggish*' reaction from the Police and what the Police are actually saying they are doing.⁵³

OSI further reports that the Centre of Roma Culture (in Tarnow) and the Association of the Roma (in Nowy Sacz) have documented in detail a

⁴⁸ According to J.Beasley's report for the British Foundation 'Westminster for Democracy', November 1999, quoted by Ministry of Internal Affairs, '*Pilot government Programme...*', op. cit., p.13. Statistic on life expectancy in Poland found at www.undp.org/hdr2001/back.pdf

⁴⁹ Asylum Aid sources.

⁵⁰ ECRI, op. cit., para. 49.

⁵¹ OSI, op. cit., p. 363.

⁵² Ministry of Internal Affairs and Administration, op. cit., p.15.

⁵³ Ministry of Internal Affairs and Administration, *ibid.*

number of cases where victims have been harassed and intimidated during the investigation process itself.

There is also concern at the treatment at the hands of the police of Roma migrants from Romania.⁵⁴

I.3.2 Disciplinary procedures There is a discrepancy of opinion in terms of what is actually done to combat racism within the police forces or lack of protection in racially motivated crimes.

The government is adamant that '*police officers violating regulations or breaking the law are monitored and subject to disciplinary proceedings*'. The government reports that Roma organisations (who complain about the police's '*sluggish*' reaction to racist crimes) do not file official complaints about the misconduct of individual officers.⁵⁵ Yet, OSI clearly suggests that such a procedure is not currently in place.

Despite provisions in the Penal Code for punishment against racist violence the Open Society Institute notes that '*there are no disciplinary regulations specifically concerning misconduct by law enforcement personnel in cases of racially motivated abuses*'.⁵⁶

I.3.3 Roma mistrust of Police forces The government seems to imply that the main reasons why crimes against Roma are not investigated is the lack of cooperation from Roma themselves, or the fact that such crimes are not reported to the police.⁵⁷ There are no Roma officers among the Police in Poland but the government recognises '*in the long term*' the need to recruit Roma into the police force.⁵⁸

I.3.4 Police training in issues of racism and discrimination There is scant evidence of police training in matters relating to discrimination and racism. ECRI noted in 1999 that there was no clear indication that the police had received any such training, which is somewhat confirmed by the government's response to ECRI's report:

*'Special training designed to sensitise policemen to the problems of racism and intolerance is not conducted, but such instruction is conveyed as part of other training programmes as is the question of tolerance towards religious minorities, sexual minorities, etc.'*⁵⁹

⁵⁴ ECRI, *ibid.*, para. 50.

⁵⁵ Ministry of Internal Affairs and Administration, *ibid.*

⁵⁶ OSI, *op. cit.*, p. 363.

⁵⁷ Ministry of Internal Affairs and Administration, *ibid.*, p.16.

⁵⁸ Ministry of Internal Affairs and Administration, *ibid.*

⁵⁹ Appendix, ECRI, '*Second Report on Poland...*', *op. cit.*

The government also stresses that in 1992 special guidelines 'regulating actions of local police authorities designed to prevent social conflicts of a nationality related and religious nature' were issued by the National Police Commander.

There is however evidence that the police need to be adopt and apply procedures that respect human rights, even if this awareness has been raised in relation to Poland's integration to the European Union, as suggested by the Council of Europe.

In terms of Poland's participation to the European wide programme 'Police and Human Rights 1997-2000', the Council of Europe comments that the first step was taken in 1999 when a guide entitled 'Is your Police Service a Human Rights Champion?' and produced in 1999 by a Joint Informal working Group on Police and Human Rights consisting *inter alia* of senior police officers from all over Europe, was translated into Polish.⁶⁰ The guide is designed to 'allow police officers to assess the extent to which police practices adhere to, and promote, the standards and broader democratic values underlying the European Convention on Human Rights'.

'Poland contributed to the inventory of policing and human rights materials entitled "Promoting Dignity". (...) In November 1999, a workshop on police and human rights was held at the Police High School in Szczytno, to examine the application of European standards to police training. This resulted in the setting up of a network and system of in-country consultancy on training problems and publication of a post-symposium book'.

'In January 2000, a national working group on police and human rights was established. New concepts on internal and external control mechanisms, new recruitment procedures and changes to training have been prepared in consultation with overseas police academies and schools'.

'At the instigation of the Programme, the National Police in co-operation with the Jagiellonian University Human Rights Centre participated in the World Organisation against Torture - Europe (OMCT - Europe) police and human rights study on the reasons why police officers violate human rights. Various seminars were organised with police officers at the sharp end of policing'.

'As a result of the study, a regional conference took place in Krakow in November 2000. Co-organised by the OMCT and the Jagiellonian University Human Rights Centre, the conference brought together more than 50 participants from Central and Eastern European countries to discuss practical solutions to the challenges ahead for police. A workshop followed

⁶⁰ Source www.humanrights.coe.int/police/initiative/poland.html .

the conference at which ideas for police and human rights training in Poland were discussed'.

'As part of Poland's contribution to 'Police and Human Rights Week', the National Coordinator organised a pan-European conference in October 2000 in Legionowo on police and human rights, which was attended by Council of Europe member States and international and national organisations. Special 'Police and Human Rights Week' editions of the Police Journal and the Polish section of the IPA will be edited in December 2000'.

According to the Council of Europe, Poland has also expressed its commitment to participating in the new police programme 'Police and Human Rights - Beyond 2000'.

I.4 Inefficient and inadequate governmental measures

Does the Polish government tackle racial discrimination efficiently? Or is the government wrongly perceived as dealing with the issue?

The problems of racial violence and discrimination, which target predominantly (but not exclusively) Roma, remain largely un-addressed in Poland and have not raised concern at the European Commission. The European Parliament report on Poland's application for membership of the European Union mentions nothing about the Roma minority.⁶¹ Nor was there any reference to Roma in the 'Concluding Observations of the Human Rights Committee on Poland' published on 29 July 1999.⁶²

According to OSI, Polish Roma became the focus of international attention due to the exodus of a number of asylum-seekers to EU member States, particularly the United Kingdom and *'since then, the government has intensified efforts to address the vulnerability of the Roma minority'*.⁶³ Practical measures taken by the government include the ratification of the Framework Convention for the Protection of National Minorities (FCNM) in December 2000, and the adoption, in March 2001, of a *"Pilot Government Programme for the Roma Community in the Malopolska Province for the years 2001 –2003. Focusing on a region where Roma face particularly severe hardship, the Program offers government funding for the joint initiatives of local governments and Roma groups in various spheres, particularly education and employment"*.

⁶¹ Gawronski, J., Committee on Foreign Affairs, Human Rights, Common Security and Defence policy, European Parliament, (COM(1999)509 – C5-0032/2000-1997/2174(COS)), 20 September 2000.

⁶² UN Human Rights Committee, 'Concluding Observations of the Human Rights Committee on Poland. CCPR/C/79/Add.110, 29', 29 July 1999.

⁶³ OSI, op. cit., p. 347.

There is no doubt that the Polish government has taken some very positive measures aiming at improving the situation of Roma in Poland, in particular their socio-economic conditions. The government is reportedly considering the establishment of an official consultative body for decisions affecting Roma. However, and whilst welcoming the implementation of the '*Malopolska programme*', OSI notes that the government has not adopted any legislative or other steps to address racial discrimination against Roma, thus undermining the prospect of dealing with the root of the problem and effectively improving the situation as far as the provision of services and socio-economic opportunities are concerned.⁶⁴

The problem of racial discrimination and persecution against Roma in Poland is also compounded by the fact that they have little or no political representation, and are thus unable to lobby or influence the government on these issues. OSI reports that there are '*no Roma in elected positions among representative bodies at local, municipal or national levels*'.

A lack of legislation relating to racial discrimination means that effectively enforcing respect of Roma's (and other minorities) human rights (in the broad definition of the terms) remain an impossible task at the national level; especially as the monitoring of such violations is currently non-existent in Poland. This is illustrated by the case of the Malopolska Programme itself as OSI points out:

'The implementation of the Malopolska Programme is dependent upon applications from local authorities. However, confronted with strong anti-Roma sentiment on the part of many non-Roma, local officials may be reluctant to present project proposals for fear of losing popular support. Indeed public recognition of –and protection from –racial discrimination and violence are inadequate in Poland. Anti-discrimination legal provisions fall far below the requirements of the EU Race Equality Directive'.⁶⁵

OSI also notes that very few official measures have been introduced in order to raise awareness of racism in the general public or among law enforcement officials. According to the Institute, '*the Ombudsman 's Office has limited competence and authority to enforce and promote anti-discrimination norms. The establishment of an independent body capable of providing legal assistance to victims of discrimination, in line with the requirements of the Race Directive, is necessary*'.⁶⁶

⁶⁴ One justification is that, according to the government itself, "*the Roma problem in Poland, though acute, is of much less intensity than in some other countries [...]*". OSI, *ibid.*

⁶⁵ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. The directive is part of the *acquis communautaire*. See OSI, *ibid.*

⁶⁶ OSI, *ibid.*, p. 348. OSI adds: '*To compound these problems, Roma have little or no political representation of their own in Poland. There are no Roma in elected positions*

Also, by the government's own admission, the problems faced by Roma in Poland are likely to take some time as '*it is necessary to change underlying prejudices*'.⁶⁷

I.5 Asylum Case law: No persecution and No Tolerance of Discrimination

Despite a number of elements indicating evidence of lack of state protection, the courts in the UK and worldwide have usually found that Polish Roma did not have a claim for asylum.

There are very few cases of Polish asylum seekers that have been allowed by Immigration tribunals or courts around the world. In these few cases, both in the UK and elsewhere, the general conclusion is that the harm suffered by the applicant did not amount to persecution which, according to the decision in *Ravichandran and Rajendrakumar v SoS* [1996] Imm AR 97, '*must be at least persistent and serious ill treatment without just cause by the State, or from which the State can provide protection but chooses not to do so*'.⁶⁸ Incidents are not found to rise to the level of persecution and general discriminatory attitudes are not recognized as persecution.⁶⁹ One court accepted that as a 'gypsy', the applicant '*is exposed to certain risks [and] will be discriminated against and treated badly*'.

It is also found that Polish authorities did not tolerate mistreatment of the Roma.⁷⁰ In the UK, the courts referred to the Tribunal decisions of *Markovska* (HX/75505/95) and *Guiral* (HX/63044/96; 15463) that, although acknowledging the existence of harassment and discrimination against gypsies, found that such treatment was not tolerated by the authorities.

The current caselaw should not however preclude Roma individuals - who were failed by the state as far as their rights to safety and protection were concerned - from claiming asylum. The evidence gathered in this report demonstrates that many Roma victims of racist violence do not get adequate protection and access to justice from the police or other judicial authorities. This indicates that the state is unable – if not unwilling - to provide such protection.

among representative bodies at local, municipal or national levels. Non-governmental Roma associations struggle with few resources'.

⁶⁷ IND, op. cit., p. 2 of 6.

⁶⁸ Quoted in *Roszkowski v. Special Adjudicator* [2001] EWCA CIV 650 (9 May 2001).

⁶⁹ *Wackowski v. INS*, 202 F.3rd 276 (Table) (7th Circuit, 1999).

⁷⁰ *Wierzbicki v. Secretary of State* [2001] EWCA CIV 830 (15 March 2001).

PART II ROMANI WOMEN'S RIGHTS IN POLAND: CONTEXT OF ABUSE AND PROTECTION ISSUES

There are currently no specific data on violence against Romani women in Poland, whether abuses are committed by state agents or non-Roma, or by Romani men. RWRP has not found any document relating to domestic violence within the Roma community or to the violations of their rights as women. Generally speaking, there is a need to undertake research on the issues, taking into consideration abuses relating to Romani women as women, as well as, as Roma.

As mentioned in PART I, Polish Romani women have been victims of racist attacks during which their bodily integrity has been violated (not to mention the impact on their mental health). In such circumstances, the question is what sort of support and legal redress can they expect to get from the state authorities and the judicial system in Poland.

There are two major reports on issues relating to violence and abuses of women's rights in Poland: the International Helsinki Federation for Human Rights report (July 2000) and that produced by Urszula Nowakowska, of the Women's Rights Centre, '*Polish women in the 90's*'.⁷¹ The Women's Rights Centre (hereafter WRC) produced a number of studies in 2000, some of which are available in English.⁷²

II.1 General legal provisions in relation to women's rights⁷³

The new constitution adopted by the Republic of Poland in 1997 provides for the principle of gender equality in Art.32 and 33.⁷⁴ However, such principles only apply to public authorities and the government has been criticised for

⁷¹ Nowakowska, U., '*Violence Against Women: Polish Women in the 90's*', 1999, 24p. Unless otherwise stated, the information below is drawn from these two reports. The Women's Rights Centre (hereafter WRC) provides legal and psychological services for battered women and in addition to its office in Warsaw, has recently created branches in various parts of Poland, including Łódź, Częstochowa, Gdańsk, Kraków. Besides the provision of services, the organisation is also an advocate of legislation changes and plays a major role in lobbying the Parliament and the government for a better protection and promotion of women's rights in Poland. See also WRC, '*Progress Report 2000 – Detailed information about the WRC's Programs and Activities*', at <http://free.ngo.pl/temida/activities.htm> .

⁷² WRC, *ibid*.

⁷³ A detailed analysis of women's status in Poland can be found in Martynovicz, A., '*A perspective on the women status in Poland – Paper prepared for the conference "Obstacles to the Advancement of Women's Human Rights – A Regional Approach"*', Polish Helsinki Committee, Sarajevo, 14-15 April 2000.

⁷⁴ Art. 32.1 'Everyone shall be equal before the law...', Art.32.2 'No one can be discriminated against in political, social or economic life on any grounds'; Art.33.1.: 'Women and men (...) have equal rights in the family, political, social and economic life. For full details of the Polish Constitution in English, see www.sejm.gov.pl/english/konstytucja/kon1.htm . For an overview of the Polish legal system and resources on the web, see Rakowski, Piotr and Rybicki, Robert, '*An Overview of Polish Law*', 15 May 2000, at www.llrx.com/features/polish.htm

failing to take adequate steps to eliminate discrimination against women, in line with its obligations as a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁷⁵

Gender inequality was also the subject of stern criticism from the UN Human Rights Committee when it produced its report in July 1999: In particular, it notes '*the numerous forms of discrimination against women, both in Polish society and in the national legal system [and that Poland] devoted very little attention to the issue of gender equality*'.⁷⁶

In this context, it is not surprising to find that there are major issues to resolve in terms of protection of women against violence in Poland, as we shall see below.

II.2 Domestic Violence

II.2.1 Prevalence The Women's Rights Centre (hereafter WRC) reports that domestic violence crimes constitute the third most reported crimes in Poland, after crimes against property and murders/killings.⁷⁷ Yet, as mentioned before there is to date no specific data available on domestic violence amongst Polish Roma. The only data available are the statistics produced by the police and the Ministry of Justice which are not broken down according to ethnicity.

In the first three quarters of 1999, the police recorded 39,182 women victims of domestic violence);⁷⁸ the number recorded by police in 2000 is 23,147. 200 murders per year are also attributed to domestic violence.⁷⁹ However even such statistics are not systematically collected or at least not in a consistent way. For instance, the police are not required to register cases that have been dismissed due to lack of evidence or cases of women who have withdrawn their statement for fear of reprisal. Also, in addition to feelings of shame, many women may not be aware of what constitutes domestic violence and would not report it to the police.⁸⁰

As a result of all these factors, it is believed that the incidence of domestic violence may be much higher than the figures suggest and a more

⁷⁵ Poland ratified CEDAW in July 1980, see International Helsinki Federation for Human Rights, '*Women 2000, An investigation into the Status of Women's rights in Central and Eastern Europe and the Newly Independent States*', July 2000, p. 320.

⁷⁶ UN Human Rights Committee, *op. cit.*

⁷⁷ WRC, '*Domestic Violence Against Women and Children*', Warsaw 2000 at <http://free.ngo.pl/temida/>. WRC works to ensure that women victims of violence are protected under Polish law.

⁷⁸ IHFHR, *op. cit.*, p. 336.

⁷⁹ WRC, *ibid.*, p.18 of 26.

⁸⁰ Nowakowska U., *op. cit.*, p. 5.

accurate picture on the prevalence of the problem countrywide is yet to be produced.⁸¹

II.2.2 Social context According to Urszula Nowakowska, Director of WRC in Warsaw, *'violence against women [in Poland] remains hidden and surrounded by taboos'*, in particular in small villages and towns where it is very common. Domestic violence is also prevalent in large cities.⁸²

A study conducted between 1993 and 1996 by the Public Opinion Research Centre (CBOS) based on a representative sample of 1087 adult married women found that about half of the respondents were frequently abused by their husbands.⁸³ Another half said they were *'battered sporadically during the relationship'* whilst 18% admitted they were victims of domestic violence. A third of divorced women interviewed also cited physical abuse as the reason why they divorced their husbands. Over 60% of the sample interviewed had said they had suffered sporadic or repeated abuse.

In terms of general public awareness, a survey dated November 1999 suggests that 83% of respondents recognize that domestic violence is a social problem but people's awareness of the crime is limited to acts of *'repeated assaults against family members'*.⁸⁴

Popular sayings such as *'a husband who does not beat his wife, does not love her'* and *'if a husband does not beat his wife her liver rots'* reinforce the acceptability or tolerance of domestic violence. The idea that children need a father even if abuse is perpetrated, is largely promoted, in particular by the Catholic Church which also promotes traditional gender roles (many Poles, including Roma, are very much influenced by the Catholic Church's teaching).

II.2.3 Legal provisions on domestic violence Article 207 (par. 1) of the Polish Penal Code provides for a definition and punishment of domestic violence crimes. The definition includes the concept of psychological harm and the perpetrator may be a husband (or a wife), an ex-husband or just a partner. Other articles of the Criminal Code that are relevant include Article 156 (severe damage to health), Article 190 (threats) and Article 153 (1) of the

⁸¹ WRC notes for instance that the gender of the victim and perpetrator or the relationship between the two is not indicated in official statistics.

⁸² WRC, op. cit.

⁸³ Details quoted by WRC, ibid. (data in this paragraph relate to physical assault or physical abuse only). CBOS is an independent research centre and one of the largest and most renowned public opinion research institutes in Poland.

⁸⁴ IHFHR, op. cit., p. 334.

Law of Family Planning, Protection of the Human Foetus and Conditions of Abortion (for forcing a woman to have an abortion).⁸⁵

Domestic violence is defined as a '*continuous*' crime. The violence must be repeated to fall under the provisions of Article 207 although the Supreme Court's sentencing policy provides that a particularly violent act may be defined as domestic violence even if committed only once.⁸⁶

In theory, the victim does not have to come forward to bring charges against the perpetrators, a neighbour or any other witness may inform the Police who are legally bound to investigate domestic violence (along with the Public Prosecutor).

II.2.4 Government Measures As part of its obligations to implement the Beijing Platform of Action, Poland has adopted a programme to combat domestic violence and an administrative reform was introduced in 1999 to create Crisis Intervention Centres and Family Assistance Centres.⁸⁷ They are run by local authorities who are also responsible for organising specialist counselling services for victims of violence.

The government has however been criticized by the Women's Rights Centre for neglecting the problem and failing to implement a comprehensive policy on its prevention. The recommendations on the issue contained in the national '*Plan of Action for Women*' have never been implemented. In fact, according to WRC, '*Gender equality and related issues have been given the lowest priority ranking*' by the government which also '*mostly refuses to co-operate with the international community in matters relating to violence against women*'.⁸⁸

Likewise, the government has ignored the recommendations of the UN Committee on Economic, Social and Cultural Rights according to which it is crucial that '*every effort be made to ensure women's right to health, in particular reproductive health*'.⁸⁹ Such recommendations were made in 1998.

⁸⁵ Abortion is also a criminal offence in Poland, see Article 153 (2) of the Law on Family Planning, Protection of the human Foetus and Conditions for Abortion. More details available in IHFHR report, '*Women 2000...*', op. cit., p. 329.

⁸⁶ WRC, *ibid.*, p. 5 of 26. Despite this provision, the same Supreme Court has also reduced the meaning of domestic violence in another ruling dated of August 1996. See below part on Court handling of domestic violence cases.

⁸⁷ Smereczyska, M., (Government Plenipotentiary for the Family Affairs), '*Response to the Secretary General's questionnaire on the implementation of the Beijing Plan of Action*', Report to UN Division for the Advancement of Women, 8 November 1999, 18p. Available at: <http://www.un.org/womenwatch/daw/followup/poland.pdf>.

⁸⁸ WRC, *op. cit.*, p.1 of 26.

⁸⁹ UN Committee on Economic, Social and Cultural Rights, '*Concluding Observations of the Committee on Economic, Social and Cultural Rights: Poland 16/06/98*', E/C.12/1/Add.26.

The UN Committee on Economic, Social and Cultural Rights – following evidence provided by the Federation for Women and Family Planning – also expressed its concerns about the lack of domestic regulations in terms of trafficking and the growing number of domestic violence cases. Lack of safe houses for women and children, the absence of specific regulations on sexual harassment of women, and *'the apparent lack of counselling facilities for such victims'* were a matter of concern. In addition, the Committee noted that there was no legal provision prohibiting sexual harassment.⁹⁰

Over a year later, in July 1999, the UN Committee on Human Rights denounced *'the lack of any protective remedy in civil courts'* and the insufficient number of shelters for domestic violence victims.⁹¹

II.2.5 Protection in practice

II.2.5.1 Police handling of domestic violence As mentioned before, the police is in theory legally bound to investigate domestic violence cases (even if the case is reported by a neighbour only). In 1998 the *'Blue Cards'* system was introduced nationally, suggesting that the police would treat domestic violence crimes as seriously as any other crimes. The system is a procedure designed to be used when police intervene in domestic violence cases in order to systematise the collection of information on such incidents (one of the cards contains guidelines on how to gather such information). Another card contains information relating to the victim's rights and telephone numbers to contact for help.

In practice however, the Women's Rights Centre reports that the *'Blue Cards'* system is still inefficiently implemented in so far as it is not used systematically and there are many shortcomings in current police intervention in such crimes.

Whilst Poles expect the police to intervene first and take appropriate measures in cases of domestic violence, the reality shows a different picture.⁹² Police are often criticized by women's groups for failing to intervene and for not *'properly collect[ing] evidence'* or not collecting evidence at all: *'In most cases, the police do not use the [Blue] cards, unless a woman demands that they are used to document an incident'*.⁹³

Moreover, WRC points out that the information contained in the blue cards contradicts existing legal provisions because it suggests that domestic

⁹⁰ Ibid.

⁹¹ UN Human Rights Committee, *'Concluding Observations...'*, op. cit.

⁹² According to an opinion poll conducted in November 1999 by the Centre for Research of Public Opinion (OBOP), see IHFHR, op. cit., p.334.

⁹³ Nowakowska, U., op. cit.

violence is prosecuted upon the request of a victim. In fact not only is the crime intended to be 'publicly prosecuted' but also there is 'no request that the victim is required to initiate legal proceedings'. Or in other words, 'the victim does not need to come forward with the charges. It is enough that a neighbor or NGO informs the police or a police officer observes an act of violence when called to an incident, to produce charges'.

Despite this, WRC stresses that the implementation of the blue cards system 'shifts the responsibility for initiating prosecution to the victim, thus, giving the police a pretext to abandon legally required proceedings. As a result, many policemen (...) require a victim to make a statement that he or she requests the police to take action within their powers'.⁹⁴

As a result, 'domestic violence cases are prosecuted only at the request of the victim. Temporary arrests are seldom used, even in the most serious cases' with the exception of 'intoxicated abusers' referred to 'sobering detention centres' (a measure for addressing intoxication rather than violence against women).

The provision of evidence constitutes one of the major difficulties for women who seek police protection and judicial redress.

Witnesses – such as neighbours - are often reluctant to come forward as they believe domestic violence is a matter to be dealt with privately. At the same time, the police is accused of not taking the steps to interview neighbours immediately after an incident.

Medical certificates Often police request forensic medical certificates which are very costly to obtain. Romani women belonging to the most deprived groups will be even less likely to try to obtain such a certificate. They may also face discrimination in accessing health services or medical treatment. But another obstacle for all victims of domestic violence is the 'seven-day rule'. WRC explains: 'If her medical certificate indicates that the bodily harm she has experienced does not result in the impaired functioning of an organ or in health disorder lasting at least 7 days and she has no witnesses, the police may refuse to prosecute the case and inform her that she may file a private charge against her husband'.

The result of this is that many cases are not investigated or are discontinued by the police on the purported basis of lack of evidence. WRC also reports that often general practitioners (doctors) who are not registered as forensic specialists 'refuse to write any statement describing the injuries of the victim', even though this is illegal.⁹⁵

⁹⁴ Nowakowska U., *ibid.*, p. 20.

⁹⁵ Nowakowska U., *ibid.*, p. 3.

Domestic violence treated as a family matter The police treat domestic violence as a private or family matter or do not recognize the problem or the gravity of the offences. According to a survey conducted by WRC in summer 2000, police knowledge of what constitute domestic violence seems lacking or at best ambivalent.⁹⁶ For instance, 'repeated battery with serious consequences for the victim's health' was identified as domestic violence by less than 60% of police officers (and repeated blows with similar consequences by just under 56%). Only 13.2% considered a 'single blow having no serious health consequences' as an act of domestic violence (20.8% in the case of a 'single battery').

Confusingly, 73% of police officers interviewed identified verbal abuse as domestic violence.⁹⁷ The survey also reveals that for over 80% of police officers think that the victims contribute (about 23%) or contribute to a certain degree (over 58%) to the violence perpetrated against them. Also, for 95% of police officers interviewed, domestic violence is 'most commonly' or 'usually' a consequence of alcohol abuse. Police officers interviewed in the context of another study⁹⁸ said that they did not know that marital rape constituted a crime. Many such cases are not actually reported as rapes.

Police as well as public prosecutors have been involved in training sessions and seminars organised by WRC about domestic violence in the last few years.⁹⁹ IHFHR also reports of a pilot scheme project in one of Warsaw's districts. Despite this, the survey suggests that the level of awareness remains low nationally and more awareness training needs to be conducted before Polish women can get the protection they are entitled to.¹⁰⁰

Lack of physical and witness protection scheme Despite the availability of legal provisions,¹⁰¹ perpetrators of domestic abuse are almost never

⁹⁶ The survey was carried amongst 106 police officers (and 38 prosecutors). WRC, 'Law enforcement officers' and prosecutors' attitudes towards domestic violence. Brief discussion of the survey's findings', at <http://free.ngo.pl/temida/>.

⁹⁷ A breakdown of responses per sex of respondents indicate that women police officers are much more likely to recognize verbal violence as a form of domestic violence but less likely to identify repeated battery having serious health consequences for the victim as such.

⁹⁸ 'The observation of human rights in preliminary criminal proceedings in case of women victims of rape – preliminary report on the monitoring of police, August 1999 – January 2000', Women, Law and Development. See IHFHR, op. cit., p. 344 footnote 44.

⁹⁹ It is not clear whether the training took place nationally or in Warsaw only. However references to two 'tribunals' (sessions) on violence against women organised in 1997 and 1999 suggest the training took place in Warsaw. See Nowakowska, U., op. cit., p. 8.

¹⁰⁰ In order to be comprehensive, such training should also include sessions on the handling of minorities' cases, and in particular Romani women's cases.

¹⁰¹ Article 15 of the Law on the police (right to arrest an abuser for 48 hours if his behaviour is deemed dangerous) and Article 244 of the Code of Criminal Procedure (right to arrest a suspect under certain circumstances).

arrested.¹⁰² In addition, if a lawsuit is filed, the law does not provide for orders (or injunctions) of protection for either the victim or witness.

Access to legal and psychological assistance is extremely limited, as is the number of shelters in the country. In some regions, there are no shelters at all and generally speaking, people are not informed about the availability of protection. A national poll conducted in 1999 revealed that almost two thirds of Poles have never heard of any programs against domestic violence in their own regions.¹⁰³ 63% of respondents indicated that they did not know of any forms of help for victims.¹⁰⁴

WRC reports that many shelters target the homeless or mothers with small children. Curiously, a large number of shelters are run by men (some of whom have criminal records) and this situation has led to women suffering further abuses. In many instances, even advice provided by staff reflects a lack of understanding and knowledge of what constitutes domestic violence, resulting in women being provided with bad advice (such as being instructed about 'how to please' their husbands).¹⁰⁵

Lack of protection and in particular access to 'safe' addresses mean that few victims are willing to testify or able to cooperate with the investigation. It often follows that the police dismiss the case, even when other evidence is available (WRC notes that this is illegal practice).

When a case does get prosecuted, the pre-trial proceedings can take several years (usually 2 to 3 years), during which time the victim may be obliged to live under the same roof as the perpetrator (a situation which is reportedly common in the country because of the shortage of shelters as well as housing).

II.2.5.2 The Court handling of domestic violence crimes The number of cases brought to trial are minimal compared to the number of complaints filed with the police. WRC reports that it is common that '*prosecutors refuse to initiate proceedings or dismiss the cases*'. Another element that undermines the reporting and prosecution of domestic violence crimes is the very low sentences given to perpetrators of such crimes when the cases are brought to court.

In fact, according to WRC, '*the criminal justice system considers family violence cases insignificant, [consequently] they are not treated like other*

¹⁰² The only exceptions are people who have acted violently whilst under the influence of alcohol and are kept in 'sobering' centres.

¹⁰³ Poll conducted by the Public Opinion Polling Centre (OBOP). See Nowakowska, U., p. 9.

¹⁰⁴ IHFHR, op. cit., p. 334.

¹⁰⁵ WRC initiated a protest petition in December 1998 to protest about human rights abuses in shelters but it was ignored by the authorities. Nowakowska, U., op. cit., p.9.

crimes. One reason for the serious under-enforcement of the existing domestic violence law is the absence of public recognition of the grave health, social and economic consequences inflicted on women, children and the society at large. Serious legal and institutional deficiencies in the family violence intervention system are also caused by a lack of knowledge about the complexities of domestic violence among policemen, prosecutors, and judges. Virtually no public pressure exists to change this drastic situation. In fact, domestic violence in many communities is still accepted as an almost inevitable part of daily life'.¹⁰⁶

'As a result these officials are unresponsive to the injuries of battered women and their children, and handle their cases in an insensitive and ineffective manner. Many judges and law enforcement bodies fail to apply the existing law effectively, often making rulings based on stereotypical attitudes and beliefs. This behavior prevents many victims from receiving the protection they are entitled to under the law'.

Statistics show that there has been an increase in domestic violence convictions in the 1990s (over 14,000 in 1999) and since 1997, suspended sentences have declined from 91.4% to 83% of all sentences in 1999 for violent domestic crimes. Sentences remain however very often lenient.¹⁰⁷

WRC contends: 'sentencing practices in domestic violence cases have narrowed the meaning of this term'. The organisation cites a Supreme Court ruling dated of 6 August 1996 which states: 'the essence of an offence of domestic violence consisted in an act qualitatively different than ordinary insult or violation of bodily integrity. (...) To be classed as an offence (...) the scope of the perpetrator's behaviour cannot be limited to either systematic or single incident, if it not accompanied by excessive (beyond measures) intensity, severity, degradation (...). Domestic abuse, within the meaning of Article [207], should be understood as an intentional act that constitutes an intense and severe violation of bodily integrity, inflicts moral suffering on the aggrieved person'.¹⁰⁸

How to measure the severity of the violence is not indicated in the ruling which also states that a violent act may not constitute domestic violence just on the basis of its repetitive pattern.

¹⁰⁶ Nowakowska, U., *ibid.*

¹⁰⁷ WRC, 'Domestic Violence Against Women and Children...', *op. cit.*,

¹⁰⁸ Our emphasis. See WRC, *ibid.*, p.6.

WRC also expresses its concern at the fact that according to the same ruling, an act of violence will not be recognized as domestic abuse if it is reciprocated. Women are therefore '*practically denied the right to self-defense*' (as it will be considered as "*reciprocal abuse*") whilst many abusers try to use this particular provision to absolve themselves from criminal responsibility.

The women's organisation reports that according to its own experience, '*judges often justify the acts of domestic violence and their perpetrators*'. It illustrates this by quoting another ruling from the Court of Appeal in Cracow according to which: '*domestic abuse, to be recognized as a criminal act, cannot be limited to using insulting or vulgar language, violating bodily integrity, restricting personal freedom, etc. In some situations such acts may result from the provocative behavior of the alleged victim (...). There are also circumstances, in which an abusive behavior may be recognized as committed through necessity resulting from the desire to preserve marriage or the well-being of children or the alleged victim or any other value protected by law and more important than the dubious dignity of misconducting victims. (...) In such circumstances, it may be recommended that the accused should be acquitted of any charges or that the penalty should not be imposed or that the victim should [file a civil lawsuit against the perpetrator]*'.¹⁰⁹

WRC stresses that the ruling demonstrates that protection of the family unit is more important in the eyes of the judges than that of individuals' rights, even if these rights are embodied in the constitution and a number of national and international laws. Yet many women victims do not even know their rights.

II.3 Women victims/survivors of Rape

II.3.1 Prevalence There is no accurate data on the incidence of rape in Poland. According to IHFHR, the police recorded 2,029 rapes in 1999 (of which 233 were gang rape according to the definition provided in the legislation). Over 50% of the proceedings on such cases take less than two months. In 83.7% of cases a guilty verdict was pronounced.¹¹⁰

As the data are not segregated per ethnicity, it is not possible to know the proportion of Romani women raped during any period covered by the statistics, nor the ethnicity of the perpetrators.

¹⁰⁹ WRC, *ibid.*

¹¹⁰ IHFHR, *op. cit.*, p. 336. Unless otherwise stated, the information in subsequent paragraphs is drawn from the same report.

II.3.2 Current legal provisions: The legislation in relation to rape was amended in 1998 and reduced the crime from a felony to a misdemeanour.

Article 197 (1) of the Penal Code provides that '*Whoever, using violence, threat or deceit, forces a person to have sexual intercourse shall be punished by 1 to 10 years of imprisonment*'. If the crime is committed with '*particular cruelty or together with another person, the punishment shall be two to twelve years of imprisonment*'. The legislation includes rape within marriage, rape of homosexuals and prostitutes. It also defines gang rape as rape committed by two or more people. Sentences for other forms of sexual abuses are much lower. For instance, incest is also a criminal offence but punishable by three months to five years imprisonment.

Rape is only prosecuted upon the victim's request but a rule of '*non return*' applies which means that once the motion is filed, it cannot be withdrawn. However the victim can still choose not to file a complaint. Once a motion is filed, the police and public prosecutors are legally responsible to initiate further proceedings and prosecution.

In practice, both WRC and IHFHR report that there is very little support for victims of rape whose treatment is often influenced by stereotypes relating to the victim (see below).

II.3.3 Issues of protection and access to justice Women victims of rape are reported to be mistreated by the police as well as in court proceedings where stereotypes about victims' provocative behaviour prevail (see also above, Appeal Court ruling on domestic violence case).¹¹¹ IHFHR notes that the lack of professional training for police forces, prosecutors and judges, is one of the major factors that lead to the mistreatment of victims of rape. IHFHR also reports that a study conducted in five major Polish cities and towns (between August 1999 and January 2000) revealed a number of malpractices that prevent victims/survivors of rape from getting adequate support and access to justice.

In particular, there were '*signs of policemen discouraging victims by presenting the possible complications during criminal procedures. (...) Police also very often stress the fact that once the victim files a motion there is no way it can be withdrawn. This evokes serious questions as to whether the information is given to discourage victims from starting proceedings in the first place*'.¹¹²

¹¹¹ Nowakowska U., op. cit.

¹¹² The study – '*The observation of human rights in preliminary criminal proceedings in case of women victims of rape*' was conducted by Women, Law and Development as part of the Project '*Human Rights advanced Leadership Training for Women*'. See IHFHR, *ibid.*, p. 337 and p. 344.

Interview procedures in practice constitute another obstacle for women victims/survivors of rape to get access to justice: Despite orders issued by the police headquarters stipulating that every woman victim of rape should be questioned by a policewoman,¹¹³ in practice these orders are not enforced or impossible to enforce.¹¹⁴ Even if the first hearing is conducted by a policewoman, this is always followed by subsequent hearings reported to be taken by policemen.

In practice, despite the harm caused to the victim/survivor, multiple hearings are the norm: *'there are no formal restrictions on the number of preliminary hearings at the police station or during the prosecutor's questioning. (...) Representatives of the police force usually note two to four hearings involving the victim'*.¹¹⁵ In addition, often these hearings take place in the presence of other policemen, with a total disregard for privacy. The whole process is described as humiliating and frightening.

The identification process is another strong deterrent: Police almost always insist that the victim/survivor identify the perpetrator face to face dismissing the victim's fears, even when a one-sided mirror is available.

Although IHFHR indicates that some changes are taking place, especially with the introduction of a model project in Warsaw (Praga Pólnoc department), attitudes towards victims of rape are *'still in need of serious improvement'*. The situation is made worse by the fact that victims of rape are not provided with information about the rights to lodge a formal complaint against police behaviour or misconduct in the handling of the case.

II.4 Trafficking of Romani women

II.4.1 Evidence There are no figures available to confirm the numbers of women and children trafficked in Poland. Women are trafficked from Poland (to Germany and other Western European countries through means including fake employment offers, fraud and/or coercive measures, or even *'auction of women'*), to Poland and through Poland.¹¹⁶

Romani women from Bulgaria (along with Turkish from Bulgaria) are being trafficked to Poland, where they may stay for few months before being trafficked to the West. Bulgaria is the largest single source of foreign women trafficked in Poland according to the US State Department Report (February

¹¹³ The orders were issued at the beginning of 1999.

¹¹⁴ Partly due to a shortage of policewomen in Poland (about 10% of the police force). See IHFHR, *ibid.*, p. 337.

2001). Also a number of Romani women from Romania are said to be trafficked to Poland on Bulgarian documents.¹¹⁷

The US State Department reports that these women and girls usually come from deprived socio-economic background¹¹⁸ and are subjected to conditions such as working on highways (as opposed to brothels for women of other nationalities or ethnic groups). Indeed, low level education is a major characteristic of many Romani women living in Central and Eastern Europe.

II.4.2 Legal provisions and protection issues in practice¹¹⁹ A number of articles in the 1997 Criminal Code could be used to prosecute traffickers of Polish women. The Criminal Code prohibits trafficking and pimping (prostitution itself is not a crime in Poland) and the crime carries sentences of up to 10 years for those convicted.

Article 204 (4) of the 1997 Criminal Code provides that the abduction of persons for the purpose of prostitution abroad constitutes a misdemeanour. Article 253(1) prohibits the forced movement of persons and can be used in cases of trafficking for other purposes than prostitution.

Article 291 prohibits situations when threat of violence or actual violence is used to force a person to perform certain actions.

Despite the existence of such provisions, however, not many cases are actually prosecuted in practice. Besides feelings of shame and fear of being rejected by one's community and family, another major obstacle impeding prosecution is that there are no legal provisions or programmes for the protection of victims after criminal proceedings. There is also a lack of trust in the police '*connected to the widespread perception of their involvement in crime*'. In addition, traffickers are '*very rarely*' arrested.¹²⁰

¹¹⁵ IHFHR, *ibid.*

¹¹⁶ US State Department, *op. cit.*, p.17.

¹¹⁷ The US State Department report does not indicate who are the traffickers but it is commonly reported that women from Central and Eastern Europe are trafficked by organised crime groups.

¹¹⁸ Also according to a research carried out by the Centre for Promotion of Women and submitted to the UN Special Rapporteur, Rhadika Coomaraswamy: see IHFHR, *op. cit.*, p. 339.

¹¹⁹ Information in this paragraph is drawn from the US State Department Report, *op. cit.*, pp16-18 and IHFHR report, *ibid.*, pp. 338-340.

¹²⁰ IHFHR, *ibid.*, p. 339.

La Strada Foundation¹²¹ thinks that the Polish authorities have not allocated resources to investigate trafficking cases originating within Poland. This demonstrates a lack of willingness to tackle the issue.

¹²¹ La Strada Foundation is a cross-border network of non-governmental organisations in Bulgaria, Germany, Hungary, Poland and Ukraine, and has been working with victims of trafficking since 1995.

Conclusion

Figures relating to number of asylum seekers and successful determinations indicate that Polish Roma are not deemed deserving refugee status. The case law in the UK and other jurisdictions support this position.

Yet, Polish Romani women live in a society where racial discrimination and racial violence is tolerated because it is not adequately dealt with by the authorities. As a result, they are victims of horrendous racist attacks, including serious sexual assaults, that undermine both their bodily and mental integrity. Polish Romani women say they did not feel safe not only outside their homes but also *in* their own homes. Their children are also vulnerable to extreme and repeated forms of racist violence. It is not only the frequency of such violence that is important but also the fear of falling victim to it.¹²² The psychological damage to those who became victims of racist violence and those who fear to be the next victim is yet to be measured and understood. It is presently hidden and ignored.¹²³

In the area of violence against women too, Polish Romani women are unlikely to find the support and remedies they need to get justice, given the obstacles non-Roma Polish women face. In the Women's Rights Centre's own words, the '*Polish government mostly refuses to co-operate with the international community in matters relating to violence against women*'.¹²⁴

In the context of the hostility against Roma that has been observed in dealings with the police, it is clear that Romani women who have been victims of rape are reasonably likely to face further obstacles if trying to ensure that their perpetrators are brought to justice or to secure prosecution. Racism will undoubtedly play another part in police '*unwillingness*' to investigate Romani women's rape cases, because of what is known of police refusal to recognize the racist behaviour behind racist crimes. Women's groups have already highlighted the fact that often police refuse or do not collect evidence adequately in relation to domestic violence or sexual crimes against Polish women. There is no reason to believe that Romani women victims of sexual crimes would benefit from a more '*favourable*' treatment from police investigators.

On the other hand, and in particular given the conditions of police hearings described above, it is hard to conceive how Romani women could have practical recourse to the authorities for protection or to justice for redress.

¹²² The government reports that according to the General Police Headquarters, '*Roma are not frequent victims of crimes*', see Ministry of Internal Affairs and Administration, *op. cit.*, p.15.

¹²³ According Sylvia Ingmire, of the Romany Support group, it is something that needs to be investigated and dealt with with urgency (Interview with RWRP/Asylum, 3rd September 2001).

¹²⁴ WRC, '*Domestic Violence ...*', *op. cit.*, p.1.

Sylvia Ingmire of the Romany Support Group informed us that the majority of cases reported to the police are that of minor Roma girls who need hospitalisation (such cases are actually usually reported by the medical staff in charge).¹²⁵

In light of the above, the question that arises is '*where can Polish Romani women – victims of racial violence or/and any form of violence against them as women – turn for protection*'?

¹²⁵ Interview with RWRP/Asylum Aid, 3rd September 2001.

Annex: Trends in Asylum applications and decisions

About 565 Polish citizens sought asylum in the UK in 1997, 1,585 in 1998, 1,860 in 1999 and 1,015 in 2000.¹²⁶ From 1997 – 1999, only one or two applicants received refugee status and five received exceptional leave to remain (ELR). 20 were granted refugee status in year 2000 and the same number got ELR.

From 1997 to 2000, 4,215 applications for asylum were rejected (whilst 5,025 had applied during the same period).¹²⁷

UK in comparison to the rest of the world Out of 3,207 Polish asylum seekers worldwide in 1999, almost 58% applied for asylum in the UK.¹²⁸ In total, 72 received refugee or humanitarian status (or 6% according to UNHCR own indicators) in any part of the world and 65% were rejected.

In 2000, 3,872 Polish nationals claimed asylum worldwide, an increase of over 20% compared to the previous year.¹²⁹ The proportion of Polish asylum seekers in the UK compared to the rest of the world decreased to just over 26% (from 58%). The recognition rate for Polish asylum seekers worldwide decreased to 4%.

¹²⁶ All statistics relating to the UK drawn from Home Office, 'Asylum Statistics United Kingdom 2000', 25 September 2001 (all figures exclude dependants).

¹²⁷ Discrepancy due to the fact that asylum decisions made during one year are not necessarily related to the applications made during the same year.

¹²⁸ UNHCR, 'Trends in Asylum Decisions in 38 countries, 1999-2000', UNHCR, Geneva, 22 June 2001, p.13/46.

¹²⁹ UNHCR, *ibid.*, p.15/46.

ROMANI WOMEN IN ROMANIA

PART I ROMANI WOMEN'S EXPERIENCE OF RACISM AND XENOPHOBIA

I.1 Background

I.1.1 Roma in Romania Estimates of the number of Roma in Romania vary enormously, from 409,000 according to the latest official survey (1992) to 3.5 millions out of 22,700,000 Romanians (1992 figures).¹ 'Moderate' estimates put the figure between 1.5 and 1.8 millions.² As in other countries in Central and Eastern Europe, it is believed that strong anti-Roma prejudices that have prevailed historically have discouraged many Roma from officially declaring their ethnicity, thus the disparities in official numbers and estimates.³ In any case, Romania has the largest numbers of Roma in Europe and Roma constitute if not the largest, the second largest minority in the country.⁴

Beyond the numbers, one should not overlook the extreme diversity of the Roma communities living in Romania, including the diversity of their traditional values.⁵ In Transylvania for instance, a minority amongst Roma groups speak Roma, whilst the great majority speak Hungarian or Romanian. Others describe themselves as 'Boyas', sometimes referred as Beash-speaking.⁶ On the subject, Fosztó and Anăstăsoaie write:

'It is no easy task to present an overall account of the topic. The complexity of the situation is partly due to historical differences between regions, language and cultural diversity among groups and more recently to different directions taken in pursuing political strategies and action'.⁷

Referring to a field study of Roma in local communities in Transylvania, the authors further write: *'the following interpretation of the behaviour of local Roma (...) cannot be assumed to be typical of Roma elsewhere in*

¹ Fosztó, L. and Anăstăsoaie, M-V., 'Romania: representations, public policies and political projects' in Guy, W. (ed.), *'Between Past and Future: the Roma of Central and Eastern Europe'*, University of Hertfordshire Press, September 2001, pp 351-369.

² See European Roma Rights Center (hereafter ERRC), *'State of Impunity: Human Rights Abuse of Roma in Romania'*, September 2001, 80p. Also United States Department of State, *'Romania, Country Reports on Human Rights Practices-2000'*, Bureau of Democracy, Human Rights, and Labor, Washington, February 2001.

³ ERRC, op. cit., p.57 of 80.

⁴ After Hungarians, estimated at 1.6 millions.

⁵ We do not have details on how such values differ from one community to another or indeed on how many different Roma communities are living in Romania today.

⁶ Fosztó, L. and Anăstăsoaie, M-V., op .cit., p.361.

⁷ Such cultural (and thus normative) differences will need to be taken into account, especially as far as the status of Romani women are concerned. See Fosztó, L. and Anăstăsoaie, M-V., op. cit., p.351.

Romania. (...) One can learn from [it] but should not draw general conclusions'.⁸

There are however some factors that 'unify' Roma as one entity: the societal discrimination that translates into high rates of unemployment and increasing poverty and the violent attacks to which they are subjected on a daily basis.

1.1.2 General public opinion towards Roma⁹ According to the European Roma Rights Centre, 'distrust and dislike of Roma pervade all layers of state and society in Romania' and 'in recent years, anti-Romani sentiment has remained high'. In the media, Roma are often portrayed as thieves, dirty people¹⁰ or described by stereotypes such as 'offender gypsy',¹¹ 'violent gypsy', 'school dropout', "businessmen gypsies", 'high birth rate', 'dirty gypsies', 'gypsy mob', 'illiterates', 'beggars'.¹² The UN Committee on the Elimination of Racial discrimination expressed recently its concern at:

'The persistence of xenophobic attitudes and prejudice against certain minorities within Romanian society, which manifest themselves on numerous occasions in the media'.¹³

A survey conducted in November 2000 by the news agency Agence France Press indicated that three out of four Romanians would not tolerate Roma as neighbours. This study confirmed the outcome of previous surveys.¹⁴

High-ranking government officials have also made publicly anti-Roma statements and, in one prominent case, this has helped a politician to secure electoral gains: The extreme nationalist Corneliu Vadim Tudor (of the Greater Romania Party or PRM) got 28% of votes in the first round of the

⁸ Fosztó, L. and Anăstăsoaie, M-V., *ibid.*, p.360.

⁹ Unless otherwise stated, information in this paragraph is drawn from ERRC's report, *op. cit.*, p. 6. of 80.

¹⁰ Fosztó, L. and Anăstăsoaie, M-V., *op. cit.*, p.364.

¹¹ Roma in Romania find the term 'Gypsy' offensive (contrary to some Roma from other countries).

¹² According to a study of articles produced by 5 mainstream daily newspapers between February and August 2000. For details, see Romani-CRISS Foundation, 'Media Contamination with Racism - attitudes towards the Roma minority', February-August 2000, at www.mma.ro/databaseu.htm

¹³ UN Committee on the Elimination of Racial Discrimination (hereafter CERD), 'Concluding Observations of the Committee on the Elimination of Racial Discrimination: Romania. 12/04/2001. CERD/C/304/Add.85.', United Nations, 12 April 2001, 3p., at www.unhchr.ch/tbs/doc.nsf.

¹⁴ In another one, conducted in May-June 2000 by the Centre for the Research of Interethnic Relations, about 40% of respondents said that given the choice they would not allow Roma to live in Romania.

presidential elections of November 2000.¹⁵ His main message carries '*anti-Romani, anti-Semitic and anti-Hungarian statements*', promising to '*isolate Roma criminals in special colonies [in order to] stop the transformation of Romania into a Gypsy camp*'. In his opinion, the '*gypsy mafia*' controls Romania and he promised to destroy it. People who voted for him said their choice was determined by such promises. PRM is now the largest of the parties in opposition with 25% of the seats in Parliament, a situation that raised the concerns of the European Union.¹⁶

On 21st March 2000, Foreign Minister Petre Roman was reported to have said that the government had an obligation '*to protect 23 million Romanians against the few thousand Gypsies*'.¹⁷ The Roma – who are seeking asylum in the West – were accused of damaging the country's image abroad, preventing it from '*getting off the EU visa blacklist*'.

I.1.3 Legal provisions on discrimination and protection of Roma rights The 1991 Romanian Constitution provides for the equality of Romanian citizens '*before the law and public authorities, without any privilege or discrimination*' (Art. 16). The Constitution also states that '*constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to*' (Art. 20) and in case of '*inconsistencies*' international regulations take precedence.¹⁸

Article 15 provides that '*all citizens enjoy the rights and freedoms granted to them by the Constitution*' whilst according to Article 21, access to justice is also open to anyone '*for the defence of his/her legitimate rights, liberties and interests*'.

Politically, '*each recognised ethnic minority is granted one representative in Parliament's Chamber of Deputies, in accordance with the Romanian Constitution and electoral legislation, provided that the minority's political organisation obtains at least 5% of the average number of valid votes needed to elect a deputy outright*'.¹⁹

Article 4 of Law No.92/1992 on Judicial organisation explicitly state: '*Justice is rendered equally for all the persons, without any discrimination based on*

¹⁵ He got 26% of votes in the second round against President Iliescu. See ERRC, op. cit., p.6 of 80.

¹⁶ Home Office, '*Operational Guidance Romania*', February 2002 (version 2).

¹⁷ Reported by Radio Free Europe/Radio Liberty Newslite. See US Department of State, '*Romania...*', op. cit., p.17 of 23 (Section 5); also ERRC, op. cit., p. 6 of 80.

¹⁸ CERD, '*Fifteenth periodic reports of States parties due in 1999: Romania*.

CERD/C/363/Add.1', 17 May 1999, p.15 of 38, at www.unhchr.ch/.

¹⁹ Home Office, op. cit.,

race, nationality, ethnic origin, religion, sex, opinion, political enrolment or social origin'.²⁰

On 31st August 2000, the government adopted an 'Ordinance on Preventing and Punishing All forms of Discrimination' (No. 137) in which discrimination is described as 'any difference, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social status, belief, sex or sexual orientation, appurtenance to a disfavoured category or any other criterion, aimed at or resulting in a restriction or prevention of the equal recognition, use or exercise of human rights and fundamental freedoms in political, economic, social or cultural fields or in any fields of public life'.²¹

The Ordinance enables human rights non-governmental organisations to become parties in court cases, in order to ensure the representation in court of discriminated persons, in case that the discriminatory act affects the community in general.²² However, as of August 2001, Ordinance 137 had not yet passed the Chamber of Deputies, one of the two chambers of Parliament, thus remaining a provisional document.²³ Likewise, the 'Council for the Prevention of Discrimination' had not been established by then.

Romania is also a party to the framework Convention for the protection of national minorities, the European Convention on Human Rights (and its 11 additional protocols), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (and additional protocols).²⁴

Minorities' rights are also protected by the **Department for the Protection of National Minorities** (set up in January 1997), which *inter alia* has 'the responsibility to monitor the specific problems of persons belonging to ethnic minorities, (...) to submit proposals for draft legislation and administrative measures, [...and] to investigate complaints'.²⁵ Its' aims are to acknowledge the offences and apply the sanctions provided by the Emergency Ordinance on Discrimination.²⁶

²⁰ International Helsinki Federation on Human Rights (hereafter IHFHR), 'Women 2000: An Investigation into the Status of Women's Rights in Central and South Eastern Europe and the Newly Independent States', Vienna, July 2001, pp347-370 (www.ihf-hr.org/).

²¹ See Human Rights Watch, 'HRW World Report 2001: Romania: Human Rights Developments', at www.hrw.org/wr2k1/europe/romania.html and IHFHR, op. cit.

²² Home Office, op. cit.

²³ Open Society Institute (OSI), 'Minority protection in Romania', September 2001, at www.eumap.org/reports/content/10/642/html/100.

²⁴ CERD, 'Fifteen periodic report...', op. cit.

²⁵ US Department of State, op. cit., p.17 of 23.

²⁶ Home Office, op. cit.

Within this department, a National Office for Roma was established whose role is to '*initiate, support and coordinate pro-Roma action*'.²⁷ An Inter-Ministerial Committee for National Minorities was also set up as a consultative body and includes a Sub-Committee for the Roma community whose competence is to design a specific strategy for the protection of the Roma minority.²⁸

Whilst this action to deal with discrimination is acknowledged by the International Helsinki Federation in their report for 2000, concern is expressed at the downgrading of the Department that formerly represented the interests of minority groups:

*"On the negative side, one of the first acts of the new political power resulting from the November-December 2000 parliamentary and presidential elections has been to downgrade the Minorities Department, which used to have the status of a ministry, including direct participation in Government sessions and decisions. Since January 2001, the Department has been placed under a bizarre Ministry of Information".*²⁹

Also in 1997, the **Ombudsman** (or 'People's Advocate') was established by an Act of Parliament which also establishes its powers and procedural issues.³⁰ Its role is to protect the rights and freedoms of citizens in relations with the public authorities. Article 14, par.2, provides that anyone '*without distinction as to citizenship, age, sex, political allegiance or religious belief*', can make an application to the Ombudsman.³¹

Areas within the jurisdiction of the Ombudsman include administrative procedures, social benefits, protection of children in need, police, pre-trial custody and detention of prisoners, etc. The Ombudsman has to report to Parliament every year or at the request of the latter. The reports include recommendations on measures to improve the protection of human rights including modifications of the Romanian legislation if necessary.

Racial hatred is punished by law according to Article 317 of the Penal Code:³² Incitement to racial or national hatred and acts of violence against a person by reason of his racial, national or ethnic affiliation, as well as with

²⁷ Government Ordinance No.17/1997. See CERD, 12 April 2001, op. cit. Also, UN Human Rights Committee, '*Consideration of reports submitted by States parties under Article 40 of the Covenant. CCPR/C/95/Add.12*', 18 August 2000, par.49.

²⁸ Government Ordinance No. 459/1998. See UN Human Rights Committee, op. cit., para. 51.

²⁹ IHFHR, '*Human Rights in the OSCE Region: The Balkans; the Caucasus; Europe; Central Asia and North America Report 2001 (Events of 2000)*', p. 256.

<http://www.ihf-hr.org/reports/ar01/Country%20issues/Countries/Romania.pdf>

³⁰ Law No.35 of 13 March 1997. See UN Human Rights Committee, op. cit., par. 3-11.

³¹ CERD, op. cit., 17 May 1999.

³² Act No.140/1996. CERD, ibid.

nationalistic or chauvinistic propaganda by any means in public, are punishable by a term of imprisonment of between six months and five years ('offences of public incitement and defence of racism', Art. 324, paras. 1, 2, and 4).

I.1.4 Discrimination 'not dealt with' Despite the recently implemented legislation, several other sources identify some key areas of human rights concerns, most notably the discrimination and human rights abuses perpetrated against Roma, and discrimination towards women, certain minority religious groups, and homosexuals. For example, the United States Department of State reports for 2000:

'The Constitution forbids discrimination (...). However, in practice the Government does not enforce these provisions effectively, and women, Roma, and other minorities are subject to various forms of extralegal discrimination. Homosexuals reportedly have been the victims of police brutality in the past'.³³

In October 2000, a governmental official, Péter Eckstein Kovács, then Head of the Department for National Minorities, stated: *'Roma are the national minority most exposed to discrimination. (...) Despite our efforts, we have established the existence of certain visible manifestations of exclusion of Roma from various segments of social life'.³⁴*

According to the European Commission, Roma in Romania remain *'subject to widespread discrimination throughout Romanian society. However the government's commitment to addressing this situation remains low and there has been little substantial progress in this area since the last regular report'.³⁵*

I.1.5 The 'New' nature of racially motivated crimes Reports on the situation reveal that throughout the nineties, there has been a shift in the nature of violence suffered by Roma in Romania: Whilst many Roma were victims of mob violence in the early 1990s, since the middle of the decade violence against Roma has been mostly perpetrated by the police.³⁶ ERRC reports a series of incidents where Roma were beaten by police forces and subjected to verbal abuse.

³³ U.S. Department of State, op. cit.

³⁴ This statement was made at the European Conference against Racism held in Strasbourg in October 2000. Quoted by ERRC, *'State of Impunity...'*, op. cit., p. 3 of 80.

³⁵ European Commission, *'Regular Report on Romania's Progress towards Accession'*, 8 November 2000, at www.europa.eu.int/comm/enlargement/report/2001/ro_en.pdf

³⁶ ERRC, *'Sudden Rage at Dawn: Violence against Roma in Romania'*, Country Report Series, Budapest, 1996; also ERRC, *'State of Impunity...'*, op. cit.

Even when Roma are victims of vicious attacks by civilians requiring several days of medical treatment, the police ignore the complaints (more details on violence by the police below, II.3).

I.2 Romani women's experience of racism and discrimination

I.2.1 Violation of their right to safety³⁷ There are no specific reports on violence against Romani women in Romania. However, as the examples below demonstrate, Romani women are particularly vulnerable to abuse or racist attacks both inside and outside their homes, as are their children. In some cases, women have been targeted just because their male relatives were working away from home or hiding from the police.

The mother and the wife of a man accused of theft, in the town of Braşov, were beaten by the police whilst they were looking for him. In February 1998, the police visited the house of the man's mother and when she told them her son was not there, the police beat her and her daughter-in-law. There were no investigations into the incidents.³⁸

A woman suffered a miscarriage when the police who came to arrest her husband in the middle of the night manhandled her. Her husband had filed a complaint to the governing body of the medical profession and to the Chamber of Deputies after their son nearly died of appendicitis because a physician had refused to treat him at the hospital he attended in the town of Dej. The police subsequently persecuted him and his family by arresting and beating him on several occasions. The husband filed a complaint against a police officer after being subjected to another beating in April 1998. The police officer later threatened his family with extermination.³⁹

In February 1999, a Romani woman owner of a bar was victim of a vicious assault after three men entered the premises and started to beat and attack the customers with numb chucks.⁴⁰ The incident occurred in Lambada, on the outskirts of Cluj-Napoca. Her sons were also severely beaten. A year on, the woman still suffered pains in the chest as a result of the injuries.

³⁷ Unless otherwise stated, Information in this paragraph is drawn from ERRC, '*State of Impunity...*', *ibid.*

³⁸ ERRC, '*Cases of Relevance to the International Covenant on Civil and Political Rights in Romania, Submitted by the European Roma Rights Center, For Consideration by the United National Human Rights Committee at its 66th session, 12-30 July, 1999*', 13p, at www.errc.org/publications/indices/romania.shtml

³⁹ **Veres V. Canada**, 24 November 2000. See details at: <http://decisions.fct-cf.gc.ca/fct/2000/imm-2227-00.html> .

⁴⁰ Martial art weapon consisting of sticks joined by a metal chain. The incident is reported by ERRC who interviewed a number of victims/survivors during a field trip in November 2000; see '*State of Impunity...*', *op. cit.*

In April 2000, the wife of a man who had been repeatedly attacked by non-Roma living in the same village, was herself physically assaulted by villagers on the day her husband went into hiding. During the incident which took place in Paloş, Braşov County, her children were also assaulted. The attackers had tried to set the house on fire but the police intervened after being alerted by a witness.

The Romanian Helsinki Committee reported on a couple whose house was broken into by three attackers on 24 December 1999 after midnight in the village of Perişoru in Brăila County. Whilst two of the assailants ransacked the house, the third sexually assaulted the woman (see also below).⁴¹

A Roma woman sought asylum in Canada after being raped by four men (the location is not known). Her attempt to seek protection from the police was cut short when she was offered bribes to withdraw the charges (one of the men was the son of a high ranking police officer).⁴²

1.2.2 Social rights undermined by discrimination One of the most comprehensive recent studies on social discrimination faced by Roma in Romania is the report by Ina Zoon, '*On the margins: Roma and Public Services*'⁴³ which contains extensive chapters on the housing conditions for Roma people in Romania, as well as their lack of access to education, health care and social protection in general.

Discrimination against Roma in these fields continues to concern international institutions and human rights organisations monitoring the situation, including the Open Society Institute (hereafter OSI) which is monitoring the European Union Accession process of countries from Eastern and Central Europe.⁴⁴

In terms of access to health services for instance, OSI notes:

'A UNICEF study concludes that racial prejudice is "often insidiously manifested in the health care services and is not recognised as such," and health care institutions and medical staff practice a "discriminatory sociology" in that they "do not welcome Roma". The Ministry of Health reports that 30 percent of Romanian Roma are not registered with a family doctor "because they do not have identity documents, doctors are reluctant to receive Romani patients and some Romani patients are not

⁴¹ The case is quoted by ERRC, *ibid*.

⁴² **CRDD 198-04880, Rowsell, Eustaquio, October 20, 1999** at www.irb.gc.ca/Legal/reflex/issues/refugee/129_e.htm

⁴³ Published by the Open Society Institute in April 2001, available at www.soros.org/romaandpublicservices.html

⁴⁴ See www.eumap.org/ .

interested in registering.” Those who are registered often avoid visiting the doctors for lack of trust and fear of being ignored or humiliated’.

One of the most important impacts of discrimination against Roma in all fields of society is that the great majority of Roma in Romania live in poverty, if not extreme poverty. Romani women are particularly affected in terms of health and education and this, in turn, affect the well-being and prospects of their children (more details on this in II.1.2 Romani women and social rights).

I.3 Police: the source of the problem?

1.3.1 Impunity for police violence ERRC recently published an update on the situation faced by Roma in Romania that highlights in particular the impunity police enjoy despite widespread police violence against Roma (see below I.4.2).⁴⁵

In the above-mentioned case, where a man intervened to protect his wife from being sexually assaulted, the husband was taken into custody and seriously physically assaulted whilst in detention both by the police and the brother of one of the assailants. He was indicted with assault whilst the police did not investigate the sexual assault upon his wife.

ERRC documents a recent case of unwarranted police violence against Romani women which took place in Valea Rece neighbourhood of Târgu Mureş: the incident happened following another incident in which a drunken Romani man reportedly attacked police and gendarmes on patrol in a particular neighbourhood inhabited by Roma. When the police started to beat the man, Romani residents intervened by begging the officers to arrest him instead. Police reinforcements arrived at the scene and as they were chasing the residents away, some also started to beat at least four Romani women, using racial abuse.

In the village of Zizin, Braşov County, police officers, wearing black masks and armed with automatic weapons, were also involved in a serious attack on a Romani's couple home, around 6 a.m. in January 2001. One of the police officers pushed the woman to the floor and *'kicked her in the stomach, back and head, while questioning her about the whereabouts of her sons'*.

Romani women are therefore also particularly vulnerable to violence by the police, especially in a country where violence against women at the hands of state agents has been systematically reported (see below II.5).

⁴⁵ ERRC, *'State of Impunity...'*, op. cit. Unless otherwise stated information in subsequent paragraphs taken from the same report, pp.13-20.

1.3.2 Racism in the police force ERRC notes that 'reported police abuse of Roma includes: abusive police raids targeting Romani communities; torture and ill-treatment of Roma in police custody; racist intimidation and harassment of Romani victims of police abuse; instances of unwarranted use of firearms causing injury and sometimes death'.⁴⁶

According to the study, *'police violence against Roma in Romania persists in an environment in which racist stereotyping of Roma is rampant. The relationship between Roma and the police in Romania is burdened from the outset by the widely held belief that Roma are criminals. Police abuse proceeds from a basic suspicion of guilt of the Roma by police officers, as well as an overall tendency to use force as a component of criminal investigations.'*⁴⁷

ERRC mentions the case of the then head of the Bucharest police department who made a series of defamatory comments about the Roma in an interview with a daily newspaper, talking extensively about 'gypsy criminality' and the fact that *'there are Gypsies who are born criminals, and [...] do not know anything else than to commit criminal acts'*.⁴⁸

The report details a number of cases of abuse by the police that were left unsanctioned by the authorities (see below).

1.3.3 Police training on racism and discrimination The Ethnocultural Diversity Resource Centre (EDRC) has planned to implement a training project for police officers on *'Conflict prevention and management at multicultural community level'*.⁴⁹ Organized in collaboration with the Department for Prevention and Research of Criminality within the Ministry of Interior, the project planned in particular to train 150 police officers (assistant police officers and students at the Police High School) working in multicultural communities. The Ministry, which pledged contributions towards the training costs, recommended participants from all parts of the country. It is however not clear whether the programme actually took place.

However, Romania has participated in the *'Police and Human Rights 1997-2000'* (European wide) programme funded by the Council of Europe.

⁴⁶ ERRC, 'Press Release', 10 September 2001 at www.errc.org/

⁴⁷ ERRC, *ibid.*

⁴⁸ Quoted by ERRC, 'State of Impunity...', *op. cit.*, p.18 of 80.

⁴⁹ The project implementation period was scheduled for October 2000 to May 2001, depending on funding. See www.fundraising.ro/Projects%20MOs/CRDE_055.htm. One of EDRC's missions is *'to promote principles of ethnocultural peace and justice based on institutional solutions acceptable both to majority and minorities'*. A search of its website content in January 2002 (www.edrc.ro) led to no results.

'A seminar on human rights and policing was organised in November 1998 by the Romanian Independent Society of Human Rights (SIRDO) together with the Bucharest Information and Documentation Centre on the Council of Europe. The Programme Manager was invited to give a presentation at this conference and made use of the opportunity to discuss the involvement of Romania in the programme with the Ministry Of Interior and the police authorities'.⁵⁰

In addition, *'a representative of the General Inspectorate of Police participated in a November 1998 meeting of the Joint Informal Working Group on Police and Human Rights'.*

Awareness of Romanian police officers on human rights issues was fostered by the translation, publication and dissemination (nationally) of a booklet *'A visit by the CPT – What's it all about? 15 Questions and Answers for Police'*⁵¹ in December 1999: This included 500 copies for Moldova, 1,000 copies given to the Ministry of the Interior, 100 copies to the Romanian Independent Society of Human Rights (SIRDO hereafter) and 20 copies to the postgraduate section of the police Academy. Further countrywide dissemination was organised by the Information and Documentation Centre in March 2000.

The Romanian National Police also participated in the World Organisation against Torture - Europe (OMCT - Europe) police and human rights study on the reasons why police officers violate human rights and the Council of Europe reports that *'various seminars were organised with police officers at the sharp end of policing'*.

The Council of Europe notes that Romania has not reported any involvement in *'Police and Human Rights Week'* in November 2000 but suggests further commitment on the part of the authorities: *'the Bucharest Information and Documentation Centre on the Council of Europe has expressed an interest in further translation of police and human rights training and awareness material in 2001. The Romanian Police and Human Rights Committee has expressed its commitment to developing a Romanian version of the Workbook in 2001'*.

Despite these laudable efforts also noticed by CERD in its April 2001 report,⁵² ERRC reports that *'Romanian human rights organisations have (...) reported instances in which police attempt to discourage Roma from reporting*

⁵⁰ Unless otherwise stated, Information in subsequent paragraphs from www.humanrights.coe.int/police/main/english.html

⁵¹ CPT is the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment. It usually visits places of detention and provides recommendations. For more see www.cpt.coe.int/.

⁵² CERD, op. cit.

human rights abuse by imposing arbitrary fines on them.⁵³ Either individual police officers are not prepared to recognize such rights or they are unaware of them. In either case, the state fails to ensure that human rights standards are duly respected and that violations of such rights are duly pursued/investigated.

I.4 Judicial authorities sanction mistreatment of roma

I.4.1 A 'biased' judicial system CERD notes in its April 2001 report that a 'limited number of cases of racial discrimination have come before the organs administering justice'.⁵⁴ According to the UN Committee, this 'may indicate a lack of awareness of the existence of available legal remedies and of the protection against racial discrimination provided by the Convention [on the Elimination of Racial Discrimination to which Romania is a party].

However, even when the Roma know about the legal remedies against racial discrimination or violence, they may not find the protection they are due. The Romanian Helsinki Committee reported in September 1999 that 'in Romania, there is a discrepancy between the policy of the Department for the Protection of National Minorities, which has repeatedly asked the Prosecutor's Office to take steps against incitements to violence, and the Prosecutor's Office, which refuses to enforce the law in such cases'.⁵⁵

Recent field studies conducted by ERRC led the organisation to conclude that 'when Roma rights violations occur, non-prosecution of perpetrators is the norm'.⁵⁶ ERRC talks about a 'Romanian judicial system [that is] slow, biased, and handed down unsatisfactory rulings in instances of violence against Roma by non-state actors'.⁵⁷

ERRC reports that 'human rights activists in Romania have reported to the ERRC (...) that prosecutors frequently end [judicial] proceedings with no indictments when Roma are victims and non-Roma perpetrators. One representative of a non-governmental organisation told the ERRC that such cases "occur frequently enough to constitute a pattern".⁵⁸

An example of failure by the authorities to adequately investigate crimes against Roma, leading to immunity from prosecution for the perpetrators, is

⁵³ ERRC, op. cit., p.14 of 80.

⁵⁴ CERD, 'Concluding Observations...', op. cit., p. 3.

⁵⁵ Romanian Helsinki Committee, 'Minority Rights in Romania', September 1999, p.5 of 11, at www.ihf-hr.org/reports/minorities/romania.fin.pdf (please note 'minorities' wrongly spelt in website address), also available in html.

⁵⁶ ERRC, 'State of Impunity...', op. cit., September 2001, p. 4 of 80.

⁵⁷ ERRC, *ibid.*

⁵⁸ ERRC, *ibid.*, p.13 of 80.

provided by ERRC: the organisation has filed an application with the European Court of Human Rights in Strasbourg in March 2000, in relation to a serious attack on a Roma community that left 150 people homeless in August 1991.⁵⁹

The investigation into the incident had been initially terminated by the Harghita County Prosecutor's Office on the basis that '*given the large number of people involved, it was impossible to identify the perpetrators*'. The General Prosecutor's Office overturned this decision in February 1991 but it was only in September 1991 that Harghita County Prosecutor's Office requested the County Police to reopen the investigation. Police interviewed several witnesses who said they did not know anything about the incident and no further investigation was carried out. 4 years later, the investigation was terminated for a second time by a decision of the Harghita Country Prosecutor's Office.

In July 1998, an attorney from the Lawyers' Association for the Defence of Human Rights (APADO-CH) filed a new criminal complaint with the Prosecution Department of the Supreme Court. The case was referred to the Court of Appeal which decided that '*no criminal charges could be brought because the statute of limitations for this charge expired after a period of five years from the date on which the offence was committed*'. It also found that there was no evidence that an '*aggravated destruction of property*' (Art. 218 par.1 of the Criminal Code) had been committed. On appeal, the Prosecution Department of the Supreme Court confirmed this decision, which means that the victims have no further avenue to seek justice through domestic courts.

I.4.2 Legal immunity for police Not only is the above case not unique, but ERRC also reports on the fact that '*immunity from prosecution is nearly guaranteed when the suspected culprits are police officers. Where the Romanian judicial system has been slow, biased, and handed down unsatisfactory rulings in instances of violence against Roma by non-state actors, police violence against Roma is remedied only in the absolutely exceptional case. In the overwhelming majority of cases in which allegations of police abuse are made, Romanian investigation and prosecution authorities have ignored their obligation to ensure the right of Roma to an effective remedy. Prosecutors commonly refuse to open criminal investigation into allegations of police abuse against Roma*'.⁶⁰

⁵⁹ The 'Caşinul Nou' case in Harghita County. The case is still pending. ERRC, *ibid*.

⁶⁰ ERRC, *op. cit.*, p.14 of 80. Information in subsequent paragraphs is from the same source (pp.15-18).

'When criminal proceedings against police officers have been initiated, investigation procedures are often extensively delayed and/or the cases have been closed with no indictment decisions'.

The impunity the police enjoy is compounded by the fact that the police are an organ of the military, *'and its concomitant position within the jurisdiction of the military courts, also contributes to its insulation from accountability'.*

The organisation reports a number of cases that were left unchallenged by the Romanian judicial system. It notes in particular: *'In July 1999, on the occasion of the United Nations Human Rights Committee's review of Romania's compliance with the International Covenant on Civil and Political Rights, the ERRC submitted a list of 19 cases of police abuse of Roma that had been reported in Romania in the period 1996-1998. As of June 22 2001, with the exception of one case in which a police officer was indicted for shooting and killing a Romani man in May 1996, only to be acquitted by the Bucharest Military Court, none of these cases (...) resulted in an indictment of the police officers involved. Nor have any of the cases reported to the ERRC since 1998 resulted in indictments'.*

PART II ROMANI WOMEN'S RIGHTS IN ROMANIA: CONTEXT OF ABUSE AND ISSUES OF PROTECTION

'As a general opinion, violence against women and girls, especially domestic violence and sexual abuse, remain clandestine. Specialists mention in this regard the urgent need to deal with the dark numbers of violence against women'⁶¹

II.1 Roma women's status in the context of women's rights

II.1.1 Legal provisions in relation to women's rights In theory, the Constitution grants women and men equal rights (see above I.1.3 for more details). Officially women's issues (including proposals for new legislation, the promotion of women through training programmes, monitoring sexual discrimination, etc.) are dealt with by the Ministry of Labor and Social Protection created in 1996.⁶² A department for Child, Woman and Family Protection was created within the Ombudsman office (1997) in 1998. Since November 1999, there is also a Consultative Inter-Ministerial Commission on Equal Opportunities between Women and Men.⁶³

Romania also ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1982, but not yet the Optional Protocol of the Convention whereby individuals and groups can directly submit their claims to CEDAW.⁶⁴ IHFHR reports that in theory *'Romanian magistrates have all the legal means to directly apply the international legal provision'*.

In November 2001, the Parliament adopted a bill against sexual harassment in the workplace which mentions the notion of sex discrimination. However, it has been noted that the Act presents sexual harassment as *'the main (and only) form of sex discrimination, thereby obliterating other, indirect forms of discrimination against women'*.⁶⁵

⁶¹ IHFHR, 'Women 2000 ...', op. cit., pp. 347-370.

⁶² US Department of State, op. cit.

⁶³ IHFHR, *ibid.*, p. 348.

⁶⁴ The two last reports (fourth and fifth periodic reports) were both submitted in June 2000. See UN Committee on the Elimination of Discrimination Against Women, 'Concluding Observations of the Committee on the Elimination Against Women: Romania. 23/06/2000. CEDAW/C/2000/II/Add.7', 12-30 June 2000 at

www.hri.ca/fortherecord2000/documentation/tbodies/cedaw-c-2000-ii-add7.htm

⁶⁵ Chiva, C., 'Taking Women Seriously: Equal Opportunities and Romania's Accession to the European Union', 3rd December 2001, at www.eumap.org/articles/content/30/304

The US Department of State writes that *'in practice the Government does not enforce these provisions, nor do the authorities focus attention or resources on women's issues'* (*'the total budget for women's programs for 1999 was less than \$75,000'*).⁶⁶ For instance, women are not generally informed about the existence of the Ombudsman or about his role and powers.⁶⁷

The report highlights in particular economic discrimination resulting in higher rate of unemployment for women and lower than average wages. Inequalities between men and women in Romania have been described as *'structural rather than merely contingent, and pervasive phenomena rather than temporary consequences of the transition. The public political sphere is predominantly masculine, as indicated by the systematic under-representation of women in the Parliament and government, as well as by the 'absence of an outlook based on gender equity' from political parties'*.⁶⁸

Furthermore both women's and men's understandings of gender roles is framed by patriarchal assumptions and practices.

II.1.2 Romani women and social rights The information available demonstrates the dual discrimination faced by Romani women due to their gender and ethnicity. Such information reveals that both discrimination and traditional Romani values constitute obstacles to Romani women's social, economic and political rights or to the protection of such rights.

II.1.2.1 Economic and social status In the context of the general discrimination against women in Romania, Romani women – who belong already to the most vulnerable groups economically – are particularly affected, both economically and as far as their living conditions are concerned. For instance, IHFHR writes:

'Roma population is poorer than other population groups [with] poverty rates significantly higher (78.8%) than for other population groups and in comparison with the national poverty rate (30.8%). The living infrastructure available to Roma communities is often disastrous, an aspect that affects primordially the women who are managing the households. Roma communities are usually located in rural areas, either isolated or located at the margins of towns or villages. Consequently access to public facilities such as water supply, electricity, gas supply or roads is very limited. Roma communities in urban areas are usually located in particular districts or

⁶⁶ US Department of State, *ibid.*

⁶⁷ IHFHR, *ibid.*, p. 348.

⁶⁸ Chiva, C., *ibid.*

neighbourhoods also characterised by poor or non-existent public services. In addition, housing conditions are overcrowded. Since Roma women are even more exposed to patriarchal traditions of their role⁶⁹ (...) their daily life is much more difficult'.⁷⁰

Access to health care demonstrates the specific challenge Romani women face due both to their ethnicity and gender (see also below). Statistically, 'the number of health-related problems is higher than average for Roma women. Similarly, the life expectancy is lower than the average, and the infant mortality rates and cases of malnutrition are higher than the average. The number of Roma families having and raising a large number of children is much higher than the average'.⁷¹

II.1.2.2 Traditional romani values⁷²

According to IHFHR, 'the gender roles are traditionally defined in most Roma communities. As such women are largely responsible for managing the daily needs of the family. Consequently, Roma women face a dual challenge arising from their ethnicity and gender. The still limited information and research available on the status of Roma women reveal that the most significant disadvantage faced by Roma women is related to the enjoyment of social and economic rights in particular'.

Traditional practices that may influence the enjoyment of such rights for Romani women include early marriage: 'The cultural tradition of marrying young girls when they are 13 or 14-years-old is quite spread all over the country, in various Roma communities, regardless of how different they are'.

The traditional view on gender roles and early marriage in particular have also a direct impact on **access to Education** for Romani girls: 'The very traditional approach on the status of women in the Roma communities is very powerfully rooted in the precise established rules that refrain women from aiming to attend school. ... Their precise responsibilities in the community'⁷³ constitute obstacles to Romani girls' school attendance and education in the long-term.

There are also strong traditional values in terms of **reproductive role**: 'Powerful traditions regarding childbirth and spousal relations (...) would not

⁶⁹ An hindsight on such traditions can be found in **Section I** of this study.

⁷⁰ IHFHR, *ibid.*, p. 367.

⁷¹ The report does not provide statistics for Romani women. In comparison, the leading causes of death for women in Romania are circulatory diseases (61.5%), cancer (13.8%), accidents and poisonings (6.5%), and respiratory illnesses (6.5%). The average life expectancy for women is 73.09 years whilst infant mortality rates was 22 per 1000 births in 1999 and 20.2 per 1000 in the first six months of 2000. See, IHFHR, *ibid.*, p.357.

⁷² Unless otherwise stated, information is drawn from IHFHR, *ibid.* pp367-368.

⁷³ IHFHR, *ibid.*

allow Roma women to use any kind of contraceptives'. This is reflected by high fertility rates amongst the Roma, attributed to lack of education and information regarding contraceptive methods.⁷⁴

II.2 Violence against women: prevalence and access to protection

'Women who are submitted to acts of violence do not enjoy total protection from the state in the case of domestic violence'.⁷⁵

Romania's submission to CEDAW in 1999 recognised that:

'The phenomenon of violence against women remains a major problem in Romanian society. At the present time, Romania has a national plan for research into and evaluation of the phenomenon. Although by now a large part of the legal and regulatory framework necessary to battle this phenomenon has been put in place by Romania (namely, the Penal Code, which punishes any such offence), acts of violence against women continue to be observed.'⁷⁶

II.2.1 Domestic violence

II.2.1.1 Prevalence⁷⁷ There are currently no reliable evidence or statistics on the prevalence or frequency of domestic violence in Romania. One major reason is that criminal offence statistics are not collected according to gender or on the basis of the relationship between the perpetrator(s) and the victim(s). This is compounded by the fact that many women are reluctant to report it in the first place, mainly due to social pressures (both cultural and economic. See below).

Some idea of the prevalence of domestic violence is given by the results of research carried out in the penitentiaries and minors re-education centres in

⁷⁴ Organisation for Security and Cooperation in Europe (OSCE), 'Report on the Situation of Roma and Sinti in the OSCE area', 2000, p.123 (www.osce.org/).

⁷⁵ Written statement from the Romanian Independent Society of Human Rights (hereafter SIRDO), reporting to the UN Commission on Human Rights (UN Economic and Social Council), 'Integration of the human rights of women and the gender perspective: Violence Against Women. E/CN.4/2001/NGO/95', 6 February 2001. SIRDO is a non-governmental organization in special consultative status. Source: www.unhchr.ch/huridocda/

⁷⁶ CEDAW, 'Consideration of reports submitted by state parties under Article 18 of the Convention on the Elimination of all forms of Discrimination Against Women', CEDAW/C/ROM/4-5, 15 March 1999, at www.un.org/womenwatch/daw/cedaw/romania.pdf (also available in html)

⁷⁷ Unless otherwise stated information in this paragraph is drawn from IHFHR, op. cit., pp. 362-367.

1995: It revealed that almost a third of the 62 women convicted for committing violent offences (including homicide, battery and infanticide) mentioned their husbands' or partners' violent behaviour.

The current recording procedures (or lack of them) means that it is also not possible to determine the extent to which violence plays a part in divorce cases. However, according to the government's estimation, *'it constitutes the primary cause for more than 70 per cent of cases of divorce'*.⁷⁸

The most accurate figures on domestic violence were produced by the Minnesota Advocates for Human Rights, documented in their 1995 report *'Lifting the Last Curtain: A Report on Domestic Violence in Romania'*.⁷⁹ Some evidence in the study was provided by interviews with two judges in Bucharest according to which domestic violence touches all levels of society. One of the judges estimated that she was assigned one to two cases per day *'involving women beaten by their husbands or boyfriends'*. She had herself been beaten by her ex-husband.

A survey of 301 women also found that 24% responded in the affirmative to the question *'has your spouse or partner ever hit, slapped or pushed you?'*⁸⁰.

Further evidence was provided by the Forensic Hospital in Bucharest: The statistics gathered by the staff from 1993 to 1994 indicated that 28% of women who attended the Hospital for treatment during this period had been beaten by an intimate partner. A doctor at the hospital commented that the findings *'represent[ed] the "tip of the iceberg" (...) because victims frequently seek treatment at the facility only after several assaults'*.⁸¹

The *'under-reporting'* of domestic violence cases was confirmed by IHFHR: *'Discussions with lawyers underline that law enforcement bodies register only a very small percentage of all cases of assault'*.⁸²

In addition, the Community Safety and Mediation Centre (CMSC hereafter) recently pointed out that *'there is a significant increase in domestic incidents leading to serious assault and murder'*.⁸³

⁷⁸ CEDAW, *ibid.*, p.14.

⁷⁹ Minnesota Advocates for Human Rights, *'Lifting the Last Curtain: A Report on Domestic Violence in Romania'*, MAHR, USA, 1995, at: <http://www.mnadvocates.org/Home%20Page%20Links/public.htm>. A number of delegates from the organisation were sent to Romania to interview healthcare and legal professionals, and to gather numerical data. Upon the delegates' request, the Forensic Hospital in Bucharest compiled statistics on domestic violence for a one-year period, from 1993 to 1994.

⁸⁰ *Ibid.*

⁸¹ Minnesota Advocates for Human Rights, *ibid.*

⁸² IHFHR, *op. cit.*, p. 360.

II.2.1.2 Domestic violence in Romanian society Domestic violence is so 'deeply ingrained in the many layers of Romanian culture'⁸⁴ that in April 2000, the Romanian edition of *Playboy* magazine had no qualms publishing an article that explained 'in graphic detail how to beat one's wife without leaving marks'.⁸⁵ For the Minnesota Advocates for Human Rights, the roots of social acceptance of domestic violence lie in 'historical references in literature' and are reflected in today's prevalence of the phenomenon in Romanian society. IHFHR also reports that not only is domestic violence widespread but it is also often considered as an acceptable part of a relationship:

'Husbands' abuse in particular is not only widespread, but also largely accepted. *In the culture the man is viewed as the pillar of the family. Suddenly deprived of this role, due to the rapid social changes and economic restructuring process, men try to solve problems by resorting to abusive behaviour, having as they do an additional excuse*'.⁸⁶

In addition, women are largely blamed for domestic violence. Laura Grunberg, the director of the Society for Feminist Analysis (ANA), a recently formed group of professional women in Bucharest, has written how women are 'terrified and shamed, believing themselves to be guilty'.⁸⁷

IHFHR also reports: 'Due to traditional pattern related to the role and position of women in Romanian society', there is also a prevalent myth according to which 'a woman gets what she deserves through a beating. (...) Assuming that the woman will be considered a "bad wife", thus breaking the image of what she should be in a marriage, the woman often conceals the violence from others, even from her parents. Consequently the violence is "inherited" by women as something that is a part of daily life, and for which she carries the ultimate guilt'.⁸⁸

Such social and cultural norms affect women's ability to seek and access any available protection (see below II.2.5 Access to Protection in Practice).

⁸³ Community Safety and Mediation Centre (CMSC), 'Policing. From Strategic Conception to Practical Delivery. Domestic Violence Inside Community', Project description (start date October 2000). Source: www.fundraising.ro/Projects%20Mos/CMSC_008.htm

⁸⁴ As the Minnesota Advocates for Human Rights put it, op. cit. Also IHFHR, *ibid.*, p. 361.

⁸⁵ The publication led to international and domestic protests and *Playboy's* foreign editors and local publisher were forced to apologize. In July, the Romanian edition published an article on the costs of domestic violence. See US Department of State, February 2001, op. cit.

⁸⁶ IHFHR, op. cit., p. 361.

⁸⁷ Minnesota Advocates for Human Rights, op. cit.

⁸⁸ IHFHR, *ibid.*

II.2.1.3 Official measures against domestic violence

The government has acknowledged that domestic violence is a problem in Romanian society and further declared that it 'shares the opinion that domestic violence represents a flagrant violation of the right to life and to physical and mental integrity'.⁸⁹ The government is also aware of the negative impact that domestic violence has on women's situation i.e. their 'marginalization' (as single women, older women and women living in rural areas) and the need for educational and other support programmes:

'(...) In light of the increase in the number of acts of violence against women, it is intended to prepare an instructional programme for women, to be made available to them starting at a very early age, dealing with the violent behaviour which they have suffered or which may threaten them in the future. The aim of this programme is to increase women's ability to protect themselves'.⁹⁰

The government also stressed 'the need to draw up educational programmes fostering non-violent behaviour and preventing conflict situations and manifestations of aggressive behaviour within the family.'

Despite the government's recognition of the problem, the lack of statistics and specific legislation is indicative, according to IHFHR, of a 'discourse of public authorities addressing the issue of violence [that] remains only at the level of good intentions'.⁹¹ The current situation with regard to legal provisions confirms this view.

II.2.1.4 Legal provisions on domestic violence⁹²

Recent developments The 1999 United Nations worldwide report on domestic violence identified that there was no specific criminal law to deal with domestic violence in Romania. This situation was about to change when in mid-2000, the Ministry of Justice submitted some legal changes to the Parliament, including an article on '*Battery and bodily or health injuries between members of the same family*' with an improvement on the provisions available until then (see below for actual provisions). However the law (No.197/2000) which was in the process of application, was suspended in January 2001, prompting a stern reaction from SIRDO:

'... The Parliament of Romania adopted measures that sanction the acts of violence within the family and place the victims who are usually women and children under protection. By the decision of the Prime

⁸⁹ CEDAW/C/ROM/4-5, 15 March 1999, op. cit.

⁹⁰ CEDAW, *ibid.*, p 6-7.

⁹¹ IHFHR, *ibid.*, p. 360.

⁹² Unless otherwise stated, information in this part is drawn from IHFHR, *ibid.*, pp.361-362.

*Minister of Romania, appointed after the elections in November-December 2000, starting with 4 January 2001 the law [No. 97] application was suspended and **thus the main reform measure for the protection of victims of domestic violence was implicitly annulled, alongside with the mechanism for the settlement of the institutional policies and programmes of intervention and support***'.⁹³

SIRDO raised its concerns with and requested intervention from CEDAW, the UN Commission of Human Rights, as well as the Special Rapporteur on violence against women; in particular with respect to the monitoring of the harmonisation of the internal legislation with international standards.

Actual Provisions As a result of the suspension of Law No.197/2000, there are actually no specific provisions on domestic violence. As IHFHR puts it, this also means that '*as such, there is no official definition of domestic violence*'.⁹⁴

Domestic violence is currently dealt with alongside other incidences of violence and assault, and covered by Articles 180 to 184 (inclusive) of the Criminal Code.⁹⁵ According to the seriousness of the injuries and/or the intensity or length of the medical care required, the punishment for '*battery or any other forms of violence causing physical suffering*' (Art. 180, 181 and 184); or '*followed by consequences such as losing a sense of physical body part, ceasing their biological functioning, a permanent physical or psychological disability, mutilation, abortion or endangering the victim's life*' (Art. 182); or '*death*' (Art. 183), range from one month to fifteen years of imprisonment (as defined in Art. 180 to 184). Intentional acts of violence resulting in bodily or health injury are sanctioned by between three and ten years' imprisonment.

Marital rape is not formally recognised as a crime either (see also below section on **Sexual violence**): '*There is no specific legislation dealing with spousal abuse or rape, and successful prosecution of spousal rape is almost impossible*'.⁹⁶

In theory, constitutional provisions provide that international treaties and covenants are fully part of domestic law (thus providing for a legal recourse in cases of violence against women). However in practice courts rarely use such provisions in terms of human rights, let alone women's rights.⁹⁷ Hence the dire need for a specific legislation to guarantee Romanian women's protection against domestic violence.

⁹³ SIRDO, op. cit., 6 February 2001.

⁹⁴ This may contributed to the fact that such violence remain invisible to a great extent.

⁹⁵ The full text of the Criminal Code can be found at www.era.int/domains/corpus-juris/public_pdf/romania_criminal_code.pdf.

⁹⁶ U.S. Department of State, op. cit.; see also IHFHR, op. cit., p.364

⁹⁷ IHFHR, ibid.

II.3 Access to protection against domestic violence in practice

II.3.1 Shortcomings in the legal provisions Besides a lack of definition of what constitute 'domestic violence', the provisions fail to acknowledge the vulnerable position of women within abusive relationships and this is reflected in particular in the **procedures**:

For instance, in all cases, except when there is aggravated bodily injury and battery causing death, the victim has the burden to file a criminal 'preliminary complaint' before criminal proceedings can take place. This in itself deters many victims from pursuing their complaint to trial.⁹⁸ In addition, filing a preliminary complaint is dependent upon the victim obtaining a forensic medical certificate.⁹⁹ But according to the Minnesota Advocates for Human Rights medical certificates do not always reflect the extent of the injury, thus permitting a lower sentence against the perpetrator:

'The delegation learned from members of both the medical and legal communities that doctors have discretion in certifying the medical treatment period and there are circumstances where this discretion may be abused. Indeed the number of days certified may not accurately reflect the actual healing time for the injury'.¹⁰⁰

Also the law provides that 'parties reconciliation removes criminal liability' (Art. 180(4), 181(3), 184(5)). IHFHR writes how the pressure of reconciliation, in the context of the societal attitude vis-à-vis domestic violence victims (she provoked it so she 'deserved' it, or else she is a 'bad wife'), lead many women to 'give up legal action. (...) Researches have shown that women usually ask for a divorce based on the husband's violent behaviour following a significant number of violent situations, which bring them to a desperate point where they either cannot endure it anymore or the lives of the children are threatened as well'.¹⁰¹

II.3.1.1 Definition not inclusive In addition to these shortcomings, none of the Articles mentioned above state whether health injuries could include psychological or emotional abuse requiring care from mental health services. Although Article 182 makes explicit reference to psychological harm, what constitutes 'permanent psychological disability' remains unclear. The effects of domestic violence, beyond physical harm, are therefore hardly recognised.

⁹⁸ See Community Safety and Mediation Centre, 'Stop the Violence and Discrimination against Women' Project description (scheduled to start in November 2000), at www.fundraising.ro/search_all.asp

⁹⁹ IHFHR, op. cit., p. 362.

¹⁰⁰ Minnesota Advocates for Human Rights, op. cit., p.9 of 17.

¹⁰¹ IHFHR, ibid., p. 361.

II.3.1.2 Access to justice: another obstacle SIRDO's recommendation that concrete support be available for women who are victims of domestic violence by means of free legal assistance in order to accomplish their access to national and international justice indicates that it is not currently the case.

Attitudes and responses by police to domestic violence (see **II.3.5**) can also play a crucial role in women's ability and willingness to file and pursue complaints.

II.3.2 Lack of information There is common ignorance of what domestic violence constitutes: *'Currently, the degree to which the general public is informed of violence against women in general, and domestic violence in particular, remains essentially unchanged. Family violence continues to be perceived as one form of general violence'*.¹⁰² IHFHR also reported that *'women, as a general rule, do not realize the causes of the husband's/partners' violent behaviour. They rather attribute it usually to alcohol and the daily life difficulties the family experiences. (...) Sources of domestic violence (...) are viewed as intrinsic to poor, uneducated people belonging to the lower socio-economic categories of society'*.¹⁰³

CMSC in the town of Iasi also reflects on the lack of information on domestic violence and access to support services: One of the main problems highlighted by the non-governmental organisation is the *'lack of information of potential victims of violence on the services and assistance providers inside community and the types of assistance they can receive'*.¹⁰⁴

II.3.3 Cultural barriers As described above (see **II.2.2**), social perceptions of victims of domestic violence represent one of the first obstacles for women seeking protection. The cultural context is such that *'it is obvious that a woman who experiences violence in the family would choose not to make it known, let alone take legal action, which is equivalent to making it public'*.¹⁰⁵

Women also simply *'don't believe they have a duty to themselves and to their family to ask for social support and to end the violence'*.¹⁰⁶

¹⁰² IHFHR, op. cit., p. 361.

¹⁰³ IHFHR, ibid., p. 363.

¹⁰⁴ CMSC, *'La vita è bella'*, project description (2000), at www.fundraising.ro/Projects%20Mos/CMSC_006.htm.

¹⁰⁵ IHFHR, ibid., pp. 362-363;

¹⁰⁶ Grunberg, L., *'Women's Empowerment Through Information'*, April 1994 (unpublished) quoted by the Minnesota Advocates for Human Rights, op. cit.

Social pressures may play a role too: Single mothers in Romania, albeit not ostracised to the extent that they once were, are *'still traditionally not well perceived'*.¹⁰⁷

In practice this means that It is extremely unlikely that a woman will disclose violence, report it to the police and even less likely that she will seek legal protection. For instance, CMSC notes that *'the statistics form inside Iasi Police [with whom CMSC is collaborating on community policing program] indicate a very low number of reported violence (compared to reality). Due to this situation, violence against women, children and young people tends to be neglected and disregarded as a real problem'*.¹⁰⁸

II.3.4 Economic harshness Economic harshness and shortage of housing mean that women find it harder to leave a violent relationship and are thus less likely to report the crime or seek protection.

*'Often, people are forced to stay in abusive relationships because they have no other place to go.'*¹⁰⁹ One young Romanian writer recently explained: *"Since state construction suddenly stopped after 1989 a rapid increase in house prices has occurred. Between 1990 and 1993, the cost of a flat increased more than 100 times. Most newly married young people live with their parents in small flats and are unable to offer decent living conditions for children"*.¹¹⁰

II.3.5 Police handling of domestic violence Few years ago, Minnesota Advocates for Human Rights reported on the inadequacy of police responses to domestic violence reflecting a serious lack of awareness of domestic violence:

'In Romania, the police are charged with investigating only homicides and the most serious assault cases. During an interview with members of the Police Academy in Bucharest, the delegation learned that if the police are called on a domestic assault case, the common practice is to counsel or advise the couple at the scene of the assault. The police may occasionally fine the abuser or require him to return the victim's property. Police do not, however, generally make arrests in these situations.

'In any case, victims of domestic assault may be unlikely to enlist the services of the police, at least in Bucharest. One human rights advocate explained that some women are reluctant to call the police because of

¹⁰⁷ IHFHR, *ibid.*, p.355.

¹⁰⁸ CMSC, *op. cit.*

¹⁰⁹ Minnesota Advocates for Human Rights, *op. cit.*, p. 8 of 17.

¹¹⁰ Sirbu, D., *'Unexpected Consequences of Transition: A Feminist Point of View 11'*, June 1994, quoted by Minnesota Advocates for Human Rights, *op. cit.*, p.15.

problems with police brutality. She cited one case where a woman called the police after her husband assaulted her. The man was arrested and sentenced to thirty days in prison. While in prison, the man died. He is believed to have been beaten to death.

'Other sources interviewed by the delegation reported that the police do not respond effectively to victims of domestic assault when they are called. Police Academy professors interviewed by the delegation explained their opinion that domestic violence is not a problem in Romania. They ascribed this perception of domestic harmony to the "cult of the woman" in Romania. That is, they explained, that women in Romania are so loved by men, that they would do nothing to hurt them. These police officers were unable to identify any particular law enforcement policy or strategy for addressing domestic violence. In contrast, an article in the journal of the police academy states that "an important segment" of criminal offenses are crimes of domestic violence'.¹¹¹

According to the U.S. Department of State report (February 2001), the situation described above has not changed ('police are often reluctant to intervene in instances of domestic violence').¹¹²

IHFHR also writes:

'Although some initiatives have been taken to involve police officers in training focused on methods and practice in properly dealing with cases of domestic violence, it is far from the real need to assess the impact of such training. Unfortunately, due to the invoked lack of resources, the state authorities rely for now on the initiatives taken by NGOs active in the field, while constantly referring to the active partnership between state institutions and non-governmental initiatives in this regard'.¹¹³

An initiative directly involving the police has been the 'Pandora's Box' project¹¹⁴ (which works in direct cooperation with the County Police), which means that victims are adequately assisted through the police investigation. This seems to remain an exception.

CMSC also notes that 'police officer attitudes are outdated' and that 'unfortunately the police considered that this problem is not one of the priorities in the effort of tackling crime (even if the local community safety audit reveals that this is a major source of conflict inside the community)'.¹¹⁵

¹¹¹ Minnesota Advocates for Human Rights, *ibid.*

¹¹² U.S. Department of State, *op. cit.*

¹¹³ IHFHR, *op. cit.*, p. 363.

¹¹⁴ Funded by the Women's Program of the Open Society Foundation Romania.

¹¹⁵ CMSC, 'Policing. From Strategic Conception to Practical Delivery...', *op. cit.*

The organisation envisaged in 2000 a two-year project with, *inter alia*, the aim to provide awareness training for all police on issues related to domestic violence and establish in the town of Iasi a police domestic violence unit.

II.3.6 Lack of physical and witness protection scheme There is a serious shortage of services to assist victims of domestic violence in Romania. CMSC in Romania comments on the lack of information on accessing support services for women and children victims of violence (**see above**) adding that *'in Iasi in particular and in Romania generally there is only a limited number of services provided to the victims, having very few standards of practice regarding assistance of victims'*.¹¹⁶ CMSC also highlights a lack of *'co-ordination in referral of cases'* when procedures for referral are in place.

In addition, there are few legal provisions for court orders, which means that the lack of protection for victims extends to the period of criminal investigation and trial: Between the time a complaint is filed and the first court appearance (i.e. the trial), *'orders for protection or other injunctive relief independent of the primary legal action ((...) available in some jurisdictions) are not available in Romania'*.¹¹⁷

Even if existent, such primary legal action remains inconsequential due to *'the serious housing shortage in Romania and the lack of shelters or any alternative living arrangements for victims of violence'*.¹¹⁸ The victim is all the more seriously at risk that there are considerable delays in the court system which means cases may remain unresolved for weeks, if not months. As a result, CMSC reports that *'it is often the case that the victim and the perpetrator of violence continue to live together'*.¹¹⁹

As the Home Office report on Romania clearly indicates, there is still a major inadequacy of State refuge services for women fleeing domestic violence:

'Under a government pilot which began in 1997, a shelter for victims of domestic violence opened in Bucharest in 1997. The shelter can accommodate only 4 persons. It received 490 calls for help during 1998 on a hot line, and registered 230 walk-in victims'.¹²⁰

There are several non-governmental initiatives that support women victims of domestic violence, including in the provision of shelter facilities. For instance, a NGO based in Bistrita County opened the *'Centre for Assistance*

¹¹⁶ CMSC, *'La vita è bella'*, op. cit.

¹¹⁷ Minnesota Advocates for Human Rights, op. cit.

¹¹⁸ As reported by the Minnesota Advocates for Human Rights, *ibid.*, p. 9, but also more recently by the US State Department, op. cit, and IHFHR, op. cit.

¹¹⁹ CMSC, *ibid.*

¹²⁰ Home Office, op. cit.

and Protection for Victims of Violence in the Family'.¹²¹ It offers *inter alia* a shelter for victims of domestic violence where they can receive medical, psychological and legal assistance for up to six months. The same support is offered for up to four months to women who do not use the shelter. In Arges County, the 'Pandora's Box' project opened an SOS hotline.

There were in total, only two refuges in Romania in 1999, one in Bucharest, and the other, as mentioned above, in Bistrita. According to CEDAW, there were five centres for victims of violence against women in Romania run by non-governmental organisations and two set up by the Ministry of Labour and Social Protection.¹²²

II.3.7 The court handling of domestic violence cases As mentioned already, legal protection for victims of domestic abuse is seriously impeded by a lack of specific legislation on domestic violence. In addition, most of the offences covered by the legislation in relation to bodily harm and injury can be punished by a fine rather than imprisonment.

This provision means that in practice, and as IHFHR highlights, '*for the offences foreseen in Articles 180 and 181¹²³ the vast majority of punishments consist of a fine*'.¹²⁴ The fines usually come out of the family budget whilst it is unlikely that they would change the perpetrators' behaviour. These factors discourage women from exercising their right to protection.

The situation as reported in 1995 by the Minnesota Advocates for Human Rights organisation remain unchanged today:

'The courts rarely force a man who has assaulted his partner to leave the family home, and the housing shortage precludes many women from seeking alternative living arrangements. Women experience repeated acts of violence and find that the available legal remedies do not protect them from this violence. The failure of the legal system to adequately protect women from domestic violence and to effectively punish perpetrators violates the "adequate remedy" guarantee articulated in the International Covenant on Civil and Political Rights'.

¹²¹ The initiative is funded by the Women's Program of the Open Society Foundation Romania. See IHFHR, *op. cit.*, p. 363.

¹²² CEDAW's questions to the Romanian officials quoted by IHFHR, *ibid.*, p.360.

¹²³ i.e. bodily harm or injury that cause physical suffering or require medical treatment for up to sixty days.

¹²⁴ IHFHR, *ibid.*, p.362.

Domestic Violence is seen as a valid ground for divorce.¹²⁵ However, the way shared resources are allocated may also play a role in deterring women from filing a divorce case:

'If the dwelling is common property acquired during marriage, the spouse entrusted with the minor's upbringing must pay pecuniary compensation for the share of property that belongs to the other spouse... Consequently, although the woman victim may be granted the house by the court, she has to pay to the violent ex-husband the price of his share in the common home. (...). Moreover, the State does not provide any social support or social programs for victims of domestic violence and the legislation, in all its stages, is rather inefficient'.¹²⁶

In practical terms, this means that divorcees are often expected to share the same housing.

II.4 Women and children victims of sexual abuse

II.4.1 Prevalence The most recent figures available are provided by the General Police Inspectorate of the Ministry of Interior according to which there were 1,502 reported cases of rape between 1997 and 1998.¹²⁷ The highest rates are registered in urban areas and in particular the town of Iasi, Constanta, Botosani, Prahova, Bihor, Bacau, Dolj and Bucharest.

Other indicators of the prevalence of sexual crimes are provided by a survey carried out by the UN Interregional Crime and Justice Research Institute (UNICRI) according to which 10.8 percent of Romanian women workers were victims of sexual incidents in 1996.¹²⁸

The numbers available do not provide an accurate picture:¹²⁹ In the government's own terms, *'the hidden number of acts of violence against women is much higher than that given by the statistics. One of the causes lies in the economic reasons for the reluctance of victims of acts of violence (sexual assault, domestic violence with a sexual component, sexual harassment, etc.) to go to court'*.¹³⁰

¹²⁵ In Bucharest for instance, 23% of divorces were filed on the grounds of violence in 1997. See UNICEF, 'Women in Transition', 1999, Chapter 5 'Violence Against Women', p.6 of 16 at <http://eurochild.gla.ac.uk/documents/monee/pdf/monee6/chap-5.pdf>

¹²⁶ IHFHR, op. cit., p.354-5

¹²⁷ Figures quoted in the UNDP report 'The Status of Women in Romania 1997-1998', UNDP, Bucharest, 1999, and quoted by IHFHR, ibid., p. 364.

¹²⁸ UNICEF, op. cit., Chapter 5 'Violence Against Women', p. 5 of 16.

¹²⁹ UNICEF notes that *'it is generally accepted that the number of rapes (including rapes within marriage) is 5-10 times higher than the number reported'*; op. cit.

¹³⁰ CEDAW, op. cit., p. 13.

Sexual abuse and 'organised sexual exploitation' of children placed in state institutions is also a serious cause of concern for UNICEF.¹³¹ Many of these children are Roma.

II.4.2 Current legal provisions Rape in the law (Art. 197 of the Criminal Code¹³²) is defined as 'sexual intercourse with a female through coercion or taking advantage of her impossibility to defend herself or express her will' and carries a sentence of between three and ten year imprisonment.

Aggravated circumstances carry heavier sentences (between five and fifteen year imprisonment) in the case of gang-rape (two or more perpetrators); if the victim was under the perpetrator's care, protection, education, supervision or treatment; if the victim suffered aggravated bodily or health injury. If the victim is under 14 or the rape is followed by death (including suicide), the sentence can be up to twenty years imprisonment. The law provides however that a rapist can avoid punishment if he marries the victim (Art.197, par.5).

Incest is also punishable by law (Art.198 of the Criminal Code)¹³³ but **marital rape** is not explicitly legally recognised as a crime. IHFHR comments:¹³⁴

'Article 197 does not make any distinction between rape in our outside of marriage which, in principle means that the general legal provision could apply to marital rape as well. However it is very less likely that the jurisprudence would consider the definition of rape as applying to a married couple'.

In addition, IHFHR explains how law students are taught about the 'family philosophy' according to which 'one of the family's functions is biological (...). [This] implies sexual relations between the wife and the husband and as such, the wife's lack of consent, in addition to the fact that it is almost impossible to prove, does not matter'. In this context, IHFHR stresses that it is unlikely that women victims of marital rape will find protection through the legal system.

II.4.3 Difficulties with prosecution of sexual crimes/rape Despite the above provisions, legal redress for sexual crimes is not deemed effective. CEDAW's own recommendations to the Romanian government ask for 'legislation and procedures for effective law enforcement to ensure that women

¹³¹ UNICEF, *ibid.*, p. 9.

¹³² See www.era.int/domains/corpus-juris/public_pdf/romania_criminal_code.pdf.

¹³³ Note that such provisions, like rape, usually refer to female victims.

¹³⁴ Unless otherwise stated, information in this paragraph is drawn from IHFHR, *op. cit.*, p. 364.

victims of sexual and domestic violence have immediate means of redress and protection'.¹³⁵

Various sources¹³⁶ point to the fact that prosecution for rape in Romania remains difficult because it requires both a medical certificate and a witness. IHFHR comments: *'With extremely rare exceptions, due to the intrinsic nature of the rape, witnesses' testimony is out of the legal evidence matter, which consequently affects legal proceedings by the victim. Therefore, from the victim's point of view, the evidence of rape implies interference in her private life'*.

The victim's 'good reputation' is also scrutinised by prosecutors, especially when to establish that coercion was used: *'the problems appear if the victim is not considered either an "honest" woman or a woman with a settled personal life (...). The existence of coercion is not relevant if a close relationship had been developed between the victim and the perpetrator before the alleged rape. The perception is the same if the victim claims that she went to the place where the rape was committed for a purpose other than a sexual relationship'*.

In other words, the treatment of victims of rape in court is often influenced by stereotypes relating to the victim herself.

The Centre for Legal Resources based in Bucharest also comments on the shortcomings in the current legal provisions in relation to the consequences for victims of crimes (all sorts of criminal acts): *'an ever-increasing number of people become victims, their rights being violated, with physical, psychological, social and financial consequences. In many cases the intervention of the legal system is not sufficient for eliminating the harmful consequences, if not accompanied by the enforcement of a coherent system of protection and assistance outside the framework of a lawsuit'*.¹³⁷

II.4.4 Lack of other forms of support The difficulties in pursuing a legal case are compounded by the fact that there is currently little support for victims of rape in Romania. IHFHR reports the existence of only two women's

¹³⁵ CEDAW, 'Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Romania. 23/06/2000. CEDAW/C/2000/II/Add.7', Geneva, June 2000; available at www.hri.ca/fortherecord2000/documentation/tbodies/cedaw-c-2000-ii-add7.htm

¹³⁶ For example, Home Office Country Information report (October 2001), op. cit., and US Department of State (February 2001), op. cit.

¹³⁷ Centre for Legal Resources, 'Study regarding the protection of the victims', Project description (start date Jan. 2001), www.fundraising.ro/Projects%20Mos/CRJ_064.htm. The Centre is a non-governmental organisation created in December 1998 whose main mission is to assist Romanian society in the process of harmonizing and adjusting the Romanian legal system to European Union Standards (www.cri.ro).

organisations offering counselling services or shelter to victims of sexual assault: One in Cluj-Napoca and one in the town of Iasi.

II.4.5 Police handling of sexual violence cases We did not find any specific information on police's response to sexual crimes in Romania. UNICEF however reports the lack of awareness amongst the police in Romania who did not receive any specific training for dealing with women victims of violence.¹³⁸

As far as **Romani women** are concerned, the chances of getting police protection are likely to be greatly reduced by police's general attitude vis-à-vis Roma people.

This '*double discrimination*' can be illustrated by the case of a Roma woman who claimed asylum in Canada:

'When she filed sexual assault charges against four men, one of whom was the son of a high ranking police officer, she was offered a bribe to withdraw the charges'. When she refused the bribe, her family started receiving threatening telephone calls. The fact that one of the attackers was the son of a police officer certainly diminished her chances to get justice. However, in their decision to grant the woman asylum, the Canadian Refugee Division took into consideration two factors: Prosecution of rape is difficult in Romania and the fact that violence and discrimination against Roma continue. As a result, they concluded that 'the claimant's contention that she did not receive adequate state protection was credible. There was a serious possibility that the claimant's attackers would continue to try to intimidate her into withdrawing the criminal charges if she returned to Romania'.¹³⁹

II.5 Violence against women at the hands of state agents

This form of violence has been most recently highlighted by the Romanian Independent Society of Human Rights (SIRDO), in their written submission to the UN Commission on Human Rights:¹⁴⁰

'Another phenomenon that we wish to submit to the attention of the Commission of Human Rights is violence against women when the state is the main persecution agent. We can appeal to numerous reports received from women who are in police lock-ups or in penitentiaries. These reports look in detail into the manner in which the police officers

¹³⁸ UNICEF, op. cit., p.14.

¹³⁹ CRDD 198-04880, Rowsell, Eustaquio, October 20, 1999 at www.irb.gc.ca/Legal/reflex/issues/refugee/129_e.htm

¹⁴⁰ UN Commission on Human Rights, '*Integration of the Human Rights of Women...*', op. cit.

submit women in police lock-ups to torture, inhuman or degrading treatments – which many times have sexual implications also.

These violations occur despite the fact that torture is prohibited by the Romanian Constitution (Art.22, par.2), the Penal Code (Art.267, par.1), the Code of Penal Procedure (Art.5, par.1) and the Convention against Torture that Romania ratified in 1994.

SIRDO highlights that the UN Special Rapporteur on violence against women and the UN Special Rapporteur on torture have received details on 40 such cases from Romania.

The organisation also mentions the mistreatment of women held in penitentiaries, including pregnant women who do not receive appropriate food or adequate medical care.

In addition to a stop to such practices, SIRDO expressly requests the intervention of the UN Commission to make sure that there is effective '*punishment against the guilty people*' and '*the respect of the right to an effective remedy*', thus indicating that both the Romanian authorities and the justice system fail to provide adequate protection.

II.6 Trafficking of women

II.6.1 Prevalence¹⁴¹ Romania is a source and transit country for trafficked women and girls but it is not clear how many are affected by this crime every year as it is underreported and/or there is no systematic record of the number of victims. According to the International Organization for Migration (IOM), as many as 20,000 women and girls are trafficked from Romania each year. Official figures do not reflect the extent of the problem: The IOM office in Romania reported that during the year 2000 about 141 women and girls were repatriated from sexual slavery by December, including 7 from Cambodia and 5 from Moldova. Figures for 1999 were less than 10.

According to the US Department of State, '*the Romanian NGO Sanse Egale Pentru Femei (Equal Opportunities for Women) reports that cases of trafficking in children rose from 8 in 1997 to 43 in 1999. In 1998, the NGO Save the Children dealt with 101 cases of children, mostly Roma, being taken to Germany and Italy and being forced to work as beggars or petty thieves*'.

¹⁴¹ Information in this paragraph is drawn from the US State Department Report, op. cit., pp. 16-18 and IHFHR report, '*Women 2000...*', op. cit., pp. 338-340.

II.6.2 Victims and perpetrators The main victims of trafficking are women and girls, many of whom are believed to be recruited from orphanages. According to IOM, women are recruited by friends, relatives or through newspapers' advertisement and they are usually unaware of the real nature of the job on offer. If they know that they will work in prostitution, they are not aware of how much

Alarming, NGOs think that many girls living in orphanages fall victim to trafficking networks, especially as many orphanages are reported to be *'complicit in letting girls escape into prostitution.'*¹⁴² *Children forced out of orphanages between the ages of 16 and 18 often have no identity documents, very little education, and few, if any job skills'*. Many such minors would be Roma children.

Evidence also shows that women may be sold to traffickers by their families or by trafficking rings (*'a minority of trafficked women are sold into prostitution by their parents or husbands or are kidnapped by trafficking rings'*). According to the Ministry of Interior, there are several domestic prostitution rings operating in the country, primarily operated by Romanians (on the other hand, the US Department of State reports that police officials often deny that Romania is a source country for trafficking).

II.6.3 Legislation on trafficking Despite a growing acceptance of the problem, the current legislation is inadequate as there is no specific legislation on trafficking. As a result, victims have no legal means to press charges against traffickers who may only be prosecuted for offences such *'as prostitution and procurement, falsifying documents, assisting individuals to cross borders illegally, blackmail, forced labor, or illegal deprivation of freedom'*.

In fact many victims have been prosecuted upon return to Romania for the crime of *'leaving the country illegally'* or engaging in prostitution. *This deters many others from returning or cooperating with the police.*

This applies also to women who were trafficked at the hands of their own family members: If they wish to report domestic violence they may find themselves unable to access protection, and even face prosecution.

Legislation in relation to the protection of minors is also inadequate to tackle the problem, leaving children vulnerable to all sorts of abuses.

¹⁴² The US Department of State refers to an extensive system of orphanages with about 60,000 dependents (op. cit.).

In addition, there are no specific provisions for the victim's safety if s/he agrees to denounce her/his trafficker(s) whilst there are very few independent support groups to help the victims.¹⁴³

The US Department of State (February 2001) reports that *'the number of individuals prosecuted for prostitution and procurement has been increasing since 1997, but this phenomenon appears to be partially due to an increased awareness of the problem among law enforcement officials as well as to an increase in the activities themselves'*.

II.6.4 Police accused of connivance Another major obstacle to seeking legal protection is police corruption, *'particularly in local forces'*¹⁴⁴ which, according to Romanian NGOs, *'only exacerbated the danger to trafficking victims and facilitated impunity for traffickers. Moreover, [victims] were often coerced by police into becoming informers'*.¹⁴⁵ In addition, the US Department of State reports that *'some NGO's expressed fear of reprisal from organized crime groups as a deterrent that prevents them from taking aggressive action against traffickers'*.¹⁴⁶

On the other hand, in few cases, NGOs are reported to having 'some success' in providing training for and working with local police forces on trafficking.

II.7 Failure of state protection for all forms of violence against women

On state protection against violence against women, IHFHR concludes:

*'The State's slow and hesitant conduct in pursuing adequate and firm legal changes and in implementing affirmative actions regarding violence against women, and the lack of resources oriented to education programs both for the public and the official bodies which enact the legal provisions related to domestic violence, illustrate indifference towards the victims and perpetuate a discriminatory attitude regarding women's status in the family.'*¹⁴⁷

As with other forms of violence, the government has been criticised for not taking any effective efforts to combat trafficking and the current picture shows a state that remains unable to provide adequate protection for victims of trafficking too.

¹⁴³ They include two shelters run by NGOs that help victims of sexual assault (see above **II.4**).

¹⁴⁴ US Department of State, *op. cit.*

¹⁴⁵ Human Rights Watch, *op. cit.*

¹⁴⁶ U.S. Department of State, *ibid.*

¹⁴⁷ IHFHR, *op. cit.*, p. 360.

State protection for women in Romania also fails to comply with a number of international instruments. For instance, the Universal Declaration of Human Rights includes several provisions relating to an individual's right to be free from violence and abuse: Article 3 provides that *'everyone has the right to life, liberty and security of person'*. Article 5 provides that *'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'*. The International Covenant on Civil and Political Rights also provides that *'every human being has the inherent right to life'* (Article 6) and that *'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'* (Article 7).

Not only are many women and children, whether Roma or not, denied such rights in Romania, but they are also denied the rights to reparation and justice when falling victims of violence.

CONCLUSION

Generally speaking, the Home Office considers that there is little ground for a citizen of Romania to claim international protection under the 1951 Convention relating to the Status of Refugees.¹⁴⁸ In February 2002, the Home Office wrote in its *'Operational Guidance Romania'*: *'Whilst the threshold may be passed in individual cases, the level of harassment and discrimination claimed by the majority of Roma is unlikely to amount to persecution within the terms of the 1951 UN Convention'*. The Home Office also referred to the UNHCR's advice according to which *'whilst it is beyond dispute that Roma in Central and Eastern European countries are frequent victims of discrimination and, on occasion victims of violence, conditions do not warrant the recognition of such asylum claims of a prima facie basis'*.

And referring to the situation of Roma, the Home Office country report (2001) quotes the European Commission according to which *'areas still needing attention include, [...] despite some positive developments, the situation of the Roma'*.¹⁴⁹

Looking at the specific case of Romani women, we argue that there is a greater cause for concern.

Indeed, the present situation in Romania is that of a country where both women and minorities are routinely subjected to discrimination, abuse and violations of their social, economic, political and civil rights. The evidence gathered in this report documents that violence against both women and women from the Roma communities are perpetrated by individuals as well as state agents, and in particular the police.

Current legislation, by which Romanian authorities and citizens are obliged to abide, provide in theory for the protection of women and minorities, if not through national laws, at least through international treaties and covenants (such as the Convention against Torture or the International Covenant on Civil and Political Rights) ratified by Romania.¹⁵⁰ In practice however the great majority of violence against Roma, especially at the hands of the police, remain unpunished.

At the same time, many local and international organisations or institutions reporting on the situation of women's rights in Romania highlight the prevailing lack of protection against all forms of violence against women. In these cases, the legislation is inadequate, weak or non-existent, illustrating again Romania's failure to adhere to its obligations as set forth in the

¹⁴⁸ Home Office, op. cit.

¹⁴⁹ Ibid.

¹⁵⁰ In addition, Romania's request to become a member of the European Union puts an obligation on the country to harmonize its legislation to comply with European standards in human rights.

Constitution and in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

In other words, women and minorities such as the Roma are denied the right to security of the person, freedom from torture and cruel and inhuman or degrading treatment through a failure of state protection.

In this report we presented a picture of Romani women subjected to '*double discrimination*' according to which violations of their rights, as women, are very likely to be compounded by a lack of state protection because they are members of a particular minority group that suffers ingrained cultural stereotypes and widespread discrimination across all spheres of society.

In addition, Romani women, who are also most likely to fall in the poorest categories of Romanian society, have very few opportunities to find protection and safety/security, especially in a Romanian society where patriarchal values remain the norm but also as members of communities where traditional Romani values are strongly perpetuated. The challenge for them, when seeking their rights, is enormous, when not impossible to attain.

Annex: Trends in Asylum applications and decisions

About 605 Romanian sought asylum in the UK in 1997, 1,015 in 1998, 1,985 in 1999 and 2,160 in 2000.¹ From 1997 – 1999, only a dozen received refugee status and less than 10 received exceptional leave to remain (ELR). 15 were granted refugee status in year 2000 and 20 got ELR.

From 1997 to 2000, 4,830 applications for asylum were rejected (whilst 5,765 had applied during the same period).²

UK in comparison to the rest of the world Out of 9,514 Romanian asylum seekers worldwide in 1999, almost 21% applied for asylum in the UK.³ In total, 317 received refugee or humanitarian status (or 5% according to UNHCR own indicators) in any part of the world and 62 % were rejected.

In 2000, 9,603 Romanian nationals claimed asylum worldwide, an increase of less than 1% compared to the previous year.⁴ The proportion of Romanian asylum seekers in the UK compared to the rest of the world increased to 22.50% (from 21%). The recognition rate for Romanian asylum seekers worldwide decreased to 3%.

¹ All statistics relating to the UK drawn from Home Office, *'Asylum Statistics United Kingdom 2000'*, 25 September 2001 (all figures exclude dependants).

² Discrepancy due to the fact that asylum decisions made during one year are not necessarily related to the applications made during the same year.

³ UNHCR, *'Trends in Asylum Decisions in 38 countries, 1999-2000'*, UNHCR, Geneva, 22 June 2001, p.13/46.

⁴ UNHCR, *ibid.*, p.15/46.

OVERALL CONCLUSION ISSUES OF PROTECTION AND INTERNAL FLIGHT

The findings of this report leave no doubt that Romani women are experiencing multiple discrimination, both in the way their rights are being violated and in the way (access to protection and) justice is denied to them. They are discriminated against first as women and second as members of a minority group that is little tolerated in Central and Eastern Europe, and in particular, as this report shows, in the Czech Republic, Poland and Romania. Although most of the violence against Romani women in these countries has remained invisible to date, there is evidence that such violence is widespread and yet remains unpunished. This is because, as we have shown in this report, protection in relation to crimes against Roma in general is all too often inadequate and insufficient. In the case of Romani women, it is also because crimes against women in the countries under review are dealt with similar levels of inadequacy and insufficiency, leaving the great majority of perpetrators unpunished whilst victims/survivors are left without judicial redress.

In addition, violations of Romani women's rights perpetrated *within* the Romani community may not be punished adequately either, not least because Romani women's rights are not always deemed a priority as far as Roma people are concerned.¹

In the context of an asylum claim, once lack of protection against persecution is established, there is another crucial question to consider: is '*internal flight*' – or '*internal relocation*' – a reasonable alternative?² In the case of Romani women, whilst it is clear that the answer to this question will very much depend on the specific circumstances surrounding the asylum claim under consideration, there are some elements worth highlighting.

For Romani women victims/survivors of violence *within* their communities, or victims/survivors of racially motivated crimes, internal flight is hardly a possibility for two major reasons:

¹ As explained in the introduction and Section I, it is not possible to generalise. However the information provided in Section I in particular sheds some light on the subject.

² According to Heaven Crawley, '*the issue of whether or not there is an internal flight alternative is one which is becoming increasingly important in the general context of efforts to limit overall recognition rates [in particular] to deny refugee status to persons at risk of persecution for a Refugee Convention reason in part, but not all, of their country of origin*'. See '*Refugees and Gender: Law and Process*', Jordans, London, 2001, pp.59-61.

1/ The first reason is that as soon as a Romani woman seeks help from *outside* her community, especially on the basis of domestic violence (i.e. a family matter) she is more than likely to be seen as betraying both the family and the community and in this case will face rejection and be condemned to 'social death'. She will lose all family and community support networks and resources that so far would have helped her to survive in already difficult social circumstances. Both Alex Jones and Nicoleta Bitu provide some information in this regard:

'For many widowed women, movement is impossible since social norms in the Roma community will not allow women to move alone. Single parent households rely on the close-knit Roma community to protect and support them. In single women's households, a man from another household often controls the economic resource. Control also extends to women's social behaviour, including where they can go and who they speak to'.³ Speaking to a gadje (non-Roma) about 'internal affairs' such as domestic violence for instance, is clearly not acceptable.

'When a woman breaks the roles and does not respect the rules of the family, her extended family does not respect her anymore and her parents are also less respected by the community'.⁴ This means that her own family may not have any other choice than to reject her in order to maintain their status in the community.

This is partly why Nicoleta Bitu asks fellow Romani activists: *'the controversial question is: do we want the states to intervene from the point of view of legal support and government policy?'*⁵

However, the options in terms of protection for Romani women living in Central and Eastern Europe are extremely limited, if one relies on the current evidence. As the information gathered in this report suggests, violations of women's rights are usually not dealt with, both in terms of access to protection and in terms of punishment.

2/ The second reason why internal flight is unlikely to be an option is that, despite efforts to conform to international and European

³ Jones, A., 'Migration, ethnicity and conflict: Oxfam's experience of working with Romani communities in Tuzla, Bosnia-Herzegovina', in *Gender and Migration*, Oxfam, Oxford, 1998, p. 61.

⁴ Bitu, N., 'The situation of Roma/Gypsy women in Europe', Council of Europe, Strasbourg, 17 September 1999 (Reference: rom/mgsrom/doc99/MG-S-ROM (99) 9e), p. 10.

⁵ Bitu, N., 'Roundtable: Romani activists on women's rights', in *Roma rights: 'Women's Rights'*, Nr.1, 2000, p. 36.

standards in terms of human rights, minority rights and women's rights, none of the governments in the countries under review have been able to guarantee the enforcement of such rights unequivocally at local levels. This means that the legal changes that have occurred in recent years at national level in the Czech Republic, Poland and Romania, have remained wholly insufficient: as illustrated in this report, violations of the rights of Roma (but also women's rights) very often occur at the local level where resistance to comply with such international standards remains strongest (e.g. local police stations, local prosecutors, etc.).

As Robin Oakley, Peter Mercer and Jeanette Buirski write, '*experience of combating exclusion of minorities from across Europe suggests that local-level strategies are important especially [because] national level policies and strategies relating to minorities are usually ineffective unless some mechanism is found to implement them at the local level*'.⁶

The reason is that '*the local level, especially of the municipality, is the level at which the delivery of most public services is administered*' (including services such as police protection and access to justice). In the case of Roma, as the authors further highlight in their article, the result is that '*discrimination against Roma [remains] institutionalised in the whole way that European societies operate: health, education, employment, housing, security and so on*'.

As long as the laws in relation to human rights, women's rights and minorities' rights are not systematically enforced at local levels, with ongoing reliable monitoring mechanisms, Romani women are therefore very likely to be denied their rights as well as adequate and sufficient protection in any part of their country of origin.

The Women's Caucus, at the meeting of NGOs from Central and Eastern Europe, described the predicament of Romani women in the following terms: '*Rising nationalism, xenophobia and intolerance against all ethnic minorities including the Roma people, strongly affect the living conditions and rights of women from these groups. The state policies often neglect the needs of minority women such as access to education, information, health care including reproductive health and rights, legal protection, social services*'.⁷ The situation for Romani women in the Czech Republic, Poland and Romania could not be better summarised.

⁶ Oakley, R., Mercer, P. and Buirski, J., 'Local-level strategies for combating Roma exclusion', *in equal voices*, European Monitoring Centre on Racism and Xenophobia, Issue 7, November 2001, p. 20.

⁷ Warsaw 15-18 November 2000. Source: www.hri.ca/racism/meetings/women.htm.

RECOMMENDATIONS

1. RWRP urges Home Office decision-makers to look at each individual case on its own merits as provided by the 1951 UN Convention relating to the status of Refugees. The situation for Roma in Central and Eastern Europe remains extremely grave as far as the protection of their rights is concerned. Romani women are particularly vulnerable as they experience multiple discrimination.
2. RWRP urges Home Office decision-makers to take into account gender issues as detailed in the Refugee Women's Legal Group's Gender Guidelines⁸ and the Immigration Appellate Authority's own Asylum Gender Guidelines⁹ when reviewing Roma cases and/or Romani women's cases. RWRP's view is that the current 'gender guidance' as included in the (new) Asylum Policy Instructions (November 2001) are insufficient to warrant a full understanding by Home Office decision-makers of the issues women asylum seekers face.
3. Given the information produced in this report on the experience of Romani women in the context of racism and xenophobia in Central and Eastern Europe (see **Section II**), and given the independent testimonies RWRP obtained in the course of this research, it is RWRP's opinion that Romani women dependent on a male relative's asylum claim should be given the chance to be heard separately about their experience of persecution as wives, mothers or individuals.
4. In particular, RWRP urges Home Office decision-makers to take into account Romani women's specific experience of discrimination and racially-motivated violence which extends to the social sphere, and means that many Romani women may face increased vulnerability in terms of access to medical support, education and employment, increasing the risks to their safety if returned to their country of origin. The same applies to Roma children.
5. RWRP advises legal representatives and Home Office officials to take into consideration the difficulties in getting a full statement from Romani women throughout the process, including cultural

⁸ RWLG, 'Gender Guidelines for the Determination of Asylum Claims in the UK', RWLG, London July 1998.

⁹ Berkowitz, N. and Jarvis, C., 'Asylum Gender Guidelines', IAA, London, November 2000.

obstacles that prevent the disclosure of information in relation to sexual abuse and lack of protection from one's own community or family. Cross-cultural differences (see **Section I**) should also be taken into consideration to determine the way the interview is being conducted and the selection of interpreters and interviewers.

6. RWRP urges women's organisations, human rights organisations and any other organisations with an interest in women's rights to support or take on extensive research work on the abuses of Romani women in Central and Eastern Europe. Areas such as domestic violence (all forms) and sexual violence (by state and non-state agents), sexual exploitation and trafficking of Romani women, remain severely undocumented despite the fact that such problems have been mentioned by numerous Romani women and other people working with them. As much as possible this research should be conducted by Romani women themselves or with the active participation of Romani women.
7. RWRP invites any organisations (working in human rights, health sector or other social sector) who have gathered information on the issues mentioned above in the course of their work to disseminate such information as widely as possible, either by contacting RWRP or by any other available means.

SECTION III

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CONCLUSION AND RECOMMENDATIONS

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