



Knowing Your Rights and Fighting for Them

A Guide for Romani Activists

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FOREWORD

The Roma rights field emerged in the mid-1990s together with the European Roma Rights Center. As applied human rights, it is a concretisation of the abstract: it develops human rights positions on Roma-related issues. But concretisation in this case should not be understood as deduction. Human rights principles and norms do not directly dictate views on Roma issues. Roma rights are not contained inside human rights as genetic codes in a cell's DNA. Concretisation, by articulating in rights terms the life concerns of a broad range of disadvantaged communities perceived as "Gypsies", is simultaneously an enrichment of the contemporary human rights doctrine. Thus Roma rights contributes to the open-ended and synthetic nature of human rights, ensuring their relevance and growing transformative power in a changing political universe. Nine years after its establishment, the European Roma Rights Center is ready to present, in this Handbook, some of the lessons of its training projects aimed at nurturing Roma rights advocates. An essential aspect of these training projects has been their gradual infusion with the feedback coming from Romani activists. This Handbook is therefore a snapshot of a continuing dialogue between a doctrine and a movement, a first systematic attempt to encapsulate the lessons of the dialogue in order to pass them on to a next generation of the Romani movement.

The purpose of this Handbook is to offer a strategic tool to the actors of the Romani movement in their day-to-day struggle for equal rights. It can be used to introduce grassroots activists to the thinking and the language of human rights. It provides to trainers a basic guide to Roma rights activities at the national, regional European and international levels. However, the Handbook retains a pragmatic perspective: it will be useful in developing the skills most relevant in defending and promoting Roma rights. To this end, it has been divided into two separate sections.

Part A, *Thinking About Human Rights*, provides a background to the fundamental principles behind universal human rights and links them to issues that face Romani communities in Europe through examples and activities. Chapters 1 and 2 outline human rights as universal standards applicable to all, based on our inherent humanity. These chapters give special attention to the right of equality and struggle against discrimination within a Roma rights context.

Chapters 3 and 4 begin to focus more specifically on how rights are enshrined and protected through a variety of instruments and mechanisms at local, national and international levels. We begin with an overview of national institutions and move through those of the United Nations, the Council of Europe, the Organization for Security and Cooperation in Europe and finally the European Union.

Part B of the manual is called *Making Rights Work* and focuses on the skills and functions undertaken by activists and nongovernmental organisations in human rights work. Chapter 5 describes the meticulous

process of human rights research and documentation. Chapters 6 and 7 move on to reporting and advocacy actions in the public interest to inform and stimulate change. Chapter 8 turns to the utility of engaging national and international law through litigation. The final chapter of the manual looks at creating change through direct action by activists and citizens, reflecting on historical movements across the world.

The Glossary and Appendices are there as a reference to supplement the information provided and aid the exercises found throughout.

The European Roma Rights Center believes that this specialised Handbook, tailored to reflect the current stage of the struggle for Roma rights, will add value to the existing more or less comprehensive human rights manuals. As the Handbook it is based on an interactive educational approach, we hope it will be a pleasant and easy-to-use instrument in a variety of formats, wherever needed, training members of the Romani communities to stand for their rights.

Knowing Your Rights and Fighting for Them

Part A

Thinking about Human Rights

A Guide for Romani Activists

Part A
Thinking about Human Rights

Chapter 1.

What Are Human Rights?

Knowing Your Rights and Fighting for Them

1. WHAT ARE HUMAN RIGHTS?

Introduction

The following appeared in a 2003 edition of the ERRC's quarterly journal *Roma Rights*:

A Prague-based news source, *Radio Prague*, reported that local authorities in the town of Slaný, near Prague, evicted five Romani families from their home on Oualova Street during the weekend of June 14 to 15, 2003. According to the Czech Romani organisation *Dženo Association (Dženo)*, following the eviction, the five Romani families lived with their furniture on the street in front of their former homes in protest. Three of the evicted children were reportedly removed from their mother's care and placed in an asylum centre in Prague, though their pregnant mother was left in the street.

According to *Radio Prague*, Mr Ivo Roubik, the mayor of Slaný, rejected accusations of racism, stating that the eviction of non-Romani families was also planned. Mr Roubik stated that the evictions had been undertaken because the families failed to pay their rent. However, the Prague-based non-governmental organisation *Counselling Centre for Citizenship, Civil and Human Rights (Poradna)* stated that some of the evicted Romani families had paid their rent on time, while the other families had attempted to negotiate with town authorities only to be met by a blank refusal of co-operation. *Radio Prague* also reported that, following a decision of the town hall, the families were requested to pay rent for living on the street as it is public property.

According to *Dženo*, Slaný authorities announced plans to turn the buildings formerly occupied by Roma on Oualova Street into a women's shelter and move the so-called "unadaptable" citizens to temporary accommodation being constructed on a former military base. The new site, located far from schools and most services, is reportedly not accessible via public transport. Two police officers were to be assigned to the area to preserve order.¹

Now, consider the following statements. Do you agree or disagree with each statement? Mark your opinion and provide a reason.

Statement	Agree	Disagree	Reasoning
A minority cannot suffer discrimination if it lives under the same laws as everyone else.			
Everyone has the right to adequate housing.			

Statement	Agree	Disagree	Reasoning
Economic and social rights are not enforceable.			
A person or group has the right to peacefully protest injustices.			
If something is not stated in a country's national or local laws, it is not a right.			
Special care and consideration should be provided to pregnant women.			
All people are equal and enjoy equal rights.			

The preceding activity was meant to get you thinking about rights. What are your rights as a citizen of your state? What are your human rights? Do these differ? Who is responsible for protecting human rights? Do rights come with certain duties or obligations? In the story described above, the Czech Roma in question clearly experienced several abuses. How are these abuses related to fundamental human rights? This chapter will explore the term “human rights” and introduce other important concepts related to human rights work.

What are Human Rights?

“All human beings are born free and equal in dignity and rights”,² meaning that all people possess certain rights from birth, simply because they are human beings. These are known as **human rights**.

All human beings are born free and equal in dignity and rights

This principle, which accords to all human beings freedom and equality, is the cornerstone of human rights work. Human rights exist to protect the fundamental freedoms and inherent human dignity of both individuals and groups. From what source do these principles of freedom, equality and dignity spring? They arise from

our common humanity, from the fact that all men, women and children share the condition of being human, irrespective of our differences such as age, ethnicity, gender, sexual orientation, political beliefs,

religion, national or social origin, language, property, birth or any other status. Everyone is entitled to respect as a human being. Human rights differ from needs because rights are entitlements, whereas needs are aspirations.

There are many different human rights, all of which possess the following characteristics:

- Human rights are *universal* – They belong equally to all human beings regardless of age, race, ethnicity, gender, sexual orientation, political beliefs, religion, national or social origin, language, property, birth or any other external factor.
- Human rights are *inherent* – They are based on recognition of the intrinsic worth of every human being. They do not have to be bought, earned or inherited.
- Human rights are *inalienable* – A person’s human rights can not be taken away, given up or transferred. No person or institution has the right to deprive another human being of his or her human rights. This is true even if a human right is not recognised or is violated by a state.³
- Human rights are *interdependent* – All human rights matter equally. The violation of one right affects the enjoyment of others. Human rights are therefore interconnected, indivisible and all equally essential to protect human dignity.

“Human rights are commonly understood as being those rights which are inherent to the human being. The concept of human rights acknowledges that every single human being is entitled to enjoy his or her human rights without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Human Rights: A basic handbook for UN staff, OHCHR UN Staff College Project 1999, p.2.

According to the Bucharest-based national daily newspaper Realitatea, on May 28, 2002, Mayor Dan Ioan Cărbușor, of the eastern Romanian town of Roman in Neamț County, together with local police and Romani leaders, attempted to introduce “good Roma cards”. The cards were reportedly to be issued to Roma exhibiting good behaviour. According to Realitatea, Roma not in possession of such cards would be prohibited from entering bars, restaurants and discos in Romania.

Reported in *Roma Rights*, 3–4/2002

Targeting Roma in this patronising and humiliating way is an attack on the universality, inherence and inalienability of their human dignity. Such a policy suggests that some human beings are more equal than others and is against the foundation of human rights. We do not have to ‘deserve’ human rights or dignity, they are entitlements to us all as human beings. Fortunately, in this case it seems that the rights violation was recognised by some Romani community leaders and no such cards were ever issued.

Myths vs Facts about Human Rights

The following is a list of common myths about human rights. As human rights activists, part of ensuring the rights of all people is to dispel myths that surround human rights discourse.

Myth: States are not obligated to ensure that human rights are realised.

Fact: The responsibility to protect, promote and ensure the enjoyment of human rights falls primarily to the state. With the exception of a few specific rights which are owed by the state in particular to citizens (i.e. the right to vote in elections), the state is responsible for the protection of the human rights of *all* people within their territories. These responsibilities include “the obligation to take pro-active measures to ensure that human rights are protected by providing effective remedies for persons whose rights are violated, as well as measures against violating the rights of persons within its territory”.⁴

Myth: People only deserve human rights if they fulfil certain duties.

Fact: Although we each have the moral obligation and responsibility not to impede upon others’ rights, there are no duties that must be fulfilled in order to “deserve” human rights. This is a common mistake and myth that has at times been perpetuated by governments seeking to limit the rights of their citizens. Human rights are the entitlement of every human being and are “not dependent upon past, present or future behaviour [...]”.⁵ Human rights are something with which every human being is born.

Myth: If my rights are violated, there is nothing I can do because life is just like that.

Fact: Many individuals or groups whose rights have been consistently violated feel a sense of disempowerment. However, there are possibilities for individuals to challenge and stop human rights violations, as well as to receive justice for any harms they have suffered. The implementation of human rights is closely watched by a variety of actors. Governmental agencies at both the local and national levels are often a first resort. In addition, courts, media, human rights activists and NGOs, as well as regional and international governing institutions, monitor human rights. There is a wide variety of avenues available through which persons who have experienced a violation of their human rights may seek remedy. Many of these will be discussed in the coming chapters and especially Part B of this handbook.

Myth: Human rights are irrelevant to people who cannot afford to eat or feed their families.

Fact: Human rights talk may seem very abstract in the light of the fact that many people cannot afford a square meal each day. Why talk of human rights at all, some may wonder. Poverty and human rights are

more closely connected than appearances may suggest. As we will see throughout this chapter, human rights are interdependent. Violations of human rights are therefore interconnected. Extreme poverty is a violation a person's right to "[...] a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services [...]" under Article 25 of the United Nations' Declaration of Human Rights. The violation of a person's right to health can prevent people from working, limiting their income and ability to work. The repercussions of this are felt more severely if this person is the primary wage earner of their household. Empowerment to improve the substandard conditions in which people live comes from demanding their universal human rights. Poverty is strongly tied to violations of human rights, which are especially relevant to those struggling to make ends meet.

Myth: Human rights are just utopian ideas and are not applicable in reality.

Fact: Skeptics about universal human rights often propagate this myth. At times, it can be difficult to maintain optimism about human rights when consistently faced with a world of abuses and human rights violations. It is necessary, though, to continue working for these rights, which are not merely hopes, but, which are guaranteed under international law. Human rights work is necessary to ensure the dignity of, and recognise the worth of, every person. It is everyone's obligation to work toward the realisation of all rights for all people and to find the common humanity of every child, woman and man on earth.

Thinking about Human Rights: Identifying Rights

Based on the above outlined characteristics of human rights, name four things you consider to be human rights. Why do you consider these to be rights? Are they different from needs? Who is or should be responsible for fulfilling/upholding these rights?

1. Right: _____

Reason: _____

Who is responsible? _____

2. Right: _____

Reason: _____

Who is responsible? _____

3. Right: _____

Reason: _____

Who is responsible? _____

4. Right: _____

Reason: _____

Who is responsible? _____

Examples of Human Rights

The rights that we refer to as *human rights* cover a broad range of issues touching all aspects of human life necessary to uphold human dignity. These rights are outlined in many different international and regional documents that will be explored in Chapters 3 and 4. The United Nations’ Universal Declaration of Human Rights (UDHR) is generally regarded as the most recognised of these documents and can be found in the Appendix of this manual. Some of the rights that can be found in the UDHR include:

- ✓ the right to life
- ✓ freedom from arbitrary arrest or detention
- ✓ freedom from discrimination
- ✓ freedom of thought, conscience and religion
- ✓ the right to health
- ✓ the right to education
- ✓ the right to property
- ✓ the right to seek and enjoy asylum

Take a moment to look at the rights outlined in the UDHR. Compare them with the rights you came up with in the previous activity. Did you come up with anything different than what is contained in the UDHR? Did you find anything surprising in the document?



Thinking about Human Rights: Interdependency

As mentioned above, the right to education is one of the universally guaranteed human rights outlined in the Universal Declaration of Human Rights. Few would argue the value of an education in enriching a person's life. However, the benefits of education to the individual are more deeply rooted than this: Other human rights depend on the effective realisation of the right to education.

Turn to the UDHR once more and examine each of the 30 Articles individually. How would your ability to enjoy these rights be different if you were not educated? When other human rights are violated, how can this affect one's right to an education? Below is an example of a Bulgarian case regarding the right to education. While you read the case, consider the following questions:

1. What are some of the challenges of ensuring the human right to education?
2. What are the state's obligations with regard to educating their people?
3. How does integrated schooling, where Romani children study along with non-Romani children, promote the right to education? What other rights does it promote?

Segregation in Education in Bulgaria

Roma face serious disadvantages in accessing quality education in Bulgaria. A comparison of data from two national censuses held in 1991 and 2001 shows that the number of illiterate Roma increased from 28,897 in 1991 to 46,406 in 2001. About 70 percent of school-aged Romani children in Bulgaria attend all-Romani schools, located in segregated Romani neighbourhoods throughout the country. Many of them have substandard curricula with a focus on vocational training. The quality of education in those schools has never been equal to that of regular non-Romani schools. Such schools are usually overcrowded and lack basic facilities. Classes are not held regularly; and some students who graduate from these schools can hardly read or write. Unqualified teachers, poor facilities and racial prejudice towards Roma on the part of school authorities are staples of the education received in these schools. This can be easily seen in the striking disparities between Romani children in the all-Romani "ghetto" schools and their peers in non-Romani schools with respect to school accomplishments. It has been estimated that around 70 percent of all Romani children in Bulgaria attend such schools.⁶

On September 15, 2000, approximately 300 Romani children from the Nov Pat Romani neighbourhood in Vidin, Bulgaria, started the school year by being bussed to one of the six mixed regular schools in the town. The program for equal access of Romani children to education, initiated by the Vidin-based non-governmental organisation DROM and supported by the Open Society Institute, was a major challenge to the pattern of continued educational segregation of Romani children in Bulgaria.⁷ The basic idea of the Vidin desegregation project is to guarantee equal access to education for Romani children from Vidin's Nov Pat Romani settlement by supporting their transfer to mainstream schools in the town.

Romani children were dispersed throughout six schools in Vidin. Free school materials, such as supplementary textbooks, notebooks and writing instruments were provided for roughly 80 percent of the children enrolled in the desegregation program. This helped them become equal participants in the education process. Moreover, additional classes were offered to children unable to master the new lessons because their starting level was lower than that of their non-Romani peers.

The success of the Vidin project was measured by the grades of the Romani students at the end of the first year. Although the Romani children did not have the same level of knowledge as their non-Romani peers at the start of the school year, they had managed to catch up by the year's end. No Romani student had to repeat the school year due to poor grades. The results show that fears of Romani children not being able to adapt to a new competitive school environment are unfounded.

The Evolution of Human Rights

As people, their relationships and the world changes, so do the contents of specific rights and the scope of human rights. Due to this, the list of specific protections outlined in the UDHR is not necessarily exhaustive. Human rights are dynamic, not static, and international law has reflected this in the adoption of additional treaties and conventions on human rights over the years.

As particular groups are identified as being disproportionately affected by human rights abuses or a new form of human rights violation is recognised, international law is developed

As particular groups are identified as being disproportionately affected by human rights abuses or a new form of human rights violation is recognised, domestic and international law is developed to address this. An example of this is the heightened degree of attention minority rights have been accorded in recent years due to escalating ethnic, racial and religious tensions throughout the world. Discrimination and minority rights are discussed extensively in Chapter 2.

Two groups that have been recognised as being particularly vulnerable to specific human rights abuses are women and children. In countries all over the world, every day, women are “[...] systematically discriminated against, excluded from political participation and public life, segregated in their daily lives, raped in armed conflict, beaten in their homes, denied equal divorce or inheritance rights, killed for having sex, forced to marry, assaulted for not conforming to gender norms and sold into forced labour”.⁸ Abuses also include, inter alia, domestic violence, violations of reproductive freedom and devaluation of childcare and other domestic labour. These are violations of universal human rights that target women specifically because they are women, and often governments do little to nothing to stop them. Although abuses of women's rights take place in various ways and to varying extents, women continue to be discriminated against in most of the world's countries, with justification frequently placed on religious or “cultural” values.

In the case of children, it is widely recognised throughout the world that, “the child, by reason of his [or her] physical and mental immaturity, needs special safeguards and care, including appropriate legal protection [...]”.⁹ Children around the world are vulnerable to exploitation, sexual abuse and domestic abuse. Many are forgotten as street children, forced into bonded labour or prostitution or pushed into military service. Others are discriminated against or neglected in the state’s obligations pertaining to health care and education. As a huge and largely unheard group, specific focus has increasingly been devoted to the human rights issues that affect children. Other groups that have been addressed specifically in international law include refugees and migrant workers. Aspects of international law will be further addressed in Chapters 3 and 4.

Human Rights and Responsibility

Along with human rights come responsibilities. As rights holders, we have *a duty to respect the human rights of other human beings*. There are certain *limits* on rights to balance one person’s rights with the human rights of others. These limits are necessary for everyone to live together and with dignity. For example, everyone has the right to freedom of opinion and expression, but people may face civil and in certain cases criminal penalties for spreading lies and hate-speech about other persons or groups. These actions degrade the dignity of others and violate their human rights. It is each person’s responsibility to respect and uphold the rights of others.

In addition to violations committed by the state, frequently human rights abuses are carried out by non-state actors (those who are not state officials or members of government). Traditionally, the state has been viewed as the protector and potential violator of human rights and obligations have fallen upon the state to uphold human rights. Since it is abundantly clear that states are not the only responsible party with regard to human rights violations, non-state actors are also deemed liable for rights violations. “Employers, corporations, landlords, teachers, doctors and any other citizen capable of violating an individual’s rights due to neglect or encouragement by the state are increasingly being held accountable [...]”.¹⁰

As rights holders, we have a duty to respect the human rights of other human beings

Violations of human rights do not only take place in public. Abuses committed against women and children often occur in the private sphere of the home or family, where a great number of the world’s women and their children spend the majority of their time. Violations of dignity in this sphere may include, but are not limited to, domestic violence, rape and infringement upon reproductive freedom. Individuals are responsible and accountable to respect others’ rights in all spheres of life, though this does not derogate from the state’s responsibility to ensure and protect the human rights of all those within its borders.

The following case from Romania is an example of a violation of human rights by private actors as well as the state’s dereliction of duty to ensure the protection of rights.

On September 20, 1993, Rupa Lăcătuș, Pardalian Lăcătuș and Zoltan Mircea, all three of Romani origin, were killed by a mob of ethnic Romanians in Hădăreni. The lynching occurred after an ethnic Romanian man, Chet, an Crăciun, had been stabbed to death by one of the Romani men during a fight earlier that day. The news of the conflict and of the death spread fast among the villagers and generated a violent reaction, in the beginning against only Roma involved in the conflict and after this against all Roma in the village. Soon after, a large number of villagers learned of Romanian villager's death. Enraged, they gathered together to find the Lăcătuș brothers and Zoltan Mircea. The angry mob arrived at the house where the three Romani men were hiding and demanded that they all come out. When they refused to come out of hiding, the angry crowd set fire to the house. As the fire engulfed the house, the brothers tried to flee but were caught by the angry mob that beat and kicked them with vineyard stakes and clubs. The brothers died later that evening. Zoltan Mircea remained in the house where he died from the fire.

Later that same evening, the villagers decided to take their anger out on all Roma living in the village, proceeding to burn Romani homes and property in Hădăreni. The pogrom continued through to the following day and resulted in the villagers setting fire to more Romani houses and destroying other Romani property such as stables, cars and goods. In total, 13 Romani houses were destroyed.

Ten months later, 3 individuals were charged with the murders. They were later released and their arrest warrants were cancelled by the General Prosecutor. Complaints against the police were referred to the Military Prosecutor's Office, which issued a decision not to prosecute. That decision was upheld on appeal.

Nearly 4 years later, following international outcry over the incident and the failure of Romanian authorities to bring justice to the victims, the Public Prosecutor in Mureș County finally issued an indictment against 11 civilians suspected of committing the crimes, which was later expanded to include others. In a judgment issued on 17 July 1998, 12 individuals were convicted of destruction of property and disturbance, including the Deputy Mayor of Hădăreni. Five others were convicted of murder. The sentences ranged from 1 to 7 years, later shortened on appeal. The Supreme Court later acquitted 2 of the defendants and those remaining in custody were pardoned by the Romanian President in June 2000 and set free. A civil court rejected all of the claims for non-pecuniary (moral) damages, finding the crimes were not of such a nature as to produce moral damage.

Having exhausted all domestic remedies, the applicants have turned to the European Court of Human Rights in Strasbourg. At the time of publication, the case had been declared admissible and was pending before the Court.

The Obligation To Respect, Protect, Fulfil and Promote

Human rights impose several obligations upon states: To respect, protect, fulfil and promote human rights. Respecting human rights requires states to refrain from impeding the enjoyment of an individual's rights. Protecting human rights entails ensuring that human rights are not violated by a "third party". The obligation to fulfil human rights means states must take active measures to ensure the realisation of everyone's human rights. Promoting human rights means not only raising awareness of rights and ways to assert one's rights, but also of the responsibility to respect others' rights.

One might wonder whether, if the rights-holder does not have the capacity to access a certain human right, due to poverty, illiteracy, corruption or other predicament, he or she is thereby deprived of the respective entitlement? The answer is no. Human rights denote a certain responsibility on behalf of governments to ensure that human rights of people under their jurisdiction are not only guaranteed by law but also effectively exercised by everyone.

Human rights denote a certain responsibility on behalf of governments to ensure the human rights of people within its borders are upheld

You may have also noticed by this point that some rights indicate a freedom to do something, while others are a freedom from something. According to some theories of human rights, these two different types of rights are defined as "positive" and "negative" rights.

Positive rights require a positive action to be taken by another party in order for the right to be realised. Some rights can not occur without the support of others – a responsibility that generally falls upon governments. Governments are required to take positive measures to fulfil certain rights obligations. Examples of positive rights include the right to education and the right to health. Without government intervention and the establishment of certain institutions (i.e. schools and hospitals), these rights could not be satisfied.

Negative rights are those rights that do not require an action for their fulfilment. In fact, negative rights are fulfilled only with the absence of action. Examples of negative rights include the right to life, freedom from torture and freedom of expression. A person is free to enjoy these rights until someone (or some force) violates them.

The distinction between positive and negative rights may be useful but it should not be deemed as absolute. Some theorists have subjected this distinction to criticism, pointing out that, for example, the "negative" fair trial rights cannot be effectively enjoyed without a sustained and adequately financed effort to build and maintain a well-functioning judicial system.

Rights violations generally take one of two forms: **Acts of commission** and acts of omission. **Acts of commission** are when an act is taken deliberately by the state or a non-state actor against a person or group of people. An example of an act of commission is the forced and targeted eviction of individuals from their homes. Acts of omission are the failure to act, intervene and/or legislate, resulting in the violation of human rights. Failing to provide infrastructure and basic services such as water, electricity and sewage to certain communities constitutes an act of omission by the government.

**Thinking about Human Rights:
Positive vs Negative? Omission or Commission?**

Refer back to the text presented in the introduction of this chapter (page 1). What rights were violated? Would you consider these *positive* or *negative* rights? Of the events described, which violations constitute acts of *commission*? Which are acts of *omission*? Use the UDHR in the Appendix and the definitions above to help you and record your answers below.

Right violated	Is this a positive or negative right?	Was this an act of commission or omission? Explain.

Endnotes

- ¹ Adapted from a news snapshot in the ERRC publication *Roma Rights*, 4/2003. Further information can be found at http://www.errc.org/rr_nr4_2003/snap12.shtml.
- ² *Universal Declaration of Human Rights*. Available in the Appendices of this manual.
- ³ Some human rights do, however, exist with specific limits, which are determined by law “solely for the purpose of securing due recognition and respect for the rights and freedoms of others [...]” (UDHR, Article 29 (2)). This means, for instance, that one’s freedom to movement may be restricted if imprisoned for committing a crime or in a national emergency. Certain rights though, may never be suspended or limited, even in emergency situations. These rights include, inter alia, the right to life, freedom from torture and recognition as a person before the law.
- ⁴ United Nations Office of the High Commissioner for Human Rights. *Human Rights: A Basic Handbook for UN Staff*. Geneva and New York, 1997.
- ⁵ Petrova, Dimitrina. “The Denial of Racism.” In *Roma Rights*, 4/2000, Budapest, 2000, p.26.
- ⁶ European Roma Rights Center. *Barriers to the Education of Roma in Europe*. Budapest, 2002.
- ⁷ European Roma Rights Center. *The Desegregation of “Romani Schools” – A Condition for an Equal Start for Roma*. ERRC Conference Report. Sofia, Bulgaria, 2001.
- ⁸ Human Rights Watch. Available at: <http://www.hrw.org/women>.
- ⁹ Convention on the Rights of the Child. Available at: <http://unhchr.ch/html/menu3/b/k2crc.htm>.
- ¹⁰ Centre on Housing Rights and Eviction, European Roma Rights Center and the Milan Šimečka Foundation. *Defending Roma Housing Rights in Slovakia*. Bratislava, 2004, p.12.

Part A
Thinking about Human Rights

Chapter 2.

**Fighting Discrimination:
The Universal Right of Equality**

Knowing Your Rights and Fighting for Them

2. FIGHTING DISCRIMINATION: THE UNIVERSAL RIGHT OF EQUALITY

Introduction

As we have already seen in our activities related to the Universal Declaration of Human Rights, it is stipulated that:

“Everyone is entitled to [human rights] without distinction of any kind, such as race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status [...]”.

(Article 2)

But, what does this mean? What is discrimination? What is racial discrimination? Most importantly, how do we identify and combat racial discrimination? This chapter will discuss these questions, as well as touch on some issues of minority rights protection and why we speak of “Roma rights”.

Thinking about Human Rights: Discrimination



Take a moment to reflect on the following:¹

Article 7 of the UDHR stipulates:

“All are equal before the law and are entitled without discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.

With this in mind, consider:

- Are all people equal before the law in your community or are some treated in different ways?
- What factors might give some people an advantage over others?
- Why is equality essential for human rights?

What is Discrimination?

Discrimination can be defined as treating one person or group as separate, superior or inferior to another based on arbitrary criteria such as race, colour, sex, language, religion, political opinion or national or social origin. Discrimination on grounds of race, colour or ethnicity is called racial discrimination, and is always a violation of human rights. Racial discrimination is any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.²

Discrimination on grounds of race, colour or ethnicity is called racial discrimination, and is always a violation of human rights

Fundamental to the principle of non-discrimination are the rights of members of racial, ethnic and national minorities to equality before the law and to equal protection of the law. International law bans racial discrimination in a range of fields including, but not limited to, education, health, housing, employment and the provision of and access to public goods and services. States have a positive obligation to prevent, punish and remedy racial discrimination, as well as to review laws and policies to make sure that they do not have a racially discriminatory impact on ethnic groups, even if they may be neutral on their face (that is, even if they do not aim to disadvantage any particular groups).

Discrimination is regarded as having two forms: “direct” and “indirect” discrimination. According to the European Union’s Council Directive 2000/43/EC “implementing the principle of equal treatment between persons irrespective of racial or ethnic origin”, direct discrimination has occurred “where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin”. An example might be an employment office which, as a matter of policy, refuses to accept Romani job applicants or a housing office, which, by intention and design, assigns Roma to sub-standard housing.

Most of us recognise blatantly discriminatory acts. Have you or someone you know ever been refused service in a pub or restaurant because the server or owner said he did not serve “Gypsies”? Do you know someone who was denied a job, flat or medical assistance because he or she is Romani? Have you ever seen a sign banning “Gypsies” or “Roma”? These are all overtly discriminatory acts, which occur with unfortunate frequency in Europe.

Another category of discriminatory acts are actions where the word “Roma” or “Gypsy” was not explicitly used, but where it is possible to show that discrimination has taken place. For example, many bars and restaurants now refuse entry to Roma and other dark-skinned persons under the pretext that they require “club membership”, or by saying that there is a private party going on. Similarly, it is often

reported that Roma applying for jobs are told over the telephone to come in for a job interview, but when they arrive and the persons offering the job see that they are Romani, the applicant is told that there is no job or that the job has recently been filled.

Indirect discrimination occurs “where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”, in accordance with Council Directive 2000/43/EC. Examples might be a department store, which states that no persons with long skirts may enter the store or a government office that prohibits entry by persons with covered heads. These rules, though neutral on their face as to ethnicity, in fact may disproportionately disadvantage members of certain minority groups that have a tendency to wear long skirts or headscarves.

In some Central and Eastern European countries, many people believe that Roma cannot suffer discrimination, because the Constitution or another law declares discrimination illegal, explicitly recognises Roma as a minority, or similar. This is a misunderstanding of the idea of discrimination as it is presently applied in Europe today. That Constitutional or other legal provisions prohibiting discrimination exist in a country does not mean that discrimination does not take place. The existence of a law against discrimination in a country does not mean that it is impossible for you to suffer discrimination – it only provides a tool with which you can fight against discrimination. A person may in fact experience many discriminatory acts every day.

That domestic Constitutional
or other legal provisions
prohibiting discrimination
exist in a country does not
mean that discrimination
does not take place

In a very limited number of situations, unequal treatment may be legal. In relation to direct discrimination, this arises in what is known as the “genuine occupational qualification” exception. It might not, for example, be unlawful to restrict applicants for a job as a Rabbi to people of the Jewish faith or applicants for a job as a Romani youth worker to Roma.

Likewise, in specific instances, when indirect discrimination is claimed, the claim may be rejected and the unequal treatment in question justified as legal. Where the complainant has established that a practice disproportionately disadvantages a racial or ethnic group, then the responsible person has the legal obligation to prove that the practice pursues a legitimate aim, and is proportionate and reasonable. An example might be a building site that requires all workers to wear hard safety hats. This policy would indirectly discriminate against certain groups who forbid the covering of heads in this way. The employer might however seek to justify this requirement by showing that, in this case, the legitimate aim is to ensure the safety of workers, that the requirement is proportional with the risk and that wearing hard-hats is a reasonable requirement under labour safety regulations.

Also, the ban on racial discrimination does not prevent governments and other authorities from planning, designing and implementing “positive action” or “affirmative action” programmes to assist groups that traditionally experience racial discrimination. These programmes are in many cases necessary to correct historical injustice and/or to ensure diversity. An example of this is setting aside a certain number of seats in a university for Romani applicants. Currently in Central and Eastern Europe there exist such programmes in the field of higher education, however this has not spread to sectors like employment and housing.



Thinking about Human Rights: Identifying Discrimination

Using the definitions given above as a guideline, fill in the table below. In the left-most column are listed several example situations. Identify whether the example given is discrimination and if so, what type of discrimination is this? Is this form of discrimination illegal or legal?

Example situation	Is this discrimination of Roma?	If yes, type of discrimination: direct or indirect?	Explanation
A Romani person without a medical degree is denied a job as a brain surgeon.			
A government policy denies social housing to those who have been found illegally occupying a building or trespassing in the last three years.			

Example situation	Is this discrimination of Roma?	If yes, type of discrimination: direct or indirect?	Explanation
A restaurant refuses to hire a Romani man as a waiter because his customers “might have a problem with it”.			
A hospital routinely racially segregates Romani and non-Romani patients into separate hospital wards “because of cultural reasons”.			

Other Terms of Discrimination

Racial discrimination – especially direct racial discrimination – is based on or underpinned by prejudices and stereotypes about certain groups and on the belief that race is an important factor determining human traits and abilities. Commonly known as **racism**, this belief purports that genetic (inherited) or culturally acquired differences produce the inherent superiority or inferiority of one race over another.

“Racism is viewed not only as a matter of individual prejudice and everyday practice, but as a phenomenon that is deeply embedded in language and perception”.

Vago, Steven, in *Law and Society* 6th ed. Prentice Hall, Upper Saddle River, NJ, 200 p.68.

A phenomenon similar to racism is **xenophobia**. Xenophobia is the fear of strangers or foreigners and is often manifested through rejection, hostility or violence against a certain targeted group. This type of discrimination is relevant to Roma, who are frequently regarded as “foreigners” in their countries of origin, regardless of how many generations they have been established as residents or citizens of their country. It is also of particular relevance to Romani refugees and migrant Roma who too often experience a backlash of xenophobic intolerance and racial discrimination in the countries to which they have fled/moved. Xenophobia is sometimes fuelled by political elites who advocate racist and discriminatory policies to “protect” their country from “outsiders”.

Discrimination, racism and xenophobia stem from the perception of cultural or ethnic superiority that are the result of **ethnocentrism**. Ethnocentrism is in place when one sees the world through one's own cultural lens and views other cultures as being inherently inferior to one's own. Ethnocentric people judge other cultures by the standards of one's own, while failing to attempt to bridge cultural divides or understand other people's conception of the world. This intolerance and lack of respect for other cultures, beliefs and practices results in discrimination.

“Many people think that they have essentially challenged racism in society by outlawing (the most egregious forms of) racial discrimination and providing access to justice and adequate legal remedy to victims of discrimination. [...] While this strategy of making race discrimination illegal and bringing lawsuits in cases of abuse is indispensable, it can't alone eradicate, or even substantially reduce racist practices (let alone attitudes) in society. As the removal or reduction of crime cannot be accomplished purely via the criminal justice system, no matter how well developed it is, so the removal or reduction of racism is impossible if strategies to combat racism are limited to making its manifestations illegal. Litigation is not the universal and sufficient answer to racism. A society based on the rule of law may well be one of racist complacency[...].”

Petrova, Dimitrina. “The Denial of Racism”. In *Roma Rights*, 4/2000.
Available at: http://errc.org/rr_nr4_2000/noteb2.shtml



Thinking about Human Rights: Racism

Discriminatory attitudes and racism affect the ability of Roma to realise the universally guaranteed right to equality, including equality before the law. The following is an example of how racism and discrimination are manifest in the criminal justice system. Read the passage and answer the questions that follow, using the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), found in the Appendices of this manual.

Romani Men Offered Reduced Compensation by Hungarian Court after Being Judged “Primitive”³

In November 2003, the Szeged City Court awarded two Romani brothers, acquitted of murder charges, a reduced compensation in the amount of 1.2 million Hungarian forints each (approximately 4,650 Euro) after classifying them as “primitive”. The two brothers, who had spent 15 months in detention as a result of false charges against them, had asked for 2 million Hungarian forints each (approximately 7,750 Euro), in damages. The Court’s ruling was reportedly based on a medical assessment which found the two men to be “more primitive than average” and had, therefore, suffered less as a consequence.

On December 18, 2003, the Csongrád County Court decided that the Szeged Court had erred in granting the Romani men reduced compensation on the grounds that they were “primitive”, but upheld the Court’s decision to award only 1.2 million Hungarian forints each in compensation. The reasoning of the Szeged Court was found to be humiliating and was therefore reportedly changed by the Csongrád court, from “primitive” to “simple”.

Questions:

1. What articles of ICERD are relevant in this case?
2. Do you think the second ruling was just? Why or why not?
3. How can the racist attitudes held by judicial figures be combated?

Minority Rights

Although human rights are universal, human rights abuses frequently occur disproportionately against certain groups. Frequently, these groups are minority communities or populations within a state. While there is no consensus on a definition, a **minority group** is generally identified as, “a non-dominant group of individuals who share certain national, ethnic, religious or linguistic characteristics which are different from those of the majority population”.⁴

Although human rights are universal, human rights abuses frequently occur disproportionately against certain groups

Although a state will not necessarily “officially” recognise such a group as a minority, there is increasing consensus that a minority is an issue of fact, not of law. Thus, for example, although the Turkish government has not recognised Roma as a minority in Turkey, this has not stopped a number of international monitoring bodies from requesting information about the Romani community in Turkey, because in practice this group shares the common features of a minority and suffers human rights abuses specific to the group.

Most countries in the world have at least one minority community and most have multiple minorities. The treatment of minority groups and how they interact with the majority population varies from state to state. The most common policies toward minorities vary from integration to segregation or exclusion and form assimilation to granting minority rights. The following gives brief definitions of these approaches.

Exclusion: These policies or practices seek to exclude or segregate minorities in aspects of economic, political, sociocultural life as well as in physical geography.⁵ Exclusion policies and practices attempt to “protect” the majority population from the dangerous “other” group. This results in social exclusion. Examples of exclusionary policies toward Roma include the educational segregation of Romani children in schools for the mentally disabled or other substandard schooling arrangements in a number of countries in Europe.

Assimilation: These policies try to force a minority to become like the “mainstream” majority population or culture. This is done through coercive policies that attempt to “civilise” the minority group or otherwise force its members to conform to a culturally defined norm. Although such policies are frequently (though not always) justified with the intention of bettering or benefiting the minority, it is still an ethnocentric and paternalistic policy that aims to decimate the minority culture. Roma have been at the receiving end of many assimilationist policies throughout Europe, especially under communist regimes.

Integration: Integration is frequently posited as a superior approach to assimilation in the treatment of minorities. Integration policies are held to “bring individuals into society as full members”,⁶ while respecting individual rights, including cultural rights.

Minority Rights: Policies that support minority rights grant certain protections for minorities as a group. This means that minority group members are entitled to their universally guaranteed individual human rights, as well as certain protections which flow from their status as members of a minority group. These “special rights” are not privileges, but measures adopted to make it possible for minority groups to preserve their identity, characteristics and traditions.⁷ Some of these safeguards include:

- The right to participate in cultural, religious, social, economic and public life;
- Protection by states of the minority’s existence and national or ethnic, cultural, religious and linguistic identity;
- Participation in economic progress and development; and
- Freedom to exercise rights individually as well as in community with other members of the minority group, without discrimination.

This policy also emphasises the right to cultural identity.



Thinking about Human Rights: Identifying Minority Policies

Listed in the following table are several government policies regarding minority groups. In the middle corresponding column, identify which policy is being described – is this policy of exclusion, assimilation, integration or minority rights? In the right-hand column, give an explanation for your answer.

Policy	Which type of policy is this?	Why?
<p>Under many former European socialist regimes, policies directed at Roma included laws on the “permanent settlement of nomads” and prohibition of the use and cultivation of the Romani language.</p>		
<p>Policies which promote multiculturalism and secure rights to and promotion of minority languages as well as cultural autonomy in the form of local and national minority self-governments.</p>		
<p>The Italian government’s policy of maintaining segregated, substandard dwelling areas for Roma known as “camps for nomads”.</p>		

Policy	Which type of policy is this?	Why?
Policies which set out a number of measures for promoting full participation of Roma in society, including educational measures aimed at ending segregation and equalising academic opportunities for Romani children.		



Thinking about Human Rights: Culture

Everyone has a cultural identity. Often this is so intrinsic to a person that it goes unnoticed until someone questions or deviates from it. As noted above, it is common for a more powerful group to attempt to impose its culture upon minority cultures.⁸

1. Why is the right to cultural identity important?
2. Why do dominant groups often seek to impose their culture on minority groups?
3. Why is it important to preserve, develop and appreciate different cultures?
4. What are some of the key components of your culture?
5. What, if any, steps has your government taken to strengthen your rights to minority group membership and culture?

Why Talk of Roma Rights?

Roma rights activists are often confronted with opposition arguments asking why “special rights” for Roma are necessary. Opponents may argue that focusing specifically on “Roma rights” creates friction with the majority community and that activists should work toward realising human rights for all.

As we have noted throughout this chapter, although human rights are universal, members of certain groups experience human rights violations disproportionately – Roma are one of these groups.

Therefore, specific attention needs to be devoted to securing equal access to universally guaranteed human rights. Roma rights are not special rights, Roma rights are human rights.

Roma rights are human rights

One of the claims of ‘Roma rights’ is the right to non-discrimination. Freedom from discrimination is not a ‘special rights’ but an expression of the principle of equality of rights, which is central to human rights philosophy and law. It is clear that, throughout Europe, despite the increasing recognition of the centrality of human rights and the growth and elaboration of human rights law, including anti-discrimination legislation, Roma experience much higher rates of human rights violations than majority populations. Formal **equal treatment** has frequently had little effect for many Roma on the everyday conditions of their reality; hence a focus on genuine equality of opportunity. In order to achieve real equality, treating all people *identically* is sometimes not enough. Groups which suffer violations of human dignity disproportionately to the majority population need additional protections to ensure equal opportunity. The Roma rights movement addresses the historically disproportionate human rights violations experienced by Romani people.

Romani Women

Romani women face a burden that is known as **double discrimination**: They are often discriminated against based on ethnicity *and* gender. While discrimination and social exclusion adversely affect many Roma, Romani women often bear a larger portion of human rights violations at the intersection of racism and sexism. Poverty and economic disempowerment, health issues, illiteracy and traditional cultural obligations disproportionately affect Romani women.

Romani women often bear a larger portion of human rights violations at the intersection of racism and sexism

Romani women are often primarily responsible for care of household, children and other family or community members. Overburdened with caring for children, managing households and generating income, women are often economically marginalised. Often, lack of security in the area of housing deprives Romani women of economic autonomy, physical safety and personal dignity and serves to marginalise women by contributing to the feminisation of poverty and their continued social subjugation. Additionally, there is a gender gap in education and leadership/political participation within Romani communities. Thus, it is important that these special issues are recognised and Romani women’s human rights be addressed, promoted and protected.

The following text outlines one of the most serious manifestations of the intersection of racial and gender discrimination resulting in human rights abuse.

Coercive Sterilisation

From the 1970s until 1990, the Czechoslovak government sterilised Romani women programmatically, as part of policies aimed at reducing the “high, unhealthy” birth rate of Romani women.

Although this practice reportedly ended in the mid-1990s, there have been periodic indications that the practice may have continued throughout the late 1990s. Since the fall of communism, a number of public officials have made statements expressing alarm at the high birth rate of Roma in Slovakia and its purported threat to Slovakia, or otherwise calling for measures to curb childbirth rates among Roma. During a speech in September 1993, then-Prime Minister Mečiar characterised the high birth-rates of Roma as a threat to Slovak citizens, asserting that, “this [Roma to non-Roma] ratio will be changing to benefit the Romanies. That is why if we don’t deal with them now, then they will deal with us in time”.

On the basis of field research conducted by the ERRC in 2002, there is indication that a serious issue of racially based contraceptive sterilisations of Romani women, taking place absent acceptable – and in many cases even rudimentary – standards of informed consent exists in Slovakia. For instance, in one case documented by the ERRC, a Romani woman had her fifth child by caesarean operation. According to her testimony, prior to the operation, she was given a Slovak-language form to sign. No one explained the contents of the form to her, even though she could not read Slovak. She signed the paper in the belief that it was related to the caesarean operation. After the operation was concluded, the doctor reportedly informed her that she would not be able to have any more children. The woman did not want to be sterilised and had never requested it. When she became angry and asked the doctor what they had done to her, the doctor reportedly told her that she had been sterilised because she had had too many abortions and too many children.

High levels of racist animosity documented in Slovakia – and in particular anti-Romani sentiment – appear to have played a role in the abusive or negligent treatment of women by doctors and nurses. Similar issues have been documented by the ERRC in Hungary and the Czech Republic.

Combating Racial Discrimination

The rest of this manual will concern itself with describing how human rights are protected through law and the actions you can take when your human rights are infringed upon or violated. The following are some of the ways to combat discrimination against Roma in Europe:

- ✓ **Get involved!**
- ✓ Create **political will** for change
- ✓ Press for new **legislation** or to change existing legislation to be effective
- ✓ Advocate for the adoption and **enforcement of effective minority and anti-discrimination laws/policy**
- ✓ Advocate for **positive action**
- ✓ Press for **specialised bodies** dealing with minority rights and issues
- ✓ Generate reliable **race statistics** on policy impact
- ✓ Engage in **dialogue** with government bodies, state actors and judicial bodies
- ✓ Promote anti-racism and human rights **education** – teach others and spread the word!
- ✓ **Engage international bodies** – learn the ropes and make your voice heard
- ✓ Encourage **political mobilisation** in your community and participate in the political process
- ✓ Build a **network** of other NGOs and activists working for Roma rights

Endnotes

- ¹ This activity has been adapted from: United Nations Office of the High Commissioner for Human Rights. *ABC: Teaching Human Rights*. Geneva: United Nations Publication, 2003, p.38.
- ² International Convention on the Elimination of Racial Discrimination (ICERD). Article 1. Appendix (p.203) of this manual.
- ³ The full text is available at: <http://www.errc.org/cikk.php?cikk=1871>.
- ⁴ United Nations Office of the High Commissioner for Human Rights. *Fact Sheet No. 18, Minority Rights*. Available at: www.unhchr.ch/html/menu6/2/training.htm.
- ⁵ Ringold, Dena, Mitchell Orenstein & Erika Wilkens. *Roma in an Expanding Europe: Breaking the Poverty Cycle*. Washington DC: The World Bank, 2003, p.19.
- ⁶ Ringold et al., p.21.
- ⁷ United Nations Office of the High Commissioner for Human Rights. *Fact Sheet No. 18, Minority Rights*. Available at: <http://www.unhchr.ch/html/menu6/2/fs18.htm>.
- ⁸ This activity is adopted from: United Nations Office of the High Commissioner for Human Rights. *ABC: Teaching Human Rights*, pp.47–48.

Part A
Thinking about Human Rights

Chapter 3.

**How Are Human Rights
Protected?**

**National Institutions
and the United Nations**

Knowing Your Rights and Fighting for Them

3. HOW ARE HUMAN RIGHTS PROTECTED? NATIONAL INSTITUTIONS AND THE UNITED NATIONS

Introduction

In Chapters 1 and 2, we concerned ourselves with some of the basic concepts underpinning human rights activity. We discussed briefly what human rights are, why they are important to *all* human beings and how discrimination, minority rights and particularly Roma rights intersect with human rights. In Chapters 3 and 4, the topics of human rights enforcement and human rights law will be examined to further explain recourses to address and combat human rights violations and abuses.

The next pages will introduce various institutions and mechanisms which together aim to ensure that the human dignity of every woman, man and child is protected. To begin, read the following passages. Then fill in the chart that follows, turning once again to the Universal Declaration of Human Rights to guide you. What rights are being denied? Which rights are being employed to seek remedy? Which articles of the UDHR relate?

Situation #1: In recent years, the local non-Romani population in the Hungarian town of Jászladány, with the support of local governing officials, have created a segregated school system under the guise of a “private school”, enrolling exclusively non-Romani children in order to provide “whites only” schooling. Initially, the County Administrative Office reversed decisions of the local government to designate classrooms in the local primary school as private schooling on the grounds that such classes were unlawful. Multiple attempts were then made to re-open the private school in an effort to provide separate schooling for non-Romani children. When the local government won a subsequent bid to open the private school, local activists and non-governmental organisations endeavoured to combat the school’s discriminatory nature by attempting to enrol Romani children at the private school. There was little success. The Parliamentary Commissioner for National and Ethnic Minorities proclaimed the private school to be unconstitutional and stated that the school should not have received a licence because the basic premise of the school is to discriminate against and segregate Romani children. According to new legislation coming into effect next year in Hungary, any school found to be segregating children on racial grounds shall immediately be closed.

Situation #2: Recently, 4 Travellers were awarded 4,500 Euro in compensation, to be paid by a local pub, after they were refused service. The decision was made by the government body responsible for equality investigations following an incident in which the manager of the pub reportedly instructed staff at the bar not to serve the Travellers. The group was asked to leave without reason, after the doorman had allowed them to enter. The pub stated that it had a strict admission policy and dress code, which entailed doormen checking for clothing and other articles

that identified someone as “rough looking”. A pub staff member reportedly testified that he asked the manager’s opinion because one of the female Traveller was wearing a “flimsy summer dress” and “tasteless” earrings. The manager stated that one of the women reminded him of a woman who had been involved in an earlier incident in the pub. The adjudicators found in favour of the Travellers because they were refused service based on presumed (and unproven) association with an incident that had happened years previously, and not on individual considerations.

Situation	Rights denied	Rights employed to seek remedy	Related UDHR Article
#1			
#2			

Rights and Obligations

As we have already seen in Chapters 1 and 2, states have certain obligations with respect to the implementation of fundamental human rights. These obligations are not only moral responsibilities, but legal ones as well. Human rights are legal claims held equally by all individuals. Even when non-state actors commit violations, governments are accountable for protecting and ensuring the fulfilment of human rights as a legal obligation to the rights holder. Human rights norms and principles are outlined in international human rights treaties and other standards in addition to national constitutional human rights provisions, which enshrine the entitlements of the individual rights holder, as well as the accountability of governments. Activists who work to ensure that governments uphold these obligations and that individuals know about them take what is called a **rights-based approach**. Laws give the moral claim to human rights a legal force. One of the benefits of a rights-based approach is that there are mechanisms in place to remedy human rights violations. Individuals may pursue justice in cases in which they believe their rights have been violated and there are monitoring bodies to engage governments on human rights matters and encourage them to undertake human rights-based policies. In the situations outlined above for instance, a rights-based approach was applied.

National Instruments

Human rights issues and protections begin at the local level. As we have examined through the preceding chapters, the state is responsible for implementing human rights standards to those who reside within their borders, including both positive obligations and negative freedoms.

No two states are identical in their laws, procedures and implementation of human rights, although all are responsible for ensuring that fundamental rights are respected and that justice is provided if they are violated. It is thus impossible within the scope of this handbook to accurately describe how human rights are implemented and protected in each of the states in which the ERRC is active, but this is an essential part of human rights activism. As an activist, it is important to know about the domestic legal order of your country. You will want, if you are not already, to become familiar with:

- The Constitution;
- How laws are passed by parliament;
- How bodies of the executive issue legal acts (i.e. presidential decrees, executive resolutions); and
- What the hierarchy of the courts is and how the legal system works.

Often, the list of legal instruments that activists engage does not stop here. When you are undertaking advocacy or pursuing a certain issue, you may also be required to become familiar with the relevant laws, institutional statutes and regulations. For instance, when investigating cases of violence by state actors, it is important to know what regulations govern the conduct of local police and what rights individuals have under domestic law with respect to the police. As well, it is good to know how the local administration is organised, including its procedures and policies relevant to your work.

The next sections will look at international law and regional **intergovernmental organisations** (IGOs). It is important to take international law into consideration in your local and national work. In many states there are constitutional provisions which stipulate that the norms of international laws ratified by the state are to be directly applied.¹ An example of this is the Slovak Republic, whose Constitution states:

“International treaties on human rights and fundamental freedoms and international treaties for whose exercise a law is not necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which were ratified and promulgated in the way laid down by a law shall have precedence over laws”. (Article 7(5))

The inclusion of a provision such as this does not mean however, that the rights outlined in international documents are automatically “implemented” by the state in practice. States must be judged on how they implement human rights protections, not solely on their legal or institutional framework. Important questions to ask include:

- Is your state living up to its international obligations?
- What is the social reality of Roma living within your state?
- Are certain groups within the minority experiencing disproportionate violation of their rights?
- Has your state developed anti-discrimination legislation and to what extent has it been effective?

Thinking about Human Rights: Human Rights and Constitutions²

An important action a state can undertake is to include internationally established human rights in the domestic legal order as a first step toward the full implementation of human rights.

How does your state measure up to international human rights standards?

Get a copy of your country's Constitution and use the version of the Universal Declaration of Human Rights found in the appendix of this book. For each right listed in the chart below, indicate with a check in the appropriate box whether the right is included in your state's Constitution as well as the UDHR.

Right	Included in the UDHR	Included in my country's Constitution
Free choice of employment	<input type="checkbox"/>	<input type="checkbox"/>
Free press	<input type="checkbox"/>	<input type="checkbox"/>
Free choice of spouse	<input type="checkbox"/>	<input type="checkbox"/>
Adequate shelter	<input type="checkbox"/>	<input type="checkbox"/>
Trial by jury	<input type="checkbox"/>	<input type="checkbox"/>
Free choice of number of children	<input type="checkbox"/>	<input type="checkbox"/>
Freedom from torture and inhuman or degrading treatment or punishment	<input type="checkbox"/>	<input type="checkbox"/>
Freedom of religion	<input type="checkbox"/>	<input type="checkbox"/>
Right to own property	<input type="checkbox"/>	<input type="checkbox"/>

Right to travel freely	<input type="checkbox"/>	<input type="checkbox"/>
Right to an education	<input type="checkbox"/>	<input type="checkbox"/>
Adequate food	<input type="checkbox"/>	<input type="checkbox"/>
Right to clean air and water	<input type="checkbox"/>	<input type="checkbox"/>
Freedom from discrimination	<input type="checkbox"/>	<input type="checkbox"/>
Adequate health care	<input type="checkbox"/>	<input type="checkbox"/>
Right to adequate housing	<input type="checkbox"/>	<input type="checkbox"/>
Freedom of Speech	<input type="checkbox"/>	<input type="checkbox"/>

Follow-up questions:

1. Were you surprised by what you found?
2. What rights were established in these documents that you feel should or should not be universal?
3. Do citizens of your state have any rights besides those included in the UDHR?

As mentioned in the section above, including these rights in the constitution is only a first step. States are also responsible for effective implementation of human rights standards. Also necessary are:

- ✓ Adopting and implementing laws to ensure that all have access to justice when their fundamental rights are abused;
- ✓ Reviewing existing and draft laws to ensure that they do not adversely impact human rights;
- ✓ Acting to disband groups that are based on ideas contrary to human rights;
- ✓ Acting to promote groups that aim to promote human rights that sanction rights violators;
- ✓ Providing justice in practice to victims of human rights abuses;
- ✓ Undertaking policies to promote human rights for all; and
- ✓ Training members of the public administration, criminal justice authorities, the judiciary and others in human rights norms, principles and approaches.

The United Nations

The United Nations was created in 1945 with the purposes of: Maintaining international peace and security; developing friendly relations among nations; co-operating in the solution of international

problems and in promoting respect for human rights; and being a centre for harmonising the actions of nations. These aims are all outlined in the UN Charter. Currently, there are 191 member countries of the United Nations that have agreed to support these ideas.

There are 6 main organs of the UN. They are the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the Secretariat and the International Court of Justice. All member states are represented in the General Assembly, but this is not true of the other main organs of the UN. To learn more about the operations and activities of the UN's main organs, visit the UN website: <http://www.un.org/Overview/brief.html>.

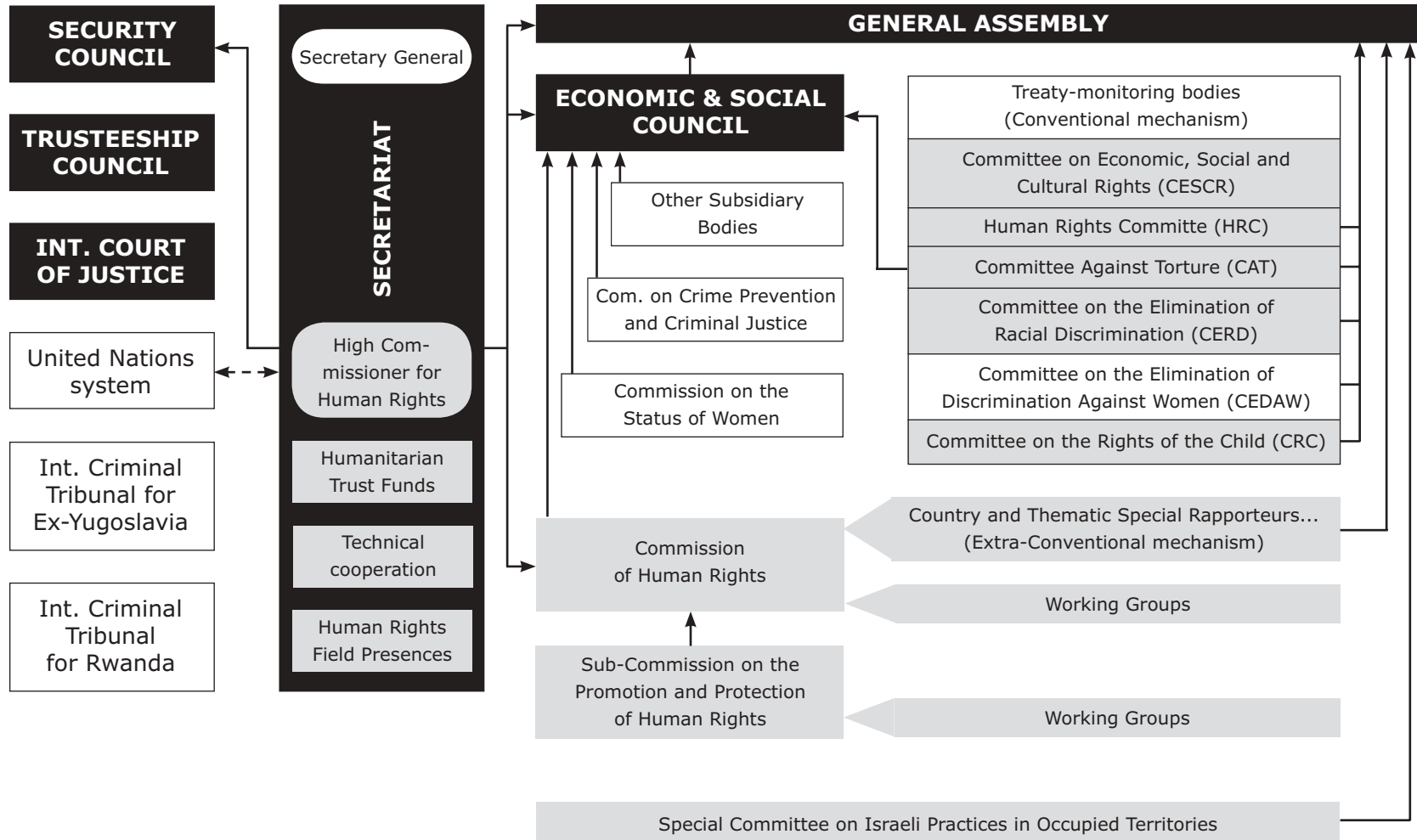
One of the greatest achievements of the UN is the development of international human rights law. In a little over half a century, the UN has “overseen the development and codification of human rights in a major effort to move them from the realm of ethical guidelines to that of binding law”.³ For instance, the Universal Declaration of Human Rights has laid the groundwork for more than 80 conventions, treaties and declarations. This demonstrates the central position that human rights have taken in the work of the United Nations.

The UN system and its human rights instruments can appear to be quite complicated and confusing, especially upon first encounter – as demonstrated by the map of the UN's human rights system found on the next page. Although the system is large and complex, it does not have to be daunting. The remainder of this chapter is dedicated to examining the human rights system of the UN.

International Bill of Human Rights

Throughout Chapters 1 and 2, we began to familiarise ourselves with the most widely regarded international human rights standard, the United Nations' **Universal Declaration of Human Rights**. The UN adopted this document in 1948 following the atrocities that occurred during World War II and proclaimed it to be “a common standard of achievement for all peoples and all nations”. It is however, just one part of what is known as the **International Bill of Human Rights**, which also includes the **International Covenant on Economic, Social and Cultural Rights** (ICESCR) and the **International Covenant on Civil and Political Rights** (ICCPR), along with its two **Optional Protocols**.

The difference that separates the Declaration from the two Covenants is its legal status. As a **declaration**, the UDHR is not a legally binding document, but sets forth general principles and standards of human rights. Even though it does not carry official legal force, many of its articles are considered to be “customary international law”, which means it has developed through the consistent practice of states that recognise a legal obligation to behave according to these standards. Governments join declarations as they would a legally binding document, but this only to show support for the ideas and standards that



the text reflects. The ICESCR and the ICCPR are however, **conventions** (sometimes also called treaties or covenants) that set international norms and standards and legally bind signatory states to follow their principles. Only those states which have signed and ratified a convention are bound to uphold these standards (see box below).

Steps in the Evolution of Conventions

Before they become codified as binding law, human rights concepts must pass through a lengthy process that involves consensus building and practical politics at the international and national levels. Conventions are:

- 1) **Drafted** by working groups. The UN General Assembly commissions working groups consisting of representatives of UN member states, as well as representatives of inter-governmental and non-governmental organizations.⁴
- 2) **Adopted** by vote of the UN General Assembly.
- 3) **Signed** by member states. When member states sign the convention, they are indicating that they have begun the process required by their government for ratification. In signing, they are also agreeing to refrain from acts that would be contrary to the objectives of the convention. Sometimes a state will sign a treaty but then never take the further step of ratification or accession.
- 4) **Ratified** by member states. When a member state ratifies a convention, it signifies its intention to comply with the specific provisions and obligations of the document. It takes on the responsibility to see that its national laws are in agreement with the convention. There is also a process by which states can ratify the convention, but also indicate their reservations about specific articles.
- 5) **Entered into force.** A convention goes into effect when a certain number of member states have ratified it. For example, the ICCPR and ICESCR were adopted in 1966; however, they did not enter into force until 1976 when the specified number of 35 member states had ratified them.

Flowers, Nancy (ed). *Human Rights Here and Now.
Celebrating the Universal Declaration of Human Rights*

Available at: <http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Default.htm>.

During the time of their creation, for “political and procedural reasons”,⁵ the drafting of a convention to codify the rights of the UDHR resulted in two separate documents. This was partially due to the politics of the Cold War era, as well as because of the different measures required to implement the rights set down in the two documents.

The **International Covenant on Civil and Political Rights** outlines mainly negative rights, which require refrain from interference, such as freedom of thought, conscience and religion, the right to take part in government and freedom of opinion and expression. The articles outlined in this document reflect liberty-oriented rights and political freedoms. In most states, some of the political rights are held exclusively by citizens (for example, the right to vote in government elections), while others are guaranteed to all persons within the state's jurisdiction (for example, freedom of expression and freedom of religion). One way of viewing the central concerns of the ICCPR is as deriving from the need to protect individuals from the arbitrary exercise of state power. Political and civil rights are also reflected in the UDHR in Articles 3 through 21. These are often referred to as "first generation rights". This document can be found at: http://www.unhcr.ch/html/menu3/b/a_ccpr.htm.

The **International Covenant on Economic, Social and Cultural Rights** is more focused on positive rights than its counterpart. This document emphasises the obligation on states to ensure the economic, social and cultural well being of individuals based on the individual's entitlement to basic necessities including, but not limited to: social security; an adequate standard of living; the right to the highest attainable standards of health; and the right to education.

Keeping Things Straight: Important Terms and Definitions

Declaration: A document stating agreed upon standards but which is not legally binding. These are important political and moral commitments.

Convention: A binding agreement between states; used synonymously with Treaty and Covenant. Conventions are stronger than declarations because they are legally binding for governments that have signed them. When the UN General Assembly adopts a convention, it creates international norms and standards.

Protocol: A treaty that modifies another treaty (i.e. adding additional procedures or substantive provisions).

Treaty Bodies: A committee of independent experts which monitors the implementation of the human rights provisions of treaties. The committee members are nominated and elected by states who have ratified the treaty.

Reservation: An assertion, entered by the state when ratifying a treaty, that indicates the wishes of the state not to be bound by specific provisions of the treaty.

As a major difference between this document and the ICCPR, economic and cultural rights entail a "progressive obligation" of signatory states to act "to the maximum of their available resources" in their implementation. This is an important difference from civil and political rights, which are to

be immediately implemented by states. The stipulation on this progressive obligation, however, is that no group be left behind based on discriminatory measures or because of disparate impact. This means simply that a state cannot choose to disadvantage specifically or allow a certain group to suffer disproportionately from the lack of fulfilment of these rights. The obligation of non-discrimination under Article 2(2) applies immediately and is not subject to progressive realisation or availability of resources. As well, governments are to take steps immediately and seek international assistance where resources are lacking domestically. Economic, social and cultural rights are generally referred to as “second generation rights” and can also be found in Articles 22 through 27 of the UDHR. You can find the full text of this document on the internet at: http://www.unhchr.ch/html/menu3/b/a_cescr.htm.

Although they have been separated into two different documents, both covenants emphasise the importance and interdependence of civil and political rights and economic, social and cultural rights for all people. The Preamble to both Covenants recognises:

“[...] in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom from fear and want can only be achieved if conditions are created whereby everybody may enjoy his civil and political rights as well as his economic, social and cultural rights [...]”.

This is significant, because it entrenches in international law the importance of ensuring both sets of rights for the attainment of human rights for all people.

“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms”.

Vienna Declaration and Programme of Action, I(5)
World Conference on Human Rights, Vienna, 14–25 June 1993

Treaty Bodies

In addition to the entrenchment of human rights norms in international law, the United Nations has established committees of independent experts to oversee the implementation of treaty provisions. These bodies review and comment on reports submitted by states, issue interpretations of articles and may examine individual complaints if stipulated within the treaty. Ratification of a treaty indicates an

agreement by the state to be periodically investigated by the committee. With most treaties this happens approximately one year following ratification and generally every 4 to 5 years subsequently. You can find a schedule of state reports to treaty bodies, as well as listings of those states who have ratified a particular treaty, at: <http://www.unchr.ch/html/menu2/convmech.htm>.

In reports, states indicate steps that they have taken to comply with a certain treaty's obligations. The corresponding committee gives observations and conclusions based on the state's report as well as relevant information received from NGOs and other monitoring bodies.⁶ As well, it may make general recommendations on specific issues or themes. The committee cannot, however, enforce its findings and recommendations upon the state.

Under some treaties, it is also possible to bring individual complaints against the state. This form of seeking remedy allows the complainant to apply for a remedy that she or he was unable to attain within the state, as well as to prevent future similar violations. For this procedure to take place, however, several factors must be present. The first is the formal consent of the state, through ratification of the article or protocol of the specified treaty that applies to this process. As well, the complaint must meet certain standards of admissibility. Admissibility of complaints will be discussed further in Chapter 8.

Both the ICCPR and the ICESCR have monitoring bodies. In the case of the ICCPR it is the Human Rights Committee (HRC). The HRC consists of 18 experts in the civil and political rights set down in the ICCPR. The Committee reviews a state's compliance with its treaty obligations every 5 years. Additionally, for those states which have ratified the first Optional Protocol, the HRC can hear complaints by individuals, even when the state is not up for review.

In its review of state reports, the HRC has frequently stated concerns about racial and ethnic discrimination. It has also made specific reference to the position of Roma in several European countries. For instance, in its recent Concluding Observations on Slovakia, the Committee expressed concern about persistent discrimination against Roma and stated:

“The State party should take all necessary measures to eliminate discrimination against the Roma, and to enhance the practical enjoyment of their rights under the Covenant. The State party should also make greater efforts to provide opportunities for Roma to use their language in official communications, to provide readily accessible social services, to provide training to Roma in order to equip them for employment, and to create job opportunities for them. The Committee would like to receive full details on policies adopted and their results in practice”.⁷

The ICESCR is monitored by the Committee on Economic, Social and Cultural Rights (CESCR). This Committee is also composed of 18 experts and requests reports from state parties every 5 years. The CESCR is interested in noting concerns of racial discrimination in its reports and has done so on many occasions. In a recent report on Poland, the Committee urged the state to “provide updated information

on the Romani population and to adopt a comprehensive programme to address the obstacles to the advancement of the Romani population, including measures to ensure effective remedy for cases of discrimination against Roma in employment, housing and health care”.⁸ There is no individual complaints procedure stipulated in the ICESCR.



Thinking about Human Rights: Thematic Instruments

Apart from the International Bill of Rights, there are thematic human rights instruments that set out the norms relevant for certain issues. These instruments either cover specific issues or refer to particular groups who are more vulnerable to human rights violations. They fall into various categories such as conventions, declarations and codes of conduct. A full overview of the various human rights documents that have been adopted under the aegis of the United Nations is available at: <http://www.unhchr.ch/html/intlinst.htm>.

In the left column of the chart below is a list of some of the major human rights treaties of the United Nations. Along the top of the chart are several issues that are especially relevant to Roma rights. Which document(s) do you think are relevant to these issues? Indicate your answer by checking the corresponding box.

Name of the Convention	Issues					
	Forced evictions from housing	Employment discrimination	Educational segregation	Access to health care	Physical abuse by police	Asylum for persons persecuted in their country of origin
International Covenant on Civil and Political Rights (ICCPR), 1966						
International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966						
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965						
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979						
Convention on the Rights of the Child (CRC), 1989						
Convention relating to the Status of Refugees, 1951						
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990						

Thematic Instruments

In the chart below are the major human rights instruments of the United Nations. In addition to the UDHR, we have already discussed the ICCPR and the ICESCR along with their corresponding treaty bodies. Like the ICCPR and ICESCR, each of the thematic documents listed below has a specific procedure for enforcing the standards it promotes upon signatory states. Some include complaint mechanisms and/or emergency procedures and each is overseen by a committee or similar body. Documents relating to these treaties can be found at: <http://www.unhcr.ch/tbs/doc.nsf>.

**International Bill of Rights
Universal Declaration of Human Rights (UDHR), 1948**



**International Covenant on Civil
and Political Rights (ICCPR), 1966**



**International Covenant on Economic,
Social and Cultural Rights (ICESCR), 1966**

Convention
relating to
the Status of
Refugees, 1951

International
Convention on
the Elimination
of All Forms
of Racial
Discrimination,
1965

Convention on
the Elimination
of All Forms of
Discrimination
Against Women,
1979

Convention
Against Torture
and Other
Cruel, Inhuman
or Degrading
Treatment or
Punishment,
1984

Convention
on the Rights of
the Child, 1989

International Convention on the Elimination of All Forms of Racial Discrimination

The principle treaty dealing with racial discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is the most plainly relevant treaty for Roma rights issues. As outlined in Chapter 2, the definition given by ICERD for racial discrimination is, “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” The Convention guarantees the right of equality before the law and equal enjoyment of civil, political, economic, social and cultural rights. The Convention applies to citizens and non-citizens alike. States must act against the dissemination of ideas based on racial superiority or hatred, as well as take measures to combat racial prejudice and to promote tolerance. The ICERD is included in full in the Appendices of this handbook.

The Committee on the Elimination of Racial Discrimination (CERD), which reviews periodic country reports and may also hear individual complaints, monitors the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee consists of 18 experts and reviews states party every 4 years. In addition to commenting on the discrimination faced by Roma in many countries that have come before the Committee in scheduled reviews, CERD has also made a number of general recommendations, including a General Recommendation on Discrimination against Roma.

This comprehensive recommendation covers:

- Measures of a general nature, such as adopting or amending legislation to eliminate racial discrimination against Roma;
- Measures for protection against racial violence;
- Measures in the field of education;
- Measures to improve living conditions;
- Measures in the field of the media; and
- Measures concerning participation in public life.

The General Recommendation also makes specific reference to the situation of Romani women, who often experience double discrimination. The full text of the General Recommendation on Roma is available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/11f3d6d130ab8e09c125694a0054932b?Op=OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/11f3d6d130ab8e09c125694a0054932b?Op=OpenDocument)

Convention on the Elimination of All Forms of Discrimination against Women

The “Women’s Rights Convention” outlines methods and states’ requirements to ensure the eradication of discrimination based on gender. The rights set down in this document include the right to equal treatment under law; equality in education, political participation, employment, health and the economy; freedom from sexual exploitation; and the possibility of temporary special measures to overcome inequality. Many of the articles are of particular relevance to minority women, including those setting down measures to eliminate stereotyped concepts of the roles of men and women. You can find the text of the treaty at: <http://www.unhcr.ch/html/menu3/b/e1cedaw.htm>.

The Committee on the Elimination of Discrimination against Women (CEDAW), which consists of 23 experts who review states every 4 years, monitors the implementation of the Convention. The Committee has noted that there is a particular deprivation of rights experienced by women on account of their race or ethnicity. In its recent Concluding Observations on Germany, for instance, the Committee noted the failure on the part of the state to provide legal protection for Sinti and Romani women, who often face both gender and ethnic discrimination. Many Sinti and Romani women and girls in Germany are excluded from a range of protections guaranteed by the Convention, notably in the areas of education, employment, health and participation in public and political life.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention against Torture outlines necessary steps for the elimination of torture. The Convention defines torture as:

“[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, *or for any reason based on discrimination of any kind*, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. (Article 1) (emphasis added)

The Committee against Torture is the Convention’s monitoring body. It consists of 10 experts who review state parties every 4 years. Additionally, this Committee is able to investigate indications of torture occurrence outside regular reviews. In its 2004 Conclusions and Recommendations on the Czech Republic, the Committee expressed concern over allegations regarding incidents of uninformed and involuntary sterilisation of Romani women, which can be seen as torture from the definition given above. The text of the Convention can be found at: http://www.unhchr.ch/html/menu3/b/h_cat39.htm.

Convention on the Rights of the Child

The Convention on the Rights of the Child sets out rights that are to be enjoyed by children (defined as every human being under 18), without discrimination of any kind. It addresses both public and private actors. Although not as old as others, this convention enjoys almost universal ratification, and is the most widely ratified human rights treaty. It can be found at: <http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm>.

The Committee on the Rights of the Child (CRC) monitors the implementation of the Convention. It is composed of 10 experts who review compliance every 5 years. The CRC has expressed concern over practices of discrimination against Romani children, including unequal access to education and health services in several European states, including Hungary and the Czech Republic.

Convention Relating to the Status of Refugees

The Convention relating to the Status of Refugees was created to provide protections to the vulnerable position of those who have been forced to leave their homes. Under the Convention, a refugee is defined as someone who,

“[...] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling, to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”. (Article 1)

The Convention outlines minimum standards of treatment and basic rights enjoyed by refugees, including rights to welfare, employment and identity papers. One of the most important stipulations, however, is the prohibition of states to expel or forcibly return refugees to the state from which they

fled. Article 33 requires, “no Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”. The text of the convention can be found at: http://www.unhchr.ch/html/menu3/b/o_c_ref.htm.

Unlike the aforementioned treaties, the Refugee Convention does not have a committee responsible for overseeing its implementation in states who have ratified the document. The concerns of refugees as protected by the Convention are, however, the affair of the United Nations High Commissioner on Refugees (UNHCR). It is the Commissioner’s task to “provide international protection to refugees and to seek durable solutions for refugees by assisting Governments to facilitate the voluntary repatriation of refugees, or their integration within new national communities”.⁹ Further information on the Office of the High Commissioner for Refugees can be found at: <http://www.unhcr.ch/cgi-bin/texis/vtx/home>.

There are a myriad of different approaches to engage in refugee issues, which vary depending upon the country in which the refugee claim is being made, the county of origin of the refugee and the specific situation being fled. The first contact point for questions should be the local UNHCR office. The role played by the local office depends on its established relationship with the government. You can find the contact information for local Offices of the High Commission on Refugees at: <http://www.unhcr.ch/cgi-bin/texis/vtx/home>.

Thinking about Human Rights: Understanding Human Rights Instruments

There are many documents in existence, which set down human rights norms. In the box below, you will find several of the United Nation’s human rights instruments, some of which we have discussed in this chapter. Using the information you have just acquired, fill in the table that follows.¹⁰ Indicate whether the instrument is legally binding or not and the possible action which can be taken on violations of the rights set out in the instrument. An example has already been provided using the Declaration on Human Rights Defenders.

• Universal Declaration of Human Rights (UDHR)	• Convention relating to the Status of Refugees
• International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	• Declaration on Persons Belonging to National Ethnic, Religious and Linguistic Minorities
• Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment(CAT)	✓ Declaration on Human Rights Defenders

Type of instrument	Name of instrument	Possible action on violations
Legally binding	<ul style="list-style-type: none"> • • • 	
Not legally binding	<ul style="list-style-type: none"> • Declaration on Human Rights Defenders • • 	Development of new principles, guidelines, etc., to influence State conduct.

** The text of the UN’s international human rights instruments not already given can be found at: http://www.unhchr.ch/html/menu3/b/o_c_ref.htm.

Extra-Conventional Mechanisms

In addition to treaty-based mechanisms and declarations, the United Nations human rights system has instruments that classify as extra-conventional mechanisms. This means simply that they operate without ties to a treaty or convention.

Commission on Human Rights

At the top of the UN human rights system is the Commission on Human Rights (CHR), a highly politicised body, composed of delegates elected from the Economic and Social Council (ECOSOC) from 53 states. This body meets annually to discuss issues related to human rights and sets out priority areas for UN human rights work. This may include appointing Special Rapporteurs or Working Groups or initiating the formation of a declaration or convention. The CHR has adopted many resolutions containing references to racial or ethnic discrimination. You can find out more about their work at: <http://www.unhchr.ch/html/menu2/2/chr.htm>.

Special Rapporteurs and Working Groups

Special Rapporteurs and Working Groups are experts appointed by the CHR to look at particular areas of human rights violations. They may be charged with investigating a particular country or theme of human rights concern. Both Special Rapporteurs and Working Groups can write directly to government actors regarding human rights concerns and report to the CHR annually. Some of the Rapporteurs and Working Groups of potential interest to Roma rights activists include:

- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;
- Special Rapporteur on the human rights of migrants;
- Special Rapporteur on the right to everyone to the enjoyment of the highest attainable standard of physical and mental health;
- Special Rapporteur on the right to education;
- Working Group on the effective implementation of the Durban Declaration and Programme of Action (related to the 2001 World Conference Against Racism); and
- Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living.

In addition to the extra-conventional mechanisms listed here, there are other international human rights instruments that fall into this category. This includes Special Procedures and the Sub-Commission on the Promotion and Protection of Human Rights. You can find more information on the workings of these instruments on the web site of the Commission on Human Rights at: <http://www.unhchr.ch/html/menu2/2/chr.htm>.

United Nations High Commissioner for Human Rights

The UN High Commissioner for Human Rights seeks to provide leadership to the international human rights movement. The High Commissioner is the UN official with the principal responsibility for UN human rights activities. She makes frequent public statements and appeals in human rights crises and travels widely to ensure that the human rights message is heard in all parts of the globe. The current High Commissioner is Louise Arbour.

The Office of the High Commissioner of Human Rights (OHCHR) has established field presences in several countries. Officials monitor and investigate human rights violations and, in many cases, cooperate with domestic governments and NGOs in building and strengthening structures that have a direct impact on the overall observance of human rights. In Europe, field presences have been established in Macedonia, Croatia, Bosnia and Herzegovina and Serbia and Montenegro. The reports of the field presences have pointed out racial discrimination suffered by the Romani community in these countries. The ERRC has co-operated with the field office in Serbia and Montenegro to produce a memorandum,

“The protection of Roma Rights in Serbia and Montenegro”. The OHCHR also provides administrative support for several treaty bodies as well as the other extra-conventional mechanisms such as the Commission on Human Rights.

Endnotes

- ¹ This is however, not always the case. Sometimes agreements must be incorporated formally into domestic law.
- ² Adapted from: Flowers, Nancy (ed). “Activity 8 Comparing Rights Documents”. In *Human Rights Here and Now: Celebrating the Universal Declaration of Human Rights*. Available at: <http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-3/Activity8.htm>.
- ³ United Nations Foundation. Available at: http://www.unfoundation.org/un/un_about.asp.
- ⁴ The instruments under preparation are available at: <http://www.unhchr.ch/html/menu2/2/chrwg.htm#standard>.
- ⁵ Flowers, Nancy (ed). “From Concept to Convention: How Human Rights Law Evolves”. In *Human Rights Here and Now: Celebrating the Universal Declaration of Human Rights*. Available at: <http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-1/from-concept.htm>.
- ⁶ The role NGOs play in producing “shadow reports” for treaty bodies will be discussed further in Chapter 7.
- ⁷ United Nations Human Rights Committee. *Concluding observations of the Human Rights Committee: Slovakia, 22/08/2003*. CCPR/CO/78/SVK. Seventy-eighth session, 2003.
- ⁸ Committee on Economic, Social and Cultural Rights. *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Poland, 19/12/2002*. E/C.12/1/Add.82. Twenty-ninth session, 2002.
- ⁹ United Nations Office of the High Commissioner for Human Rights. *Fact Sheet No.20, Human Rights and Refugees*. Available at: <http://www.unhchr.ch/html/menu6/2/fs20.htm>
- ¹⁰ Adapted from: United Nations office of the High Commissioner for Human Rights. *Minorities, the United Nations and Regional Mechanisms*. Available at: <http://www.unhchr.ch/html/menu6/2/minorities/pam1.doc>

Part A
Thinking about Human Rights

Chapter 4.

**How Are Human Rights
Protected?**

Regional European Mechanisms

Knowing Your Rights and Fighting for Them

4. HOW ARE HUMAN RIGHTS PROTECTED? REGIONAL EUROPEAN MECHANISMS

Introduction

In addition to the United Nations, there are other intergovernmental organisations (IGOs) concerned with human rights. Human rights activists in Europe are fortunate in having a set of independent regional organisations that function at the European level. These bodies broadly follow the international human rights standards discussed in the last chapter. In some instances, they have built upon those standards and not only developed sophisticated principles but also created innovative mechanisms for enforcing these principles. Often, precedents set by European human rights institutions have been adopted by other regional institutions and, at times, even by the United Nations institutions.

States are members of these regional organisations. Since these organisations require compliance with human rights standards, activists are provided with an additional opportunity (apart from the United Nations mechanisms) to bring outside attention to the violation of human rights within a state's territory. In Europe, the IGOs of most significance are:

- Council of Europe (CoE);
- European Union (EU);
- Organization for Security and Co-operation in Europe (OSCE).

Each of these organisations has its own mandate and interests, but all play some role in shaping human rights discourse in Europe. Similar to the United Nations, there are certain treaties and conventions created by these organisations which member countries are obliged to abide by.

Thinking about Human Rights: Regional Instruments



Which of the above-mentioned regional European intergovernmental organisations does your country belong to? You can easily determine this by checking the websites of each IGO. State memberships are listed at:

- Council of Europe: http://www.coe.int/T/e/com/about_coe/member_states/default.asp
- European Union: http://europa.eu.int/abc/index_en.htm#
- Organisation for Security and Co-operation in Europe:
http://www.osce.org/general/participating_states/

My country is a member or participant in:

CoE	<input type="checkbox"/>
EU	<input type="checkbox"/>
OSCE	<input type="checkbox"/>

If you have discovered that your state is not part of one of these IGOs, you might want to look into why this is or whether it is a candidate for membership.

The Council of Europe

The Council of Europe (CoE) was founded in 1949. According to Article 1 of its Statute, the states of Europe formed the organisation to, “safeguard and promote their common ideas and principles and encourage social and economic progress”. The aims of the CoE are to:

- Protect human rights, parliamentary democracy and the rule of law;
- Develop continent-wide agreements to standardise member countries’ social and legal practices; and
- Promote awareness of a European identity, based on shared values and cutting across different cultures.

The decision-making body of the Council of Europe is the Committee of Ministers, consisting of the 45 Foreign Ministers of Council of Europe member states. This is the organisation’s highest authority. The Parliamentary Assembly, made up of delegations sent by the parliaments of each member state, provides guidance to the Committee of Ministers. The Congress of Local and Regional Authorities is composed of the Chamber of Local Authorities and a Chamber of Regions. Finally, the Secretariat, overseen by the Secretary General, is responsible for the management and day-to-day administration of the CoE. You can learn more about the bodies of the CoE on their website at: www.coe.int.

In evidence of the CoE’s stated aim to protect human rights, the organisation has created several instruments and mechanisms designed to advance human rights within the region. These instruments include, but are not limited to:

- The European Convention for the Protection of Human Rights and Fundamental Freedoms;
- The (Revised) European Social Charter; and
- The Framework Convention for the Protection of National Minorities.

A number of institutions in the Council of Europe oversee the implementation of these instruments. For example, the European Court of Human Rights interprets and enforces the European Convention and the European Committee of Social Rights provides guidance on the implementation of the

(Revised) European Social Charter. Some other Council of Europe institutions are not directly linked to international law, but nevertheless are important for pressing issues of relevance to Roma. For example, the European Commission against Racism and Intolerance undertakes a range of activities, including regularly commenting on racism issues in Council of Europe Member States.

The instruments listed above are similar in nature to those of the United Nations, consisting of treaty mechanisms and requiring ratification by states. Also, like the UN, there are documents outlining civil and political rights as well as economic and social rights in addition to instruments that focus on specific thematic instruments. The table below outlines the structure of human rights mechanisms within the Council of Europe.

Main human rights instruments and implementation mechanisms of the Council of Europe¹



European Convention for the Protection of Human Rights and Fundamental Freedoms

More commonly known as the **European Convention on Human Rights** or the European Convention, this document sets out primarily civil and political rights and freedoms in its articles and protocols. Ratification of the European Convention on Human Rights is a condition for states' membership in the Council of Europe. Rights outlined in the convention include:

✓ the right to life	✓ freedom of expression
✓ prohibition of torture	✓ right to liberty and security
✓ right to a fair trial	✓ no punishment without law
✓ right to respect for private and family life	✓ freedom of thought, conscience and religion
✓ prohibition of slavery and forced labour	✓ freedom of assembly and association
✓ right to marry	✓ right to an effective remedy
✓ prohibition of discrimination	✓ right to education

In addition to the rights outlined in the Convention's articles, there are also Protocols which further outline states' obligations to those within their jurisdiction. The European Convention and several of its Protocols are listed in the Appendices of this book.

Under the Convention, the rights outlined in its articles are specifically guaranteed, "without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status" (Article 14). This, however, is not a free-standing right of non-discrimination, but applies only to the enjoyment of rights as set out by the Convention. A general prohibition against discrimination is set out by Protocol 12, which provides that rights set forth by law must be enjoyed without discrimination on the grounds of race, sex, colour, language or any of the other provisions of the Convention's Article 14. Protocol 12 will enter into effect as soon as 10 Council of Europe Member States ratify it.

The European Court of Human Rights

While states are the implementing bodies of the European Convention, its protection mechanism is the **European Court of Human Rights**. Unlike the legal instruments of the United Nations outlined in Chapter 3, a judicial body oversees the European Convention. Often referred to as the European Court, this instrument rules on complaints brought before it, interpreting whether violations of human rights have taken place according to the Convention.

As soon as the European Convention has been ratified by a member state of the CoE, the state is under the jurisdiction of the Court. Both individual and inter-state complaints can be brought, therefore applicants may be states or individuals (groups of individuals and NGOs also fit within the Court's definition of "individual applicants"). Complaints may only be brought to the Court once the complainant has "exhausted all available domestic remedies", meaning that the person has tried all relevant possibilities for securing justice in the state where the violation took place. Once a judgement is made by the Court, it must be complied with by the state. The CoE's Committee of Ministers supervises compliance with the Court's rulings.

The European Court has heard cases of racial discrimination since its inception. It has found that discrimination on the basis of race can under certain circumstances constitute a violation of Article 3 of the Convention (inhuman and degrading treatment). In a recent milestone case brought by the Bulgarian non-governmental organisations Bulgarian Helsinki Committee and Human Rights Project and the ERRC, the Court also ruled that states have a duty to take all possible steps to establish whether or not discriminatory attitudes play a role in the investigation of crimes. The box below further explains the circumstances and ruling in this case.

Nachova and Others v. Bulgaria

On February 26, 2004, the European Court of Human Rights announced its judgement in the case of *Nachova and Others v. Bulgaria*, in which it unanimously found the Bulgarian state responsible for the deaths of two Romani men as well as its subsequent failure to conduct an effective official investigation, in violation of Article 2 (right to life). For the first time in its history, the Court also found a violation of the guarantee against racial discrimination contained in Article 14 taken together with Article 2 and in doing so, stressed that the Bulgarian authorities have, "failed in their duty [...] to take all possible steps to establish whether or not discriminatory attitudes may have played a role" in the events at issue.

The applicants were all Bulgarian nationals who describe themselves as being of Romani origin. The case concerns the killing of the applicants' relatives, in July 1996, by a military policeman who was trying to arrest them. Deficient law and practice which permitted the use of lethal force without absolute necessity resulted in the deaths of the applicants' relatives. Additionally, authorities failed to conduct an effective investigation into the deaths, with prejudice and hostile attitudes towards people of Romani origin playing a decisive role.

The Court explained its historic ruling under Article 14 taken together with Article 2, stating:

"The Court considers that when investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable

steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. [...] In order to maintain public confidence in their law enforcement machinery, contracting States must ensure that in the investigation of incidents involving the use of force, a distinction is made both in their legal systems and in practice between cases of excessive use of force and of racist killing [...] the Court considers that in cases where the authorities have not pursued lines of inquiry that were clearly warranted in their investigation into acts of violence by State agents and have disregarded evidence of possible discrimination, it may, when examining complaints under Article 14 of the Convention, draw negative inferences or shift the burden of proof to the respondent Government [...]"

European Social Charter (revised)

The **European Social Charter** is the document that enshrines social and economic rights in the human rights system of the Council of Europe. The original document came into force in 1961, but is gradually being replaced by a revised version, which came into force in 1999. The Charter takes the form of a legally binding treaty, which requires that a minimum number of its articles are adopted by states party to the document. Rights guaranteed by the Charter include:

✓ housing	✓ non-discrimination
✓ health	✓ employment
✓ social protection	

The text of the European Social Charter (revised) can be found at: <http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm>.

The monitoring body for Social Charter is the **European Committee of Social Rights**. The Committee consists of 13 impartial members, elected from the CoE's Committee of Ministers. Its job is to ascertain whether states parties are in conformity with the Articles outlined in the Social Charter. This is done in two ways, through a reporting procedure and a complaint procedure.

In the reporting procedure, states are responsible for presenting reports on an annual basis, which outline their compliance with the Charter. The report for a given year concerns certain articles

depending whether it is an 'even' or 'odd' year. The Committee draws conclusions based on reports, which are published.

Under the Second Additional Protocol of the Charter, there is also a collective complaints procedure. Complaints of rights violations under the Charter can also be lodged with the Committee. Specified organisations are entitled to lodge complaints if a state has accepted the procedure under the Second Additional Protocol. These organisations include NGOs with **consultative status** with the CoE, which are on a list for this purpose. Some states have also approved to allow national NGOs to submit collective complaints.

With regard to Roma rights, the Committee has been quite general in its published conclusions on state reports. Comments have not delved into issues as deeply as those of other similar institutions. Recently however, there is an increased focus on Roma rights issues under the Charter and Revised Charter. In particular, the ERRC submitted a complaint on Greece to the Committee, outlining serious housing rights violations, including forced evictions and substandard housing. The Committee has ruled that the complaint is admissible and it will decide on the case late in 2004. As a result of the complaint, the Greek government has undertaken a number of actions to improve the situation of Roma in Greece.

Thinking about Human Rights: Civil and Political vs Economic, Social and Cultural Rights

In looking at the Council of Europe's European Convention on Human Rights and European Social Charter, we are once again faced with a division between civil and political rights and economic and social rights.

Under the United Nations, the ICCPR is to be implemented immediately, while the ICESCR is to be implemented progressively. Under the Council of Europe, the European Convention also enjoys the more significant enforcement powers of the European Court.

- Why do you think that organisations such as the United Nations and the Council of Europe tend to place civil and political rights in a special place in human rights law?
- Considering the inherent indivisibility of human rights, is this right?

Additional European Mechanisms

Framework Convention for the Protection of National Minorities

The CoE's **Framework Convention for the Protection of National Minorities** is the first treaty to protect the rights of persons belonging to national minorities. The document is mainly made up of principles, such as equality, affirmative action and state obligations governing the protection of these vulnerable groups. While the document does not give a specific definition of a national minority, many states have set out their own definition of "national minority" upon ratification and some have set out certain groups to which the Convention will apply. The full text of the convention is available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>.

The monitoring body for the Framework Convention for the Protection of National Minorities is the Committee of Ministers. States Parties are required to submit reports on the measures adopted to implement their commitments under the treaty. The Committee works in consultation with an Advisory Committee of 18 independent experts who make country visits to those states under the Convention's jurisdiction. There is no complaints procedure under the Convention, but activists have cited the convention in legal complaints before domestic courts. Reports are submitted every 5 years.

In the first cycle, the Committee of Ministers made reference to the situation of Roma/Sinti/Travellers in their conclusions on the Slovak Republic, Hungary, Romania, the Czech Republic, Germany and the United Kingdom. Throughout their conclusions and recommendations, the Committee has made reference to protection against ethnically motivated threats, violence and hostility, negative social perception and significant differences in socio-economic conditions amongst Romani populations. For those who wish to engage the Convention and its monitoring body, an important first step is to determine whether your state has made a declaration concerning the groups to which the convention will apply. You can find this at: www.coe.int/minorities.

European Commission against Racism and Intolerance

The **European Commission against Racism and Intolerance (ECRI)** was established in 1993, with the aim to combat racism, xenophobia, anti-Semitism and intolerance at the level of greater Europe and from the perspective of the protection of human rights. The body is composed of independent members, appointed by national governments and works to strengthen both legal and political protection against all forms of intolerance, including discrimination on grounds of race, colour, language, religion, nationality or ethnic origin.

ECRI is not a treaty body. However, it does monitor member states of the Council of Europe through country reports. These reports are undertaken in 4–5 year cycles and approximately 10–12 countries are reviewed every year. The reports examine various issues of racism and intolerance within the subject

state, as well as the implementation of ECRI's recommendations from previous reports. Each country is visited by an ECRI Rapporteur before the preparation of a new report. With regard to Romani issues, ECRI has made a number of important observations in its reports. The Commission makes many efforts to engage civil society, including organising information sessions with NGOs, during the preparation of its reports.

In addition to state reports, ECRI does work on general themes within the area of racism and intolerance. In this function, the Commission creates General Policy Recommendations, collects and disseminates examples of "good practices" and promotes the broadening of non-discrimination under Article 14 of the European Convention through ratification of Protocol 12. Worthy of note is ECRI's General Recommendation number 3, on *Combating Racism and Intolerance against Roma/Gypsies* and its *Practical Examples in Combating Racism and Intolerance against Roma/Gypsies*. These documents are an indication of the seriousness with which ECRI takes the forms of discrimination and racism that face Romani communities throughout Europe. You can find additional information about ECRI and its publications at: <http://www.coe.int/T/E/human%5Frights/Ecri>.

Other Bodies of Relevance to Roma Rights Works within the Council of Europe

The Council of Europe has several other bodies, in addition to those mentioned above, which work on human rights issues affecting Roma. The **Specialist Group on Roma/Gypsies** reviews the situation of Roma in Europe on a regular basis, advising the Committee of Ministers on matters concerning Roma. It promotes new initiatives concerning Roma, including studies, promotion of integration and developing relationships between Romani communities and the states in which they reside. The **Secretary General's Co-ordinator of Activities on Roma/Gypsies** promotes co-operation with other international organisations and Romani NGOs.

The Parliamentary Assembly also elects a **Commissioner for Human Rights**. This person is responsible for a number of duties relating to human rights promotion in Europe. The Commissioner:

- Promotes education and awareness of human rights;
- Identifies shortcomings in laws and practices of member states with regard to human rights;
- Promotes the observance and enjoyment of human rights as encoded in CoE instruments;
- Works with other governmental and non-governmental bodies for the promotion and protection of human rights; and
- Makes state visits to view human rights issues of concern as they arise.

The Commissioner is a non-judicial body, not empowered to rule on individual complaints.

The European Union

The **European Union** (EU) is an alliance of European countries committed to certain economic and political standards. Member states agree to surrender some of their sovereignty in order to further common matters of interest. The EU has dubbed this process “European integration”. Membership in the European Union bestows certain benefits on EU citizens, such as the ability to travel wherever one chooses within the EU member countries.

The EU also has interests in, inter alia:

- Peacekeeping actions;
- Asylum and migration policy;
- Job creation within its borders;
- Environmental protection; and
- Human rights.

The main institutions of the EU are the European Parliament, the Council of the European Union and the European Commission.

The **European Parliament** is the democratically elected legislature of the EU, composed of representatives from all member states. The **Council of the European Union**, formerly known as the Council of Ministers, is the main legislative and decision making body of the EU. It consists of governmental representatives from all member states. The **European Commission** drafts proposals for European laws, ensures the implementation of EU decisions and supervises spending. It consists of a President and officials nominated by member governments and accepted by Parliament. For more information on these bodies, you can see their websites at:

- European Parliament: http://www.europa.eu.int/institutions/parliament/index_en.htm
- Council of the European Union: http://www.europa.eu.int/institutions/council/index_en.htm
- European Commission: http://www.europa.eu.int/institutions/comm/index_en.htm

With regard to human rights, the EU has taken up activities such as creating standards for member states and developing bodies on specific thematic issues. Institutions and instruments of relevance for Roma rights activism include:

- The Charter of Fundamental Rights;
- The “Race Directive”; and
- The European Court of Justice.

The Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights sets out a range of civil, political, economic and social rights of EU citizens and residents. The document is composed of six sections:

- 1) Dignity;
- 2) Freedoms;
- 3) Equality;
- 4) Solidarity;
- 5) Citizens Rights; and
- 6) Justice.

The Charter is a reflection of the

“[...] constitutional traditions and international obligations common to the Member States, the Treaty on the European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights”. (Preamble)

In Chapter III, the Charter’s provision on equality, Article 2(1), outlines the prohibition on discrimination based on any ground, such as sex, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. The Chapter also further stipulates respect for cultural, religious and linguistic diversity, equality between men and women, rights of the child, rights of the elderly and integration of persons with disabilities. You can find the full text of the charter at: http://www.europa.eu.int/comm/justice_home/unit/charte/index_en.html.

The “Race Directive”

Formally called *Council Directive 2000/43/EC “implementing the principle of equal treatment between persons irrespective of racial or ethnic origin”* – what has come to be known as the “Race Directive” – is the EU’s strongest instrument with regard to combating racism. It was adopted in June 2000. The Directive lays down a framework of minimum requirements for “combating discrimination on grounds of racial or ethnic origin, with a view to putting into effect the Member States principle of equal treatment”. (Article 1).

Broad in scope, the document requires EU Member States to ban racial discrimination by law in fields including, employment, education, healthcare, housing, social protection, social advantages and access to goods and services. The Directive includes provisions that member states of the European Union must adopt laws, regulations and administrative provisions necessary to comply with the Directive. Member states are to implement the Directive directly into their national laws and practices to strengthen protec-

tion against discrimination based on racial or ethnic origin. Member states must also ensure that the domestic legal order includes the possibility of sanctions for discriminators and compensation for victims.

Although the document provides minimum requirements for the promotion of equal treatment of all persons, there is no maximum standard set down. This means that states may implement more progressive measures as long as they are in line with the intentions and spirit of the Directive. Laws and other provisions contrary to the principle of equal treatment are to be abolished. States are additionally required to designate a body or bodies for the promotion of equal treatment.

The original deadline for member states to transpose all of the provisions of the Directive into domestic law was July 19, 2003, with new EU member states expected to adopt laws as required by the Directive by the time of they join the EU.

The Race Directive also sets out a reporting procedure, which requires state reports every 5 years, assessing the impact of measures taken. Reports are submitted to the European Commission. The first round of reporting is to begin in July 2005. The full document is available at: http://europa.eu.int/comm/employment_social/news/2002/jan/2000-43_en.pdf.

The European Court of Justice

The European Court of Justice (ECJ) is the body which ensures that EU laws are enforced. The Court settles disputes on interpretations of treaties and legislation of the EU, setting standards of protection for citizens through case law. The Court has jurisdiction over members of the European Union and can overturn decisions made at the national level that are found to stray from European Community Law. The Court is made up of 1 independent judge from each EU member state. You can learn more about the European Court of Justice on their website at: http://www.europa.eu.int/institutions/court/index_en.htm.

The Organization for Security and Co-operation in Europe

The **Organization for Security and Co-operation in Europe** (OSCE), is an organisation which came out of the politics of the Cold War and was meant to ease conflict in Europe. The members of this organisation include the United States, Canada, Russia and the nations of Europe. There are 55 participating states altogether.

The OSCE was originally set up as an umbrella organisation to discuss shared security issues; defuse tensions and promote human rights. Since the end of the Cold War, the OSCE has concentrated increasingly on preventing conflicts, addressing issues in crisis and post-crisis settings on the continent and promoting regional security and stability broadly. Human rights remain a key focus of OSCE work, although OSCE officials often emphasise that the OSCE's primary strengths are diplomatic rather than

legal. This distinguishes the OSCE somewhat from the institutions discussed above. Human rights concerns at the OSCE fall within the “Human Dimension” aspect of the OSCE’s mandate.

The OSCE’s major bodies include the Permanent Council, the Ministerial Council and the Secretariat. The **Permanent Council of the OSCE** consists of permanent representatives of participating states who take up the organisation’s major political consultation and decision making. The **Ministerial Council** consists of the foreign ministers of the 55 participating states, which review the activities and issue guidance for the organisation. The **Secretariat** is responsible for the management of OSCE structures and operations. In addition to these bodies, the OSCE has many other instruments to help implement its mandate. Those that are most relevant for Roma rights activity are outlined below.

The Office for Democratic Institutions and Human Rights

The Office for Democratic Institutions and Human Rights (ODIHR) is the key organ of the OSCE that deals with the “Human Dimension” of regional security. The ODIHR performs a range of functions for the protection of human rights including election observation, building and strengthening civil society institutions, promoting the rule of law through legal reform, training legal personnel and the professionalisation of legal education, mainstreaming gender in all OSCE activities, monitoring human rights and providing early warning in cases of serious human rights crises. The ODIHR also assists OSCE field missions to implement human dimension activities. You can find more about the ODIHR at: <http://www.osce.org/odihr>.

Under the auspices of the ODIHR is the **Contact Point for Roma and Sinti Issues** (CPRSI). This body was established by the OSCE out of concern for the racial and ethnic hatred, xenophobia and discrimination prevalent towards Roma throughout the region. The CPRSI has initiated awareness raising programmes for Romani voters, training courses for Romani candidates and political parties and convened the first ever transnational meeting of parliamentarians, mayors and local councillors to develop common strategies to promote the political participation of Roma. You can read more about this body at: <http://www.osce.org/odihr/cprsi>.

High Commissioner on National Minorities

The High Commissioner on National Minorities (HCNM) focuses on the security implications of minority issues, including identifying ethnic tensions that might endanger peace, stability or friendly relations between the OSCE’s member states. The Commissioner’s main aim is conflict prevention. This may be accomplished through on-site missions and preventative diplomacy. The High Commissioner on National Minorities is not responsible for investigating individual human rights violations or complaints; these are excluded from the Commissioner’s mandate. The HCNM is a political instrument, not intended to supervise states’ compliance with their international obligations. The Commissioner does, however, make recommendations to governments about concerns of arising tensions and their security implications. You can learn more about this body at: www.osce.org/hcnm.

Thinking about Human Rights: An Illustration of the OSCE's Contact Point for Roma and Sinti Issues

Read the paragraphs below and answer the questions that follow.

Training Romani election observers²

It's election day. A Romani man enters a polling station and walks up to the voter register. He can't read. He can't find his name on the list. He's turned away, robbed of his chance to take part in the democratic process.

In another country, a Romani woman gathers her children; they leave their shanty home in this squatters' village and head to the polling station. No official residency status? She is turned away, losing an opportunity to play a role in deciding who will govern her and her family.

Forced to abandon their homes during years of conflict in southeastern Europe, a Romani couple, with no permanent home, heads to the polling station to cast their ballots. Internally displaced persons? Electoral officials don't know what to do with them, so they send them away, depriving them of their fundamental right to vote.

With funding from the European Commission, the ODIHR's Contact Point for Roma and Sinti Issues is conducting a project called „Roma, use your ballot wisely!“ The aim of the project is to encourage Roma and related groups to become more active participants in public life at all stages of the decision-making process, including by exercising the right to vote.

As part of this project, the ODIHR's Contact Point and Election Section trained a group of Roma, Ashkali, and Egyptians from five OSCE participating States to be short-term election observers. While the trainees were taught skills necessary for working as domestic or international election observers, a special focus was placed on the electoral behaviour of Roma and similar communities and the problems related to their political participation.

One of the keys to removing barriers to the political participation of Roma and similar communities is first to have a better understanding of those obstacles and their causes. The short-term observers trained by the ODIHR can make an impact by monitoring elections in their own countries. The data they collect about the problems facing national minorities is necessary to fill in the details about how and why such communities are excluded from the electoral process. Only when that picture becomes more complete will it be possible to find solutions.

Questions to consider:

- 1) The CPRSI’s activities in relation to promoting Roma’s political rights have been focused on promoting political participation. Can you suggest other mechanisms to promote the political rights of Roma?
- 2) What do you think is the rationale behind training Roma to observe elections?

**Thinking about Human Rights:
Europe at a Glance**

Now that we’ve taken a brief look at Europe’s major regional bodies, it is possible to have a short review. Using the information found in this chapter, fill in the chart below.

Review question	Organisation		
	CoE	EU	OSCE
What is this organisation’s mandate?			
What are the major human rights instruments that can be accessed?			
Does this IGO have any Roma-specific bodies or initiatives?			
Is my state a member of this IGO?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Summing Up

The chart below sums up the mechanism we have looked at throughout the last two chapters.

Mechanism	Origin				Functions				
	Treaty	Non-treaty	Regional	World-wide	Reporting			Individual complaints	
					State reports	Monitoring	Fact-finding	Non-binding	Binding
Human Rights Committee	✓			United Nations	✓			✓	
Committee on Economic, Social and Cultural Rights	✓			United Nations	✓				
Committee Against Torture	✓			United Nations	✓		✓	✓	
Committee on the Rights of the Child	✓			United Nations	✓				
Committee on the Elimination of Discrimination Against Women	✓			United Nations	✓			✓	
Committee on the Elimination of Racial Discrimination	✓			United Nations	✓			✓	
Special Rapporteurs of the UN Commission on Human Rights		✓		United Nations		✓	✓		
European Court of Human Rights	✓		Council of Europe						✓
European Committee of Social Rights	✓		Council of Europe						

European Committee for the Prevention of Torture	✓		Council of Europe			✓	✓		
European Commission against Racism and Intolerance		✓	Council of Europe		✓	✓			
European Court of Justice	✓		European Union			✓			✓

Does Anyone Else Monitor Human Rights?

The implementation of human rights is of interest to a wide variety of groups and individuals. In addition to the aforementioned international bodies which codify human rights and monitor their implementation, human rights are watched closely at several levels. Some other institutions and organisations, which monitor human rights include:

✓ Human rights groups and other NGOs	✓ Ombudspersons
✓ Local and national courts	✓ Academic institutions
✓ Parliament	✓ Religious organisations
✓ Government bodies	✓ Professional associations
✓ National and international media	✓ Trade unions
✓ Community and grass-roots organisations	

Whether these groups are concerned with specific rights issues or enforcing human rights standards in general, they are also significant contributors to the process of ensuring the human rights of all people and building a culture of human rights.

Endnotes

¹ Bander, Patricia, Ellie Keen and Marie-Laure Lemineur. *Compass: A Manual on Human Rights Education with Young People*. Strasbourg: Council of Europe, 2002, p.298.

² Available at: http://www.osce.org/features/show_feature.php?id=206.

Knowing Your Rights and Fighting for Them

Part B

Making Rights Work

A Guide for Romani Activists

Part B
Making Rights Work

Chapter 5.

**Human Rights Research
and Documentation**

Knowing Your Rights and Fighting for Them

5. HUMAN RIGHTS RESEARCH AND DOCUMENTATION

Introduction

Human rights research and documentation are part of the foundations of human rights work. It is undertaken in different forms by non-governmental organisations, intergovernmental organisations and states. This chapter outlines the process of human rights documentation as undertaken in NGO work. In this section, you will learn what human rights documentation is, why it is important for the purposes of human rights work and some of the aspects that human rights documentation entails, particularly for Roma rights activists. The chapter will also briefly review different human rights documentation techniques such as interviewing, gathering statistical data and “testing” to prove racial discrimination.

What is Human Rights Documentation?

Human rights documentation is a blanket term that refers to the gathering of information on human rights standards and abuses. Broadly, it is considered to have the functions of observation and analysis, but differs from other similar activities (such as academic research), because it is an instrument in the public interest, a mode of ensuring that human rights standards – such as those set down in the treaties reviewed in previous chapters – are upheld and respected. Human rights monitors and researchers seek to improve human rights situations, not merely to record their observations for the sake of documentation, creating the foundation for other human rights actions, such as reporting, advocacy and litigation.

Human rights documentation and research includes the comprehensive investigation of activities and actions to verify suspicions that human rights violations are being committed. Investigation may consist of gathering information about events (i.e. elections and trials) and incidents (i.e. individual cases of police violence), visiting sites where human rights violations may be occurring (i.e. refugee camps or detention centres) and/or checking facts with and requesting information from governing authorities. Human rights documentation is often a starting point for future action and is an important tool to ensure government transparency.¹

To date, human rights documentation has proven useful in a number of areas of Roma rights work. Careful documentation of instances of violence, such as police abuse, pogroms and other episodes of community violence, has ensured that these issues are taken seriously by authorities. It is only as a result of careful documentation that individual cases have received justice and it is only as a result of repeated and continuous documentation that long-term patterns of racial violence or discrimination in the

criminal justice system have been established in some countries. This work is far from finished and has only been somewhat successful in some states. In many European countries, documentation has simply not been undertaken or has been carried out poorly.

By gathering statistical data, it has been possible to show patterns of racially discriminatory outcomes

Another broad area where human rights documentation is very important is in establishing patterns of racially discriminatory outcomes or systemic abuses. For example, by gathering statistical data, it has been possible to show patterns of racially discriminatory outcomes, such as racial segregation in schooling or patterns of forced evictions from housing, which fall disproportionately against one ethnic group.

Finally, some special methods have been developed to document racial discrimination, such as the process called “testing (to prove racial discrimination)”, which involves sending similarly placed Roma and non-Roma (often in pairs) to experience treatment by a person, company or official body suspected of racially discriminating. “Testing” as a method is described in detail below.

Even where such documentation has been undertaken, the nature of human rights documentation is such that information can quickly become outdated. Thus, even in those places where relatively good documentation has been undertaken, a need can rapidly arise for additional updated research.

Why Undertake Human Rights Documentation?

Documentation is an important part of effective human rights activity. As mentioned above, monitoring is not a neutral function, but an instrument employed in the public interest. Often in NGO work, it is the compilation of facts, evidence and arguments that are used to convince authorities and wider society that change is necessary. Identifying patterns of abuse and documenting the nature and extent

Identifying patterns of abuse and documenting the nature and extent of violations is key to ensuring the transparency of governing institutions

of violations is key to ensuring the transparency of governing institutions. Publicising human rights violations and making knowledge accessible to the national and international public ensures government accountability.

Sometimes the mere presence of researchers and monitors improves upon the human rights status of certain situations. This is especially true in activities such as trials and elections, where the presence of monitors can enforce respect for human rights. Sometimes monitoring can also provide a vehicle for dispelling myths about the nature and cause of human rights violations of a certain group and often it offers validation to victims of rights abuse by making their voices heard.

Principles of Human Rights Documentation

The following list is a guide to the principles for fact-finding and other research for human rights activists.² Each should be considered carefully and many will be further reflected upon throughout the chapter.

- **Impartiality and Accuracy.** Fact-finding must be thorough, accurate and impartial. Ensure the credibility of information collected and disseminated by seeking direct evidence, if possible from multiple sources. Direct evidence includes victim and witness testimony, statements by alleged perpetrators, official reports, including police reports, court records, medical certificates, forensic reports, etc. Other forms of evidence include media reports, government reports, reports by NGOs, etc. Assess the reliability of the evidence and pay attention to any contradictions in the information gathered. Any questions surrounding fact will need further investigation.
- **Assessment against International Standards.** Carefully review relevant international human rights standards and constitutional rights guarantees to help identify and define what information to collect and to assess the information gathered.
- **Be Prepared Before Entering the Field.** Before entering the field, empower yourself by thoroughly researching relevant legal standards and case background information. Compile a list of everything you already know about the locations, the incident and make a list of all the information you are missing. Create a list of questions/issues you need to address during interviews to allow a proper assessment of the issue at hand.
- **Use Diverse Sources of Information.** Locate and use as many sources of information as possible. Interview both the victims (possibly individuals or entire communities) and witnesses of an event and the violator. Collect and evaluate *all* available evidence. This evidence could include periodic government budget or policy reports; legislative and judicial records; papers and studies produced by academic or research institutions; reports by or interviews with NGOs, official reports, including police reports, medical certificates, building permits, documents attesting to security of tenure, etc.
- **Respect all Parties.** All efforts should be carried out with utmost respect for those concerned.
- **Ensure Safety/Take Steps Against Victimisation.** It is very important to consider both the safety of the victims of the human rights violation(s) you are documenting as well as your own safety. When documenting abuses it is essential to take all measures possible to avoid putting interlocutors in danger to the best extent possible, and/or to prepare individuals for any retaliation they might suffer as a result of participating in your investigation, including subsequent human rights abuse. Monitors and fact-finders should therefore develop a plan of action and consider the above in relation to it. Ensure that the victims and witnesses that you interview understand the purposes for which you intend to use the information they provide you, as well as any possible repercussions they may face as a result, so that they have all the facts in making their decision to pursue justice

If at any time you feel that either the victims of and witnesses to abuse or yourself are in danger, cease your actions immediately

by working with you. If potential interviewees agree to divulge information on a particular rights abuse after having explained this to them, proceed with your fact-finding activities. **If at any time you feel that either the victims of and witnesses to abuse or yourself are in danger, cease your actions immediately.** It is not the purpose of human rights monitoring and fact-finding to place persons in the way of further harm, nor does it further human rights purposes.

The following box contains guidelines followed by human rights officers conducting monitoring for the United Nations:

Principles of monitoring outlined for human rights officers working for the United Nations	
1) Do no harm	10) Consistency, persistence, patience
2) Respect your mandate	11) Accuracy and precision
3) Know the standards	12) Impartiality
4) Exercise good judgement	13) Objectivity
5) Seek consultation	14) Sensitivity
6) Respect Authorities	15) Integrity
7) Credibility	16) Professionalism
8) Confidentiality	17) Visibility
9) Security	

Before Getting Started

Human rights monitoring and documentation are not goals in themselves, but instruments in the public interest

Human rights monitoring and documentation are not goals in themselves, but instruments in the public interest, often aiming to ensure compliance with human right standards or to improve the ability of individuals to realise fundamental human rights. Does your organisation hope to create a report to be published about the situation? Are you creating a “shadow report” to be brought to the attention of an international monitoring body? Do you require legal evidence that will prove useful in litigation to secure justice for victims? Are you hoping to develop a media campaign or

advocate at the national or international levels? Are you monitoring for the purpose of ensuring human rights are observed and to bring international attention to a specific activity (i.e. a trial or election)? It is important to have a goal or next step in mind before beginning documentation activities because this can help in determining the methods of monitoring which would be most useful in the given circumstances. Often it is the case that a combination of documentation activities is best. Some of these activities will be described in the pages that follow.

The preparation portion of human rights documentation activity involves gathering relevant information on the subject of your investigation. Preparing yourself should include:

- Familiarising yourself with both the domestic and international legal context. What are the relevant laws surrounding your issue? How have recent cases been decided? What further guidance on resolving the human rights law context have international organisations and monitoring bodies provided?
- Introducing yourself to the historical context as well as the current situation, via media sources, books, people in the field, etc. It is important to review all existing literature on the issue you are investigating.
- Gathering contacts such as individuals at other NGOs, representatives in IGOs, relevant professionals (i.e. medical, forensic), members of government (local and national) and state officials (i.e. police, teachers).

Human rights research and documentation involves three main activities: the investigation and observation of problems/situations, the collection or documentation of information and the analysis of information collected. Through these activities, the information snapshots which pieced together form an indication of human rights abuse are brought into focus as a clear picture of the human rights situation in question.

Investigation

When beginning human rights documentation, investigate written sources, information given by individuals and use your own objective observations to create an accurate, reliable and precise picture of the situation at hand.

Written Sources

Written sources include research by academics and other NGOs (including shadow reports presented to IGOs), media monitoring, reports by the state or state institutions including statistics, correspondence, court decisions or even laws and legislation. The paragraphs below provide more information on some of these sources. This is not an exhaustive list of written documents, but provides a good list of examples.

- **Media Monitoring:** Media monitoring generally consists of rigorous and consistent review of various media (i.e. print, television, radio, the internet) for information related to your topic. Media monitoring should be undertaken on an ongoing basis to ensure that you are constantly updated on happenings surrounding your issue(s). Monitoring the media is also a good way to do preparatory research for a documentation mission or study. If you wish to document how Romani communities are portrayed in the media, investigating news resources may constitute a major portion of the investigation and documentation activity itself. The internet has made media monitoring easier in recent years, with the ability to be put on listserves and use search functions on news sites to easily find the specific information you are looking for. Do not forget though, that it is always important to approach the media with caution and an eye open to media biases (i.e. racism, close government affiliations, etc.) which may exist.
- **‘Official’ reports and documents:** Monitoring may include looking at court documents for relevant cases or patterns. Court decisions are a particularly useful source of human rights information. Comparing decisions in cases where Roma are on trial with similar cases dealing with non-Romani defendants can also derive important information. Other official documents that may be useful sources of information include reports produced by police or local officials. Useful ‘national’ documents include legislation or ministerial reports and briefing or position papers on topics such as education and housing. International governing organisations such as the United Nations, the Council of Europe, the European Union and the Organization for Security and Co-operation in Europe often produce reports on both individual countries and specific themes. Finally, reports by doctors and forensic experts can also be useful in certain human rights documentation contexts. This issue will be dealt with further below.
- **Reports by civil society organisations:** Those who have done extensive research on your subject are also a good source of information. Non-governmental organisations such as the European Roma Rights Center, Human Rights Watch, Amnesty International, and the International Helsinki Federation all produce country and theme reports on the condition of Romani communities. These reports are generally accessed on the organisations’ web sites. A list of useful and important internet websites is listed in the Appendices of this handbook. Expert reports from academics are also useful in this respect.

Information Provided by Individuals

Information from individuals may come from those in conflict with an institution, members of a group experiencing discrimination, victims of human rights abuse, witnesses to instances of abuse, academics, journalists, professionals (i.e. lawyers, doctors, psychologists) or even individuals employed by state institutions. It is important to note that when interviewing or gathering information from individuals, it is a good idea to both document your sources and speak with as many relevant persons as possible. The significance here is that confirmation of testimony from multiple sources, where this testimony is taken individually and in a controlled environment, can add strength to rights abuse claims, can reveal

patterns of abuse and helps to create a clear picture of the situation in question. This will be discussed in further detail in the section on verifying data.

Observations of the Human Rights Researcher

Observations made by the human rights researcher are also an important, but easily overlooked, source of information. Since it is the human rights researcher who visits sites and speaks with individuals, she or he can provide a substantial amount of information if alert and conscious of what to look for. For instance, when visiting a community to attain information regarding housing conditions, in addition to speaking with individuals about their housing conditions and measures by officials to remedy any housing rights abuses, a researcher should take note of the location of the community and whether there exists a clearly defined physical divide or barrier between Romani and non-Romani residents. Has the state provided infrastructure for sanitary conditions (i.e. running water, waste disposal)? What do the physical conditions and geography of the community look like? The researcher should try to use their own methods of observation to make objective documentation of their visit.

When interviewing or gathering information from individuals, it is a good idea to both document your sources and speak with as many relevant persons as possible

This holds true whether visiting a community or an event.

Additionally, a researcher can create data by taking physical measurements. This is often presented in the form of statistics. How many individuals live in a certain community? What percentage of children in a ghetto school are Romani? The section below will further expand on three useful forms of collecting information: Interviews, gathering statistics, and “testing” to prove racial discrimination.

Documenting Individual Cases of Human Rights Abuse

Providing information that is objective and factual and thus allowing actions to speak for themselves is good documentation. Some of the most compelling forms of documentation include video and audio recordings as well as photographs. These types of evidence are perceived as clear and powerful. For instance, in 2001 journalists from *TeleMadrid*, a private local television station in Spain, conducted tests of kindergartens using hidden video cameras (a lawful practice in Spain) in order to document discriminatory practices in admissions procedures. One journalist was given extensive advice by a member of the state organisation of kindergartens as to how to open a kindergarten such that no Romani children would come to it. In the video recording, the administrator advises the journalist not to explicitly discriminate, “since this would be illegal”, but rather to place Romani children indefinitely on a waiting list until the parents’ interest in enrolling their children waned. The videotape was broadcast on a number of Spanish television stations and reportedly provoked nation-wide debate.

Unfortunately, it is relatively rare that human rights abuses of this kind are captured on film. Far more often, human rights monitors must rely on several other methods: Victim and witness testimony and medical documentation or other “official” reports. Incidents can be reconstructed powerfully by gathering as many individual pieces of eyewitness testimony about an event as possible and supplementing these with medical protocols, for instance in cases of violent acts, which can be procured by bringing victims to a doctor and having the doctor professionally document wounds.

Physical violence as a form of human rights abuse is a particularly traumatic one. Roma in Europe unfortunately have fallen victim to skinhead violence, physical abuse by police and other state officials, and even episodes of community violence or pogrom. Although one might think that a violent episode is relatively easy to document, in fact the opposite is the case: Most episodes of violence are not well documented and therefore are often ignored, with the victims never receiving justice. Without careful, long-term documentation of violence, it is possible to deny or ignore that such extreme episodes have taken place. Good, solid documentation of such acts is therefore very important.

Interviewing Victims and Transcribing Testimony

The human mind and its memory can be among the most accurate, as well as among the most unreliable instruments in existence

Victim and witness testimony seems like a simple issue, but in fact nothing could be more complex. The human mind and its memory can be among the most accurate, as well as among the most unreliable instruments in existence. We still know relatively little about how the mind remembers and what it remembers. Several issues are, however, clear:

- i. People usually remember events occurring recently more clearly than they remember events in the distant past, unless those events have been especially pleasing, especially traumatic or particularly memorable for some reason;
- ii. Some people can be influenced by suggestion, and their memories may change if subjected to influence. For example, if someone hears a story told several times which “makes sense” of confusing events, it may change their perception;
- iii. The act of assisting people in remembering what they have seen, independent of other influences, can be an important mode in reconstructing an event; and
- iv. On the other hand, trauma can alter memory.

Witnesses can therefore be either very helpful or very harmful in reconstructing an event and documenting it. Witness testimony can be a powerful recording of an instance of human rights abuse or can cause confusion and obscurity. By contrast, someone who has heard about an event third-hand and relates what they have heard (that is, someone who “gossips”) can dangerously obscure, derail or distort human rights documentation. The human rights monitor/researcher has a key role to play in

assisting witnesses to express what they have seen or experienced, as well as in insulating witnesses and documentation from the dangerous and harmful influence of gossip and hearsay. Powerful witness testimony has formed the basis for some very remarkable human rights documentation efforts, such as Claude Lanzmann's documentary film, "Shoah", about the Holocaust. On the other hand bad, unclear or confusing testimony has ruined some of the best human rights documentation efforts.

The core element in setting down victim and witness testimony is the human rights interview. Information recorded by the interviewer varies depending on who is being interviewed and on what the subject being monitored is, but generally, the interviewer should cover the questions: Who? What? When? Where? Why? and How?

Testimony is almost always most coherent when presented in chronological order. Try to assist persons testifying to recall events from the beginning and proceeding through to the end. Some people will testify this way naturally, while others will need assistance. Some people will not want to narrate and will need to be asked specific questions for each additional bit of detail. Some may, on the other hand, speak wildly, erratically, jump around in time or present information not based on what they have seen or heard directly during the events at issue. It is important that, where possible, you assist persons in speaking from the beginning of events to the end, in careful, seen, chronological detail.

Try not to become frustrated with a victim or witness if they are not adept at testifying chronologically. Do try to steer the victim or witness away from general information and toward specifics. You may need to keep running notes while the victim or witness testifies, to which you will need to return later for more details. In some cases, you may have to interrupt the person testifying to bring them back on track; in other cases, it may be best to let them speak and then return later to places where you lost the narrative thread. This will depend heavily on the person being interviewed. Remain aware and alert, using your best judgement as to when to interrupt and when to allow a speaker to continue.

You should be aware that some people say what they think you want to hear or may speak according to what they think your expectations are. Take all measures possible to reassure persons testifying that you are without judgement and your sole task is documenting the facts and details of an event. Try not to make judgmental statements or indicate moral positions during an interview. For example, if you are documenting police abuse during a raid related to the possession of drugs, it is very poor practice to pause an interview to lecture victims on the dangers of drugs. This does not mean you need to condone drug use, but it does mean that you should wait until after the completion of all documentation before expressing your views and that you should probably find other means (or even other people) to work on the possible problem of drug use. By stepping into

Take all measures possible to reassure persons testifying that you are without judgement and your sole task is documenting the facts and details of an event

the role of human rights researcher, you to some extent have abdicated the possibility to do other kinds of work, such as for example, social work (although of course if you believe social work is needed in a given community, by all means do your best to ensure that experts in social work are brought in to the community).

Be very aware of your own emotional state at all times during an interview. It is not possible to document human rights abuse well without having basic human empathy for the victim. If you cannot feel anything for the victim of human rights abuse, you probably should not be doing human rights research. On the other hand, capitulating too intensely to empathy for a victim can bring you into very dangerous waters. If you lose your emotional bearings and give in to anger towards perpetrators or over-empathy for the victim, you can miss key details crucial to assisting a victim in presenting their testimony to persons who may not be emotionally engaged with a victim (and this is one of your most important tasks). You can also lose your objectivity, damaging your credibility and the integrity of the testimony itself.

Also necessary is to achieve the balance between the need for details and the tendency to influence an account by asking leading questions. An interviewer must be able to distinguish between fact, rumour and opinion. This is essential for the accuracy and validity of information collection.

Establish a “Safe” Environment

In advance to undertaking an interview, a human rights researcher should also establish a secure environment by bringing the victim or witness to a place where he or she may feel comfortable and may feel free to speak at ease. Finding such a place in an exposed Romani settlement may be difficult. In some instances, it is possible to arrange to use a closed room in a house. In other cases, it may be necessary to invite the victim or witness out of the settlement to testify. In extreme instances, it may be possible to create an isolated environment in the corner of a local café or if necessary, taking testimony while walking with a victim or witness.

Before beginning an interview for human rights documentation purposes, it is important to attain the permission of the interviewee. To the best extent possible, explain to the victim your reasons for seeking an interview or for undertaking documentation broadly. Try to find explanatory language that avoids conceptual terms or terms open to misinterpretation (such as “human rights”, “discrimination”, etc.), preferring terms as close to the lives of people not involved in professional human rights work as possible (“problems”, “attacks”, etc.)

Interviews for the purpose of human rights documentation should never be conducted in a group setting, for a number of reasons. First of all, interviewees can be influenced by the presence of others. For example, there may be reasons why a particular subject might be shameful to speak about in front of other persons and outside the secure space created by a human rights researcher. Individuals may speak differently or vaguely, alter testimony or obscure crucial details if testifying in the presence of others.

Thus, researchers may miss key events if interviewing. Also, interviewers may subject the witness or victims to shame or embarrassment if testimony is taken in the presence of others.

Secondly, it is very difficult to keep strong personalities from interrupting a witness or victims, suggesting alternate details or otherwise blurring access to the memory of the victim or witness. This exposes testimony to the danger of becoming a composite story, not based on the individual memory of a particular witness, but rather based on hearsay or influenced by concerns different from simply establishing the facts. Other personalities present during an interview may try to usurp the role of the interviewer, without having human rights documentation as a goal or without clearly understanding the responsibilities taken on during human rights research. Group testimony often converges toward “gossip”, which as noted above, is the sworn enemy of good human rights documentation.

There are one or two exceptions to the rule that testimony should never be taken in the presence of others. For example, where extreme human rights abuses are at issue, such as in cases of rape or other forms of torture, the victim may wish to have a close confidant, such as a sibling, present during the interview and this may be an important request to accommodate. When considering whether to allow the presence of another person during the interview, the free choice of the victim is a primary concern. Also, the human rights researcher should weigh the danger of corrupting testimony against the importance of having one other person present during the interview. If the human rights researcher decides to allow one other person to be present during the interview in order to support the emotional needs of the victim, that person should be briefed before the interview to ensure that they remain silent and passive during the interview and that the interview as a whole remains entirely confidential.

Recording Interviews

Interviewers should keep a record of all interviews. This includes detailed notes taken during the interview if possible. Some human rights researchers use video or audio recorders during interviews. Using technological props for taking testimony can be helpful, and videotaped testimony can be a powerful human rights medium. However, there are a number of dangers posed by the use of audio or video recorders for human rights documentation purposes. In the first place, victims and witnesses can become self-conscious or embarrassed when a camera or cassette recorder is switched on. They may freeze up and not speak, or may act or exaggerate for the recorder, or otherwise become overly influenced by the presence of the switched-on machine.

Secondly, such devices are inherently fallible; they can break or fail to record. Human rights researchers relying on these devices may fail to take notes, depending solely on the machine to record. In general, using recording devices can cause researchers to become lazy and to fail to pay close attention to the testimony of the victim or witness. This can also cause the researcher to fail to ask crucial questions, clarify unclear details or miss important lines of questioning. Some researchers have missed important documentation opportunities by depending on the audio or video recorder and convincing themselves that they will “sort out the details when they get home”.

If you use an audio or video recorder for the purposes of documenting human rights abuse, never depend on the device entirely; always also take notes

If you use an audio or video recorder for the purposes of documenting human rights abuse, never depend on the device entirely; always also take notes during the interview, and make sure to remind yourself to stay aware during the interview to ask all relevant and appropriate questions. In general, audio or video recorders should only be used as a support mechanism for notes. Best practice with audio or video recorders involves taking detailed and thorough testimony using only pen and paper first

and once all facts and details are established to the satisfaction of the researcher, repeating the interview a second time, only then using the recording device. If you are using such a device and you notice the victim or witness embarrassed, self-conscious, exaggerating or acting for the machine, switch it off and proceed using only pen and paper.

Concluding an Interview

After finishing an interview, an interviewee may have expectations as to what will come next. It is a part of your work to explain clearly to the victim or witness what you intend to do with the information provided, for example by telling the victim or witness, “I intend to try to have this information

It is a part of your work to explain clearly to the victim or witness what you intend to do with the information provided

published in English so that the world will know your story”, or “I intend to publish this information in your language” or “I will try to find a lawyer and return with them so that we can pursue this as a legal complaint” (obviously do so only after you have sought and secured their consent and interest in such an action). It is important to dissuade any illusions victims may have that you may swiftly and painlessly resolve human rights problems.

Indeed, even if you are confident that you may be able to do something positive to redress human rights abuses in a given community, it is much better not to raise expectations than to make unreasonable ones, or ones that cannot or might not be fulfilled.

Be particularly aware of the role of promises. Promises can be an important trust-building exercise between a researcher and a victim, but only if these promises are fulfilled. It is a good idea to promise persons being interviewed something, if you are very sure you can deliver. Possible examples of promises a person can be reasonably sure they can fulfil include promising a return visit (preferably on a specified date), or promising to send copies of photographs, if you have taken photographs. *Never* promise anything that is beyond your power to deliver. Above all, you owe anyone with whom you have been in contact the obligation of honesty and clarity. You may wish to say clearly to any and all persons interviewed, “I am not sure if I will be able to return here, but I will promise to the best of my ability to use this material to improve the situation here. I am not sure if I can help”, if this is true.

It is unethical to pay for human rights interviews and it is even on the margins of ethics to donate money or other goods to a person whom you have interviewed. If you feel a strong charitable impulse with respect to a person you have interviewed, one possibility is to donate to a local non-governmental organisation providing assistance to individuals in the community, and possibly even to earmark your donation for assistance to the person you have interviewed. Direct donations however, cross the line into “paid victimhood” and are therefore to be avoided.

It is unethical to pay for human rights interviews

You have an obligation to warn an interviewee if you think that the act of conducting the interview may have put her in danger of retaliation. You also have an obligation to explain clearly the implications of any and all possible uses of the material gathered during the interview and to seek consent for those uses. It is the right of any interviewee to deny you the use of material gathered during the interview.

Whenever possible, it is also helpful to attain signed statements. A record should be kept of the victim’s/ interviewee’s name and contact information, even if this is to be kept confidential for safety or personal reasons. This is helpful in order to maintain contact with sources if later details need to be verified or if a possibility for justice later becomes available. Try not to wait longer than 24 hours to transcribe the details of testimony and, if at all possible, try to transcribe testimony the same day, as notes are often messy. You will want to transcribe testimony while the details of the interview are still very fresh in your mind. Also, if you are still in the area when you transcribe the interview, you may be able to conduct a follow-up interview to clarify details, if necessary.

Maximising Accuracy³

When carrying out interviews, you can maximise both accuracy and reliability by:

- Using precise questions and clear, uncomplicated, unambiguous language;
- Approaching the account in a chronological fashion so that it is easier for you to pick out and address inconsistencies;
- Reviewing apparent inconsistencies from several angles, rewording your questions if necessary – the interviewee may be confused or may not understand your question;
- Speaking primarily with victims and/or witnesses to the alleged incident. If there is any supporting documentation, such as a medical report or a copy of a petition lodged as a result of the incident, explain that supporting documentation can help to make an allegation stronger and increases the opportunities available to seek a remedy; and
- Observing and noting the interviewee’s demeanour and body language, asking yourself – does this person seem credible? In this context, you should be aware of the influence of culture, gender and psychological state.

Special Considerations

Finally, there are several special considerations to take into account when interviewing. These considerations are for the protection of both the interviewer and the interviewee. Some are beyond the scope of this manual, but there are factors that deserve consideration by both the interviewer and

It is essential to balance the need to obtain information with the needs of the person being interviewed

organisation to which they belong. This includes informed consent, gender and the needs of victims. It is essential to balance the need to obtain information with the needs of the person being interviewed.⁴ This is especially important to keep in mind if interviewing someone who has gone through a traumatic experience such as torture, rape or other sexual assault.

For instance, in the case of a sexual assault, you may wish to seriously consider finding an interviewer of the same sex, in addition to ascertaining whether the individual is fully prepared to testify about this traumatic event. Speaking with an expert, such as a social worker or other professional trained in dealing with victims of trauma, is a valuable way to prepare yourself to the sensitive issues when interviewing victims of such abuses.

Where physical violence is at issue and injuries are visible, it can be useful for documentation purposes that photographic evidence of the injuries is made. However, documentation in such cases comes secondary to the needs of the victim and should only take place providing that photographing the injuries does not result in further degradation or trauma. Where possible, it is a good idea to encourage victims to seek medical treatment, for their own interests in health, as well as in order to document their injuries. Some doctors may be willing to indicate in a medical protocol the likely cause of an injury, such as “bruising likely caused by being struck with a blunt object.” Such details can be important in establishing source and origin of physical injuries.

***Informed Consent:** This involves making sure that when someone consents to something, such as submitting a complaint to an official body, they are fully informed of both the potential benefits and negative consequences of the proposed course of action. Genuine risks should never be concealed. Consent should be not only informed, but also freely given. Individuals should not be pressured into giving their consent.*



Making Rights Work: Interviews

Read the following text ONCE and then answer the questions that follow.

According to a May 8, 2002, report to the *ERRC* by the Sofia-based non-governmental organisation *Human Rights Project (HRP)*, on February 2, 2002, at approximately 2:00 AM, Stephan Kostov, a 27-year-old Romani man, was shot in the right leg by Police Officer Mihov near the town of Sliven in eastern Bulgaria. Stephan was going wood picking near the village, together with Roumen Ivanov Borissov, Angel Ivanov Andonov and a youth nicknamed “Myrko”, all Romani youths aged 15, when they noticed Officer Mihov approaching on foot. *HRP* reported that Officer Mihov allegedly told the boys to go back to the village, and when they turned to go back, an elderly man appeared from a cottage near the road and told Officer Mihov that “boys like these have burgled my neighbour’s cottage.” Officer Mihov reportedly then pulled his gun and shot Stephan in the leg from approximately one metre away. According to *HRP*, Officer Mihov then left and the three boys took Stephan to a hospital, where he reportedly stayed for three or four days.

At the hospital, Stephan received intensive rehabilitation therapy for three fractures he received to the inside of his right knee, as a result of the gunshot. At 3:30 PM on February 2, 2002, according to *HRP*, two police investigators, a photographer and a police sergeant went to the hospital and took the three boys to the scene of the shooting. Following this, the boys were taken to the police station where they were allegedly forced to sign a document that none of them could read, due to their illiteracy. On February 5, 2002, *HRP* filed a complaint with the Military Prosecutor’s Office on behalf of Stephan Kostov. According to *HRP*, on March 6, 2002, the Regional Military Prosecutor refused to begin an investigation into the shooting. Stephan Kostov did not appeal the decision.

Now, without returning to the snapshot, answer all of the following questions:

1. On what date did the incident occur?

2. What were the names of the youths involved?

3. What was the officer’s name?

4. How old were the youths?

5. How far away was the officer when he shot at the youth?

6. On what date did Human Rights Project file the complaint?

Were you able to answer all of the questions without returning to the text? Were all of your answers correct? This exercise was meant to show how important it is to take immediate and accurate notes of testimony given. Our memories aren't always as reliable as we'd like them to be and it's easy to forget details when many facts are given within a short period of time.

Documenting Systemic Abuses Through the Use of Statistical Data

Statistics can be useful in showing patterns of discrimination (including indirect discrimination) and other systemic human rights abuses. Statistical data is especially valuable for reports to specialists, presentations to governing authorities and sometimes litigation. To be reliable, data must always be accurate and should include a clear description of the methods used in gathering information.

Statistical data is especially valuable for reports to specialists, presentations to governing authorities and sometimes litigation

Data can be gathered for generating statistics in various ways. Researchers may go to a place of interest to do physical counting (i.e. the number of Roma in a particular refugee camp); official documents may be used to identify rates (i.e. how many incidents of violence were documented as 'hate crimes' by police); or questionnaires may be distributed to collect easily comparable data, including demographic questions. One method may be more suitable to a specific study than another, depending on the needs and goals of the monitoring project.

What are demographics?

Demographics are the characteristics of a population (i.e. sex, age, race, religion, geographic location, education levels, etc.). The information collected creates a broad profile of a community, province or state, indicating population trends.

Once gathered, statistics can be employed in a number of ways. They are useful as indicators measuring the incidence of certain trends within a group, for instance, documenting the extent of lack of personal documents within a community. The ERRRC funded a survey for this purpose in the Macedonian town of

Kumanovo in 2003, which discovered, among other things, that 7% of the Roma surveyed did not have citizenship certificates and 34% did not have passports.⁵ The results of this survey allowed the ERRRC to determine the extent of the problems experienced in the community due to personal documents issues and to further comment upon new citizenship laws which directly affect these issues.

Another important use of statistics is for the purpose of comparison. It is valuable not only to procure statistics about the group you are most interested in, but also about other groups, and/or about the entire population, for comparison. For instance, in a report by the Open Society Institute, an organisation monitoring minority protection with regard to the European Union accession process, the following information appeared: “Widespread discrimination against Roma in the area of employment continues to be of serious concern. Estimates of unemployment among Roma range from 70% to 90%, as compared to the national rate of around 9%”.⁶ Providing comparison of Roma to the majority population in this case shows a very serious disparity in the sphere of employment, which may indicate that the issue is one of discrimination and certainly should prompt immediate, urgent government action.

Some organisations have undertaken important studies using methods such as “sampling”, in which researchers examine not whole populations, but rather only carefully selected representative individuals or groups, to create statistics and show discriminatory treatment.

Competent statistical research is extremely valuable and studies need to be conducted in all countries and in many areas of life – education, housing, employment, health care and social services, to name only a few. They can be useful in proving discrimination in court, in arguing for better government policies and more money to be spent on Roma, as well as in highlighting Romani issues before powerful international committees, such as the various United Nations and Council of Europe bodies. Local organisations are probably best placed to conduct such studies. If you are interested in undertaking such studies, it is worth noting the following:

It is *not* true, as many activists claim, that “everybody knows the problem, now we need only action”; in many countries, good statistical data on issues of deep importance to Roma is unavailable, for instance, in relation to (to name only a few examples):

- The percentage of Romani children who attend schools or classes for the mentally handicapped or other poor quality schools;
- The number of Roma (and non-Roma) who live in houses which are not legally registered by local authorities or do not have adequate infrastructure;
- The number of Roma (and non-Roma) evicted from their housing every year;
- The number of Romani children (and non-Romani children) who are removed from their families and placed in state institutions every year.

In some countries, state authorities abstain from collecting statistics and even block efforts to find out such information. For example, while conducting research in the Czech Republic, the *ERRC* was frequently told by school officials that keeping data on ethnicity was not done or even that it is illegal. People who say that they cannot give out information about numbers of Roma may simply be trying to block you from finding out whether Roma are suffering systematic discrimination. Even countries that classify data on an individual's ethnicity as "sensitive" and therefore subject to restrictions on use, for the most part do not maintain such bans on generalised data about groups. There are some countries though, where it may in fact be unlawful to collect and provide race statistics. Some states cite protection of the individual from invasive state or other illegitimate action as their reason for outlawing statistics gathering. A local lawyer can tell you if legal restrictions exist in your country.

In order for statistical data to be useful, research must be conducted well. Unless operating with a professionally selected statistical (random) sample, all conclusions drawn from statistics should refer solely to the specific cases investigated. A general rule of thumb is to only calculate percentages if your sample is greater than fifteen. Smaller numbers can be presented as figures (i.e. 10/15). Always make

Always make sure that you state your methodology in a section somewhere in the reporting or publication of your statistics

sure that you state your methodology in a section somewhere in the reporting or publication of your statistics, since many abuse statistics and it is therefore important to have transparency of your methods.

Depending on the size of your sample and data obtained, you may require the aid of a statistician or sociologist or knowledge of coding and statistical software for statistical analysis. Details of these processes are beyond the scope of this manual and it is best to consult an expert, your local library or the internet for further information. A good place to start is the International Association for Official Statistics: <http://www.stat.fi/iaos/index.html> or the United Nations Statistics Division: <http://unstats.un.org/unsd>

Making Rights Work: Working with Statistics



As mentioned above, transparency in the collection of statistics is very important. The manipulation of statistics is an ethical issue in the dissemination of information to the public. The following information appeared in an Open Society Institute report on Minority Protection in Bulgaria:

“[...] Bulgarian authorities gather statistics on criminal activity by ethnicity at all stages of the criminal procedure up to sentencing and those that are publicly available suggest patterns of

discrimination in sentencing. Moreover, although the authorities claim that data on ethnicity is collected only with the consent of the defendant and according to the principle of self-identification, in fact there is sufficient evidence to conclude that ultimately it is the law enforcement officer who determines the ethnicity.

The lack of transparency with regard to the collection of official ethnic statistics and the purposes for which these statistics are used is a source of concern for many civil society leaders in Bulgaria. This situation could be remedied if Bulgarian authorities collect such statistics only for clear and public purposes, and only using a transparent methodology. Recording the incidence of discrimination in the area of criminal justice (and in other areas) is considered by many [...] to be a legitimate reason for data collection, provided proper safeguards to ensure the protection of free choice of identity are set in place”.

Questions:

1. What are the ethical issues involved in statistics collection?
2. What issues arise from the determination of ethnicity by law enforcement officials in the collection of data?
3. How might these statistics be abused?
4. What safeguards could be put into place to ensure legitimacy in data collection?

“Testing” to Prove Racial Discrimination

Vesna, is a Romani woman and this is her story:⁷

“I saw a job for a sales assistant advertised in the window of a clothes shop. They wanted someone between 18 and 29. I’m 19, so I went in and asked about the job, but was told by the manager to come back in two days because not enough people had applied.

I returned twice and was always told the same thing. Nearly a week later I went back to the shop. The job advertisement was still in the window. The manager was too busy to see me, but I was told that the vacancy had been filled.

After I left the shop, I was so upset that I asked a non-Romani friend if she would go in and ask about the job. When she came out she said that she had been asked to come for an interview on Monday”.

As outlined in Chapter 2, in some cases of direct discrimination, it may happen that the word “Roma” or “Gypsy” is not explicitly used, but it is still possible to show that discrimination has taken place.

How can a person prove that there has been discrimination in such cases? Some organisations in Central and Eastern Europe have recently successfully used a technique called “testing”. The story above, involving “Vesna” uses the practice of “testing” to prove racial discrimination. Testing involves sending individuals or pairs of Roma and non-Roma – persons who in respects such as dress, qualifications, etc., are otherwise very similar – to apply for a job, a flat or to enter a restaurant, discotheque or place of employment where it is suspected that discrimination against Roma is regularly practised. If the non-Romani individual or pair is treated differently than the Romani individual or pair – for example if the non-Romani pair is allowed into the discotheque but the Romani pair is asked to show a membership card and then refused entry – then detailed and careful testimony of all of the so-called “testers” should be written down. This testimony forms the evidence of the discriminatory act and in many countries can be used in court.

A more extensive account of the methods of testing is described below:

Testing to Prove Racial Discrimination⁸

Testing is a technique that is used to collect evidence when there is an allegation of discrimination. Testing is used mainly by civil rights organisations to uncover unlawful acts of discrimination. It is applied if a member of a protected class group suspects disparate treatment on grounds of his or her national origin, religion, gender, the colour of his or her skin, or other characteristics covered by legal prohibitions on discrimination. It is applied to gauge the existence or extent of discrimination in employment, housing, public accommodation or, indeed, any other area of social life. There are two kinds of testing: research-oriented testing, which is used for auditing, and enforcement-oriented testing, which uses the results of testing to file a law suit or monitor compliance with injunctive relief. In enforcement-oriented testing, it is often appropriate to perform repeated tests of the same job vacancy, the apartment at issue, or the bar or club suspected of refusing to serve based on racial grounds. The goal of repeated tests is to assess the nature and extent of discrimination in anticipation of litigation, principally to determine whether the observed differences in treatment were isolated or reflect a pattern or practice of discriminatory behaviour.

In enforcement-oriented testing, first litigators should discuss the case with the complainant to draw up questions to be addressed by testing. One should also collect all materials concerning the firm or the club being tested, such as licences and earlier complaints against the firm, as well as legal provisions and case law. Then the selection and training of testers begins.

Testers are objective fact-finders who, after extensive training in both the classroom and the “field”, conduct testing to uncover discrimination. A test requires two testers: a “protected tester” and a “comparison tester”. [...] For example, in cases alleging discrimination against a Romani person, a Romani person would serve as a protected tester, while a non-Romani person would be in the role of a comparison tester. In a case of gender discrimination against a woman, a woman would be in the protected tester status while a man would be in the role of comparison tester. In general, testers should be quite similar. The key difference should be the quality at issue in the “test”, for example, the race or national origin of the tester where racial discrimination is alleged.

Training should include practice testing under close supervision, orientation about the uses of testing results to enforce civil rights laws and information regarding the nature of legal procedures in which testers may eventually be involved. During the training, paired testers should work closely with each other, get to know each other, and develop a sense of teamwork. Testers should be asked to declare explicitly that they accept the roles in the project as objective fact-finders, and to promise to maintain confidentiality.

Testers conduct their tests on the same day, posing as *bona fide* job or home seekers, for example. In the process of the test, testing team partners are sent at closely spaced intervals to seek information about a job, an apartment or the availability of a certain service. When conducting a test, testers should dress appropriately for the occasion. In testing employers, each tester should take actions that are comparable to those likely to be undertaken by his or her paired partner while still following the natural flow of each job application process. For instance, the protected class should apply first for the job at issue either by telephone or in person. Tailoring testers’ conduct to the particular circumstances of each job application, maintaining a clear and complete record of the test experience, and ensuring that each tester acts in ways comparable to his or her partner is necessary to obtain evidence for litigation.

Testers record their experiences on assignment forms immediately after completion of each test. The report filed by each tester should include detailed information about job or housing availability, the application process, terms and conditions, questions asked by the tester and information volunteered by the agent or the employer. Beyond answers to the questions in the report forms, it may be worthwhile to request that testers write a detailed narrative description of their experiences during the test.

The forms on which testers record their experience should include at least the following: the time of application; information demanded of applicants (e.g. the length of interviews, the characteristics of interviews, questions asked at interviews); the flow of information (e.g. information provided spontaneously, information that had to be requested); how applicants are treated (e.g. length of time they must wait, level of hospitality offered); manner in which jobs are described (e.g. discussion of salaries and benefits, the length of employment, and so on). Such well-organised testing aims at examining minute, discrete components of the hiring process and can be used to corroborate as well as dispel allegations of discrimination that have been levelled against an employer. Evidence of the ultimate disparity – that one tester was offered a job while the other was not – should be documented as carefully as possible.

It is not the role of the tester to determine whether or not discrimination has occurred, but rather to act as an unbiased recorder of information. Only the test co-ordinator (the organisation or the attorney) can evaluate whether or not differential treatment has taken place. During the test, the tester should refrain from making any leading remarks about race or ethnicity in the neighbourhood, in the work place or the club they are testing; testers should be observant, meticulous record-keepers so that their experiences will be completely and accurately documented. They should record their experiences independently and should not discuss their experiences with each other until after they have been documented. Under no circumstances should a tester discuss the testing experience or the institution tested with anyone unless authorised by the test co-ordinator or ordered by a court. If differential treatment is established, then the organisation can file a lawsuit against the perpetrator.

Enforcement-oriented testing may call upon testers to serve as plaintiffs and witnesses in litigation. This imposes at least three additional considerations in selecting testers. First, the personal backgrounds of testers must be free from any difficulties that might reduce their credibility as witnesses. Second, testers must be sufficiently articulate to present their experiences clearly in written witness statements and oral testimony. Third, because litigation may last for several years, testers must be willing to remain in contact with the testing program and return periodically to participate in legal proceedings over an extended period. [...]

Verification of Data

Whether documenting a specific case of human rights abuse or more broadly researching the human rights situation in a certain country, verification of the data collected is an essential part of documentation. Ensuring that the data you have collected is representative of the situation you are describing is essential for your case, your intended use of the data and the reputation of your organisation. Making false claims, whether intentional or not, can be extremely detrimental to the credibility of your information and organisation.

Making false claims, whether intentional or not, can be extremely detrimental to the credibility of your information and organisation

Making use of several of the different documentation techniques described above is useful in data verification, providing the research with solid proof for making future claims when analysing the data obtained. Often these activities will compliment each other and help the monitor obtain a more in-depth and factual picture. One can make observations and hold interviews at the same time. Ensuring a high level of detail and avoiding vague statements contributes to the quality and credibility of report that will be developed.

During the verification process, it is necessary to track down any information gaps and address contradictions of fact within the investigation and documentation phase. Interviews that were recorded should be transcribed. Corroboration of data should be sought out, if not already present in documentation. Any contradictions that are detected should be addressed. Contradictions in data do not necessarily mean that something is untrue, but could be a misinterpretation or misunderstanding between the researcher and her or his source.

To support and verify your case, try to have as much reliable supporting evidence as possible. Objective evidence is convincing and often required if you are planning to pursue further action – especially litigation. Examples of types of evidence include police reports, medical certificates, ‘expert’ reports, media reports and reports by international and domestic institutions. This is by no means an exhaustive list.

Analysis of Information

Analysing the data obtained is the final step in human rights documentation before the creation of a report. Once data is verified and complete, analysis can begin. As was done earlier in the process, it is once again useful to reflect upon the future action to be taken with the information gathered. Which data is most useful? How will it be useful for future litigation/advocacy/political purposes? How will data be presented in a report?

After these questions have been revisited, it is possible to continue the analytical process. Any and all quantitative raw data obtained by the monitor(s) should be processed into statistics relevant for the production of a report. Depending on the volume of data gathered, this may or may not require the help of a sociologist or statistician.

Data obtained should be reviewed while reflecting on the provisions of national laws as well as international agreements and treaties ratified by the state

Data obtained should be reviewed while reflecting on the provisions of national laws as well as international agreements and treaties ratified by the state. Does the documentation indicate a human rights violation, such as systemic discrimination? Monitors should try to identify patterns of human rights violations and, if possible, the causes of violations. Finally, the analytical process permits the submission of recommendations by the monitor, based on the information she or he has attained.

Making Rights Work: Documenting Human Rights Violations

When considering the situation described below, please think about the following questions:

1. What types of information should the monitors research before undertaking a fact-finding mission?
2. How would you go about researching the case below in the field? What methods could you use in this situation? What are the types of things you would look for?
3. How would you follow up on the fact-finding mission when returning from the field?

Now consider this situation:

Your organisation has been working on Roma rights issues in your country over the past few years. Over the course of this time, your NGO has been doing media monitoring, reviewing rights abuse complaints and monitoring the human rights situation of Roma in several communities.

Through your work, it comes to light that an overwhelming number of the children attending school from these communities (and their parents before them) are attending remedial “special schools” for “mentally disabled” children. In fact, many educators in practice regard remedial special schools as schools for Roma. Romani children are enrolled directly or transferred to such schools after having begun education in a basic school. They are often placed on the opinion of an educational psychologist based on culturally biased tests. It is said that these students possess, “intellectual deficiencies such that they can not successfully be educated in basic schools, nor in special elementary schools”.⁹

Romani parents with whom you speak inform you that they were either not consulted or were pressured into signing forms placing their children in remedial special schools. In remedial special schools, children are not offered education of the standard of a regular basic school, possibilities for further study are extremely limited and these students are prohibited from entering mainstream secondary schools. Upon visiting a handful of these institutions, it is immediately clear that an overwhelming majority of enrolled students are of Romani ethnicity.

The Ostrava Case

The above-depicted situation describes loosely the conditions the ERRC discovered while undertaking human rights documentation and general research in the Czech Republic in 1997. Based on preliminary information gathered, ERRC monitors along with local Romani grassroots organisations, began specific investigation into the situation of Romani children in the Czech education system.

Much of the research was undertaken in the eastern Czech city of Ostrava. Many interviews were conducted with teachers, school directors, students and parents. As well, the ERRC used careful research to show disparate impact: The number of Romani children and non-Romani children in all primary schools in the Ostrava school district were counted. The resulting map – showing what many say is true, but few have documented well – revealed a city dramatically segregated along ethnic lines, with the majority of Romani children attending schools from which they will graduate without the necessary skills to compete on the job market, earn competitive wages, and lead dignified lives. Further ERRC research throughout the Czech Republic revealed that the situation was similar throughout the country.

Testimonies were transcribed and Czech laws and educational policies, especially those pertaining to remedial special schools, were analysed. Patterns of abuse and neglect by educational professionals were revealed in the course of the research. The resulting report, released in 1999, revealed that over half of the Romani population of school age attended remedial special schools and that over half the total population of such schools was Romani. On the basis of statistical analysis, it was revealed that any given Romani child was 27 times more likely than a non-Romani child to be placed in a remedial special school. Many of the Romani children who did not attend schools for children with mental disabilities were concentrated in a handful of primary schools in certain neighbourhoods of Ostrava; over 30 of Ostrava's 70 "normal" primary schools were "all white" – i.e. there was not a single Romani child attending those schools.

In addition, the ERRC documented a number of specific individual cases of violence or harassment, including some cases of violence by racist skinhead youths and some instances of physical abuse or harassment by teachers or other school authorities.

This information, along with several other very disturbing statistics, provided the foundation for a group of Romani children in Ostrava, assisted by local counsel and the ERRC, to file legal complaints in Czech courts to challenge their segregation in special remedial schools.

Summary

Documentation is an extremely important component of human rights action and thus needs to be undertaken with great care and rigour. If certain guidelines are followed, human rights documentation can result in extremely productive results, ultimately forming the basis for human rights-based policies, change in practice, improvement of local situations and consciousness raising generally.

Use the following activity to develop a potential monitoring or fact-finding mission.¹⁰

a) Define a **Precise Focus**

<ul style="list-style-type: none"> • What is the scope of your investigation? 	
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b) Establish **Clear Criteria**

<ul style="list-style-type: none"> • What criteria will you use for determining the reliability of the information you gather? 	
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c) Identify the **Sources of Information**

<ul style="list-style-type: none"> • Who is/are the victim(s)? 	
<ul style="list-style-type: none"> • Who is/are the alleged violator(s)? 	
<ul style="list-style-type: none"> • Who are the witnesses? 	
<ul style="list-style-type: none"> – those who saw the event 	
<ul style="list-style-type: none"> • Who can help identify additional sources? 	

d) Identify **Written and Documentary Evidence**

<ul style="list-style-type: none"> • What documentary evidence is available that can help your investigation? 	
<ul style="list-style-type: none"> • Is the information reliable? 	

e) Conduct **On-site Inspection**.

<ul style="list-style-type: none"> • What should be done <i>Before</i> visiting the site? 	
<ul style="list-style-type: none"> • What should be done <i>During</i> the on-site visit? 	
<ul style="list-style-type: none"> • What should be done <i>After</i> the visit? 	
<ul style="list-style-type: none"> • Who can assist with the investigation? 	

f) Determine the **Level of Proof Required**

<ul style="list-style-type: none"> • What level of proof is sufficient to arrive at reasonably founded conclusions? 	
<ul style="list-style-type: none"> • What factors impact on the establishment of the level of proof? 	

g) **Corroboration**

<ul style="list-style-type: none"> • How will you crosscheck the information you have gathered? 	
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h) **Human Rights Standards**

<ul style="list-style-type: none"> • What human rights standards would apply in relation to the case or issue being documented? 	
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Endnotes

- ¹ Adapted from: United Nations Office of the High Commissioner for Human Rights. *Training Manual on Human Rights Monitoring, Professional Training Series No. 7* (2001) New York and Geneva: United Nations and Canadian Human Rights Foundation. *Human Rights Monitoring and Advocacy Workshop* (2002). Jakarta, 2002.
- ² Adapted from: Centre on Housing and Evictions, European Roma Rights Center and Milan Šimečka Foundation. *Defending Roma Housing Rights in Slovakia*. Bratislava, 2004, p.77.
- ³ Adapted from: Giffard, Camille. *The Torture Reporting Handbook*. Colchester, UK: University of Essex, Human Rights Center, 2000, p.32.
- ⁴ Ibid., p.43.
- ⁵ “Profile of One Community: A Personal Document Survey among the Romani Population of Kumanovo, Macedonia”. In *Roma Rights 3/2003*. Budapest: European Roma Rights Center, 2003. For more details, see: http://www.errc.org/rr_nr3_2003/noteb3.shtml.
- ⁶ Open Society Institute. *Minority Protection in Bulgaria*. Budapest, 2001. Available at: http://www.eumap.org/reports/content/10/100/minority_bulgaria.pdf.
- ⁷ Adopted from: The Citizenship Foundation. *Understand the Law*. 1995, p.16. Also see: The Human Rights Education Library, at: http://www.hrea.org/erc/Library/First_Steps/part4_eng.html.
- ⁸ Excerpt from Fitsum, Alemu. “Testing to Prove Racial Discrimination”. In *Roma Rights 3/2000*. Budapest: European Roma Rights Center, 2000. Available at: http://www.errc.org/rr_nr3_2000/legal_defence.shtml.
- ⁹ European Roma Rights Center. *A Special Remedy: Roma and Schools for the Mentally Handicapped in the Czech Republic*. Budapest, 1999, p.31.
- ¹⁰ Adapted from: Centre on Housing and Evictions, European Roma Rights Center and Milan Šimečka Foundation. *Defending Roma Housing Rights in Slovakia*. Bratislava, 2004, p.84.

Part B
Making Rights Work

Chapter 6.

Reporting:
Getting the Word Out

Knowing Your Rights and Fighting for Them

6. REPORTING: GETTING THE WORD OUT

Introduction

This chapter discusses the reporting of human rights abuses. It should be taken as an overview, not as a comprehensive guide to reporting. It will discuss the importance of reporting, some of the essential components to be included in a report and ethical considerations when reporting. It should be noted from the beginning however, that there are generally two different types of reports: Those aimed at the public and those targeting authorities (i.e. governments and international or regional governing organisations). The former dominate the discussion in this chapter, while the latter will be taken up more specifically in the next chapter on human rights advocacy.

The Importance of Reporting

Human rights reporting is very important for NGOs and activists seeking to have genuine impact. We report to raise public awareness about rights abuses and patterns of violations and to make recommendations to stop breaches of human dignity. As discussed in the last chapter, human rights documentation is not done merely to acquire knowledge for ourselves, but to provide reliable information about instances and patterns of human rights abuse so that action can be taken to end violations of human dignity. It is an action done in the public interest. The increase of awareness of human rights violations within one's community, country and/or internationally, instigates action, which can lead to change. This requires dissemination of the information collected and analysed through human rights research and documentation.

We report to raise public awareness about rights abuses and patterns of violations and to make recommendations to stop breaches of human dignity

Reporting also helps to establish patterns of abuse. Whether your focus is bringing media attention to a violation that has previously gone publicly unnoticed, using reporting as a mechanism to shame a particular government or institution for a poor human rights record or providing an update on a well documented issue to national or international governing bodies, you are increasing human rights awareness and public consciousness. Information made public by reporting can be important to victims of human rights abuse, complainants in human rights cases, national bodies, inter-governmental organisations, citizens, civil society and many others.

The overall aim of an effective report is to positively influence the situation you are looking to improve. This is done through awareness raising, but also through the provision of possible solutions and recommendations to the problems outlined in the report. As experts in their field, human rights activists and NGOs are in a position not only to provide criticism about human rights abuse, but also to play a constructive role with respect to governing bodies. Abusive governments, embarrassed in the eyes of their own citizens and the world may become quite receptive to policy recommendations.

Another important outcome of reporting (although indirect in nature) is the credibility that a good report establishes for your organisation. Developing a reputation for effective and insightful reporting aids in the attention future reports, and thus your issues, will receive. Effective reporting may win allies useful for coalition-building, as well as assist in building credibility for other activities your organisation may be undertaking. Good reporting builds a good name. However, the opposite is also true. Poor and inaccurate reporting will damage your credibility and adversely effect future ambitions.

Tips for Good Reporting

- ✓ Start while it's fresh! Begin as soon as possible after documentation is concluded;
- ✓ Know your audience;
- ✓ Be objective;
- ✓ Make it interesting;
- ✓ Let the facts speak for themselves – don't be sensational, emotional or dramatic;
- ✓ Compare with other reports;
- ✓ Protect your sources;
- ✓ Be succinct – don't over do it!;
- ✓ Be specific – which rights have been violated? Under which domestic/international laws?;
- ✓ Establish patterns and provide recommendations; and
- ✓ Check, double check and triple double check! If unsure, leave it out!!

Reporting Effectively

Since reports can be addressed to a variety of different readers, there are also a variety of different ways to report. By the time you have reached the reporting stage, you should already have determined the most productive and effective means of communicating your ideas. Are you planning to approach an

institution or government official with the results of your fact-finding mission? Will the information be used as evidence in a legal procedure? Are you seeking widespread national attention or international exposure of a violation? If you are planning to undertake all of these activities, have you thought about how to proceed strategically and in what time frame to act? You will also hopefully have determined whether you are creating a country report reflecting your organisation's mandate or possibly a report which will concentrate on a specific thematic issue.

It is important to keep the audience you intend to address in mind both when developing your format and writing the report. This will ensure that you are including the most relevant information and using language appropriate to your reader. For instance, as the Helsinki Foundation points out, when petitioning governing authorities, “catchy slogans that [politicians] can easily recognise as their own” can be an important addition to your reporting style.¹ Politicians appreciate clear and concise statements that they can extract for political and rhetoric purposes. Citing individual cases and being specific about which domestic and/or international rights have been violated is a good idea for all reporting. It is also important when submitting reports to individual politicians or government institutions that criticisms are not phrased in emotional language so as to incite dismissal or disregard of your report. Be up front and critical but not inflammatory. Criticism is valuable, as are recommendations for improvement of the situation being critiqued.

NGO reports of systemic or widespread human rights violations against a certain group of people have often been used as legal evidence. Reports can show individual cases as well as patterns of human rights violations that make it difficult for states to argue ignorance of a problem and thus create support in judicial proceedings. Evidence must therefore be objective and consistent, without sensational or emotional language. The weight that a report carries will depend, to a certain extent, on the reputation of the NGO who created it – maintaining objectivity and credibility is essential.

Finally, creating a report targeted at the general public or media is quite different from reporting to governments or intergovernmental bodies. These reports are often less formal than those targeted at governing bodies or similar institutions. Reporting to the media may consist of highlights or individual cases drawn from annual country/theme reports or those aimed at national or international governing bodies. This audience is most interested in “concrete cases of human rights violations or truly shocking numbers”.² Again it is important to be clear and concise using simple language free of jargon. These reports are produced more frequently and with greater ease than other reports. Instead of a lengthy document this report may be press release consisting of a page or two. As in all reporting, it is still absolutely essential to ensure accuracy and reliability. These and other ways of reporting are discussed below.

it is still absolutely essential to ensure accuracy and reliability

Various Types of Reporting

There are many different ways of getting the word out about your issue. The one you choose will reflect your desired outcome or the results you wish to provoke from the act of reporting. Your report can be a stand-alone document, be part of a current or future advocacy action plan or used for the purpose of human rights education. The following is a guideline to some of the most common reporting methods used by NGOs.

Press Releases

This is one of the most common methods of reporting for NGOs. The media can be an incredibly effective and useful tool. This includes print, radio, television and the Internet.

Fostering a good relationship with media representatives, including journalists and editors, can be an important investment for effective reporting. Press releases should therefore be clear, concise and easy to understand for members of the press, who are not necessarily experts on the issues at hand. Be accurate and allow facts to speak for themselves. Dramatic and inflammatory language will taint the credibility and objectivity of your information. Remember to offer contacts and opportunities for interviews and follow-up information, which may later be requested. A good example of a press release can be found below.

**European Roma Rights Center Collective Complaint against Italy
under the Revised European Social Charter:
Systematic Violations of the Fundamental Rights of Roma to Adequate Housing**

21 June 2004, Budapest, Hungary; Strasbourg, France. The European Roma Rights Center today brought a collective complaint under the Revised European Social Charter against Italy for persistent and systematic violations of the fundamental rights of Roma to adequate housing.

The ERRC collective complaint alleges that as a result of the construction and maintenance, by policy and practice, of substandard and racially segregated camps for Roma, as well as in light of policies and practices of forced eviction of Roma, threats of forced eviction of Roma, systemic destruction of property belonging to Roma and the systemic invasion of Romani dwellings without due regard to Italy's international law obligations, Italy is in violation of Article 31 of the Revised European Social Charter (right to adequate housing), taken together with the Revised Charter's Article E ban on discrimination.

By policy, Italian authorities racially segregate Roma. Underpinning the Italian government's approach to Roma and public housing is the conviction that Roma are "nomads". In the late 1980s and early 1990s, ten out of the twenty regions in Italy adopted laws aimed at the "protection of nomadic cultures" through the construction of segregated camps. There has been no effective action at the national or any other level to combat the development of such segregating programs. Segregated Romani housing in Italy is almost invariably substandard and in a number of localities, conditions are so extreme that they constitute a public health risk.

In addition, ERRC human rights documentation and monitoring in Italy, undertaken independently as well as in consultation with partner organisations, indicates that Roma are repeatedly and systematically subjected to forced eviction from housing, in general absent basic procedural guarantees and without alternate accommodation being provided, in violation of international law.

The ERRC collective complaint against Italy also provides the European Committee of Social Rights – the body charged with the oversight of issues arising under the European Social Charter and Revised Charter – that where Roma are concerned, Italian authorities do not effectively undertake measures "to prevent and reduce homelessness with a view to its gradual elimination" as required by Article 31(2) of the Revised Charter. The ERRC collective complaint also alleges that the Italian government has undertaken inadequate measures to compensate for the disproportionate exclusion of Roma from social housing, and has not even undertaken measures adequately to document the extent of exclusion of Roma from social housing.

The complaint is the result of close to four years of follow-up work undertaken subsequent to the publication in 2000 of the ERRC Country Report "Campland: Racial Segregation of Roma in Italy".

The full text of the ERRC collective complaint against Italy is available on the Internet at: http://www.errc.org/Advocacyletters_index.php

For further information on the ERRC collective complaint against Italy, please contact Tara Bedard, ERRC Researcher, at: tara@errc.org or (36 1) 41 32 200.

*Petitions and Letters of Concern*³

Another form of reporting is writing petitions or letters to government bodies at the local, state or national level. Relevant authorities such as Members of Parliament or local officials can bring government attention to a problem and may have the power to take specific actions. These are well researched and developed documents often aimed at policy makers whom you hope to educate on your issue and persuade to take action. A petition may also request a meeting with the addressee to further discuss solutions to the issue.

Similarly, urgent action letters are aimed at policy makers, leaders or those in positions of power with regard to your issue. Urgent action letters aim to prompt immediate action on behalf of victims of human rights abuse who are facing an imminent threat.

Before writing your petition or letter, decide on the most appropriate person or office to address. Find out who is responsible for the matter concerned. Also consider any steps already taken. For example, if you have already addressed your local council with no success, you will want to go to the next level. When requesting action, be aware of what is within the addressee's power to deliver. Do not make unreasonable or unrealistic demands, but be clear about what you are asking for or recommend.

There are times, such as national or local elections, when letters can carry more weight or effect than usual

If you are devising a letter writing campaign, an important consideration is timing. There are times, such as national or local elections, when letters can carry more weight or effect than usual. Use such events to your advantage in your petitioning or letter writing campaign.

After introducing yourself, get right to the point in the text of your letter or petition. Long petitions or letters that dance around an issue will not likely have any influence and will likely end up in the garbage. Make specific reference to relevant documents or policies. Use relevant and reliable statistics if available and include reference to where they originated. This lets the reader know that you are knowledgeable and serious about the issue. Always ask for a written response. This way, you will know that your letter or petition has received attention and may give you leverage later if additional action is necessary to resolve an issue.

Whenever possible, prepare and use letter templates to save time and always print on paper with your organisation's letterhead. Use email to share letters with all interested parties so they can easily send them too. You can also send petitions electronically to gather as many signatures as possible before sending it off the your target.

Newsletters and Journals

Newsletters and journals can be a very effective way of raising awareness and communicating with your organisation's supporters and the community. This method of reporting is good for getting information out, to a wider, yet targeted audience, raising awareness and creating discussion. In addition to news reporting, this format allows for articles and other submissions.

Although a useful tool, this type of reporting has its limits. Journals take a lot of preparation and can be quite expensive to produce. A less expensive alternative is to create an electronic newsletter. A good example of this is the weekly report produced by the Hungarian *Roma Press Center (RSK)*.⁴ Using an electronic format allows for a low-cost production and easy distribution, but is limited to recipients who have access to email and the Internet.

Country/Theme Publication

If your organisation has spent a great deal of time and effort on a specific theme or area of research, you may want to put this information together into a single comprehensive publication. A country or theme publication is a useful tool to present information that has been gathered over a period of time, when objective analysis and patterns of abuses can easily be presented in an essay or argument format.

These documents usually take a great deal of preparation, however the result is generally worth while. A single stand-alone publication can be useful as a resource to show your organisation's work, be used for the purpose of human rights education or be sent along as supporting documentation for complaints and reports to governing authorities, making a case for action.

Sometimes smaller publications can also be used as a resource for lobbying or for important events and conferences. The next section gives an outline of characteristics commonly found in such publications.

Shadow Reports

Submitting what are called "shadow reports" to international governing bodies will occupy a portion of the next chapter. These reports are submitted during the review process undertaken by treaty-based mechanisms for states that have ratified the treaty in question. A state is generally reviewed approximately every 4 years to assess its compliance with a ratified treaty. During this process, states submit a report, something like a self-evaluation, for the relevant committee to review its compliance with the treaty. NGOs are often invited to submit shadow reports to present their own comments and criticisms on state compliance to the committee. Many NGOs undertake shadow reports at their own initiative, without invitation. These reports can follow the format of the corresponding government report or may simply be a presentation of the concerns of the organisation as relevant for the international law at issue. These documents serve an important function in exposing international treaty compliance and will be examined further in the following section on advocacy.

This is by no means an exhaustive list of the different types of reporting, nor are these methods mutually exclusive. It does, however, give an idea of the scope reporting can take. It is important to keep in mind as well that effective reporting often involves combining reporting methods, such as writing a letter of concern to state authorities and sending out a press release to attract attention to the issue at hand.

Looking at reports produced by other organisations, such as non-governmental organisations, ombudspersons and intergovernmental organisations, can be quite useful when beginning the reporting process. These documents are generally public and can be found on the organisation's website or by making a request to the organisation itself. A list of NGOs, whose reports may be useful to Roma rights activists, can be found in the appendices of this handbook. Examples of ERRC country and thematic reports are also found at: http://www.errc.org/Countryrep_index.php.



Making Rights Work: Identifying Good Reporting

In the following activity, we will use the principles of good reporting discussed above to evaluate the contents of two reports. Below you will find two fictional examples of letters of concern. Read them both and answer the questions that follow to compare and contrast the strength of the two reports.

Letter 1:

Regional Foundation for Romani Rights
1357 Budapest 28, P.O. Box 562/45, Hungary
office@rfrr.org

Horváth Zoltan
General Prosecutor
Hungarian General Prosecutor's Office
Budapest, Hungary

June 23, 2003

Dear Mr Horváth,

I am writing to you on behalf of the Regional Foundation for Romani Rights (RFRR), a regional public interest organisation defending the rights of Roma in Central and Eastern Europe, to draw your attention to important developments and urge a swift action by your office.

The case involves the recent arrest of two police officers in the city of Gyöngyös in relation to the extortion of money from and torture of Romani individuals. On March 5, 2003, the Budapest-based Hungarian daily newspaper *Népszabadság* reported that four police officers, both senior lieutenants, were arrested in Gyöngyös, on suspicion of extortion, group robbery and abuse of power. According to the daily, the arrest followed an incident in February 2003 during which at least six police officers abducted a 3-member Romani family and beat the young couple in front of their 10-year-old daughter in the forest close to the nearby town of Aszód. The officers reportedly beat the child as well. During the physical abuse, the officers stole the family's gold jewellery and demanded 125 million Hungarian forints (approximately 500,000 Euro), according to the daily. The officers finally ceased beating the couple when they agreed to pay 7 million Hungarian forints (approximately 28,000 Euro). At this time, one of the officers accompanied the Romani woman to get the money while the remaining officers held her husband and child hostage. Following the family's release, the couple filed a complaint with the local police investigator against the officers involved and, with a delay of several months, after a search of their homes and offices on the morning of March 4, 2003, the four officers were arrested the same day. *Népszabadság* reported that the local investigator is going to recommend to the local court that the two officers be charged in accordance with the two crimes mentioned above.

Mr Horváth, RFRR research conducted in Hungary since 2000 indicates a high level of anti-Romani sentiment in the country which colours the interactions between Roma and their non-Romani counterparts. Widespread racist abuse of Roma exists in Hungary and in many cases the perpetrators are law enforcement officials. The RFRR calls on your office to ensure that all officers involved in the extortion of money from and the abuse of the Romani family be brought swiftly to justice. Therefore, we urge that an investigation against the other two officers reportedly involved in the abuse be opened and that the investigation against the officers arrested on March 4 explores the racial animus of the incident and takes into consideration torture.

The RFRR respectfully requests to be informed of all actions undertaken by your office in this regard. We also welcome the opportunity to discuss this case with you further.

Sincerely,

Farkas Istvan
Executive Director

Letter 2:

Regional Foundation for Romani Rights
1357 Budapest 28, P.O. Box 562/45, Hungary
office@rfr.org
June 20th 2004

To Whom It May Concern:

I am writing to you once again to emphasise my organisation's concern for the treatment of Romani beggars being harassed and subjected to horrific abuses by the terrible law enforcement officials in this district. Recently, Roma here have been subjected to violence and many racist attacks.

For instance, a Romanian Romani man was picked up by 2 police officers, who grabbed him by the arms and forced him into their vehicle without saying anything and drove to a deserted area at the top of a mountain. The officers swore at him, then threw him out of the car. One officer ripped his pants while trying to pull them off of him, while the other officer watched and laughed. They then left him there to walk many miles home. He has 4 children.

Ion Smardoï told us that his poor pregnant wife was left on the side of the road by police! A sweet and innocent young Romanian Romani girl, who has been kept out of schools due to her Romani ethnicity, was also picked up by police while begging. The officers drove her several kilometres in the direction opposite the camp to a deserted area and took her shoes from her. The officers then left the poor innocent young girl to walk home barefoot!!

Such shocking instances are now all the time. In many cases, police also steal from Roma money they have collected while begging.

We protest such actions by the racist police! You should be shocked and ashamed that such actions are occurring within this area and under your supervision!!

We demand that an immediate investigation into the harassment and abuse by law enforcement officers be opened immediately and that any and all officers found responsible for such harassment and violations of human rights be brought immediately to face well deserved and harsh justice. We demand sweeping changes to the system, along with swift and harsh punishments to police officers who violate the law. We also expect to be informed of any and all actions undertaken by your office on this matter.

Looking at both letters, indicate in the boxes below which letter is best described by the adjoining statement.

- Contained specific information about events, people and places
- Tended to wonder and was not direct
- Made specific recommendations for action to be taken
- Omitted an introduction of the organisation or concerned individual
- Was properly addressed to the correct authority
- Made sensational and dramatic statements
- Contained basic grammatical and spelling mistakes
- Was based on thorough and accurate research and information
- Requested to be kept informed of any actions taken
- Was respectful in structure and tone

- Which letter did you find to be stronger?

- Would you make any additions to the stronger letter to make it any better?

Contents of an Extensive Report

Evaluating what is necessary to include in the report requires some thought about your aims and audience

There is no one specific way to report information that you wish to disseminate. As you become accustomed to producing reports, you will develop your own style and templates for reporting, based on your own notion of what is best for your organisation and issues. A published stand-alone report on a theme or specific country will vary in form from a press release or letter of concern.

These may also vary from a shorter report produced for a specific event or conference. Evaluating what is necessary to include in the report requires some thought about your aims and audience.

As a guideline, a full-published report of an organisation’s research and documentation activities in a specific area may contain roughly the following components:

Table of contents. A clear and well-organised report should contain a table of contents outlining all of the report’s sections. Each section should be given a title that allows the reader to easily determine what the section is about.

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This is a sample table of contents from the ERRC country report on the Czech Republic

Acknowledgements. A report is rarely the work of a single individual. From your organisation's staff to consultants, researchers and editors there are many people who make significant contributions to the writing and completion of a report. These people should be individually recognised for their efforts.

Executive Summary. The executive summary of a report is often an optional inclusion. It may include an overview of the research and work conducted by the organisation, including patterns discovered through monitoring. Sometimes an organisation may choose to place its recommendations for the betterment of the situation here, instead of at the end of the report. The chairperson of the board of directors, executive director or other senior staff of the organisation generally writes it.

Introduction. The introduction of your report sets the document's tone, so should be interesting and include several elements. Incorporated in this section should be a brief introduction to your organisation: Who are you? What is your mandate? Are you a national or regional non-governmental organisation? Why have you undertaken research of this nature?

The introduction should also set the context for the situation about which you are reporting. You should not make the assumption that your audience possesses prior knowledge of the issue or country that the report focuses on. It is therefore your responsibility to provide an introduction or background to the situation at hand.

Finally, the introduction should contain an overview of the report itself. Try to briefly describe in the most concise fashion possible the main points of the report. After reading the introduction, your audience should have a good grasp of the research contained in the report, your organisation's approach to the issues and the conclusions you have drawn from the investigation.

Main Text. This is the substance of your report. It should be well thought out and contain subsections that follow a logical sequence. When outlining a human rights violation, indicate exactly what right has been violated, under which domestic and or international law. It is useful to quote the law or regulation instead of merely indicating the section or article in question. This is much more meaningful for the reader, who may not be familiar with the law, than the indication of absent information.

Include quotations from those interviewed during the monitoring or research process. Ensure that statements are accurately reflected and informants are kept anonymous when requested to be so. Also, make certain that your style of citation is accurate and consistent throughout the document. Inconsistencies and missing information will reflect poorly on your organisation.

All charts, graphs and tables should be clearly depicted, labelled and explained. This is also true for any statistics used, whether collected by your organisation or another. You are responsible for the accuracy of all information contained in your report.

Solutions and Recommendations. These are an essential component of reporting. Reports should not only be critical, but also constructive. Being able to point out problems and violations is important, but along with this is the responsibility to offer recommendations based upon your observations. Where does the government need to begin to rectify these issues or violations? Do laws need to be created or changed? Is funding needed for community based projects? What would you propose as an action plan to the governing authorities?

Bibliography. The report’s bibliography should contain all of the information cited in the main text and used in researching the report. Consult an appropriate guide for details on citing various documents.

Appendix. This is generally the final section of a report. Appendices may include information such as national or international documents, laws, legislation or correspondence cited in the main body of the text. Also frequently included in appendices are tables containing the raw data used to compile statistics stated in the text of the report. Including these adds to the credibility and transparency of the report as well as its accessibility to the reader.



Making Rights Work: Defining Your Mandate

On the following lines, write a brief description of your organisation as it might appear in the introduction of a report. Remember to include who you are, what you do and whether you are regionally, nationally or internationally focused.

Distribution of the Report

The distribution of a report should also be a well thought-out event for your organisation. Whether the result of your work is a shadow report, a report aimed at politicians or something for a wider national or international audience, you should determine a distribution plan for the report. To whom will the report be sent? When will the release date be? Will you hold a press conference to mark the report's release? What is the anticipated reaction of your core audience to the report? Are there other events with which the release of the report could be joined to heighten the impact of the report?

Timing is Everything...

In September 2001 the ERRC published a report on the human rights abuse of Roma in Romania called *State of Impunity*. After months of research, writing and editing, the publication was released on September 11, 2001.

Needless to say, the ERRC Romania publication was not the biggest news of the day. Reports of the terrorist attacks in New York and Washington dominated the news all over the world. The Romania report received much less attention than the ERRC's previously released country reports because of the attacks on the World Trade Center which took place the same day. Clearly this was not something which could have been avoided, however it does illustrate the importance of timing in the release of a report.

If your report has been geared toward a certain audience, it is also a good idea to send the report to a few other places. For instance, if you have published a report on the educational exclusion of Romani children targeted at government bodies such as the Ministry of Education, it is also a good idea to send the report to other responsible government leaders (for example the members of parliamentary committees addressing education issues, government institutes specialising in education, etc.), opposition parties, certain media outlets, interested academic contacts and other organisations concerned with your issue. This will help generate discussion around your research and findings. You may also want to send along a short summary of the report, highlighting its contents and purpose, something like a short briefing or cover letter.

Since funding is frequently limited for most non-governmental organisations, it is essential to distribute your report wisely. You want to get the attention of those who will be most interested in your report without unnecessarily wasting funds on those who will not give it any regard. Additional details of distributing the report as a part of your advocacy campaign can be found in the next section.

Ethics of Reporting

As was stressed in the previous section on monitoring, it is essential to maintain your credibility as an individual and/or organisation when reporting. Therefore, the verification of information is an essential

component of creating your report. Use good judgement: If there is some question as to the authenticity of certain information, omit it. You have a moral obligation to ensure that the information you distribute is accurate. Be precise, accurate and maintain good records of your research. It is useful to have your finished report reviewed and edited carefully by multiple members of your staff and reliable individuals or consultants to

**Use good judgement:
If there is some question as
to the authenticity of certain
information, omit it**

ensure questions are not left unanswered and there are no information gaps. Remember: In many cases, the most compelling argument is simply the facts presented clearly and dispassionately.

Another important ethical consideration in reporting is the protection of sources. If requested, you must respect the wishes of a source to remain anonymous in the publication of a report. If it is possible, using initials or encoding is a good idea, but there may arise situations where even this may pose a threat to an individual. Obtain consent from those you interview before publishing their information. Be up front and honest about your intentions to publish a report and what the aims of the report are.

Making Rights Work: Reporting on Human Rights



Use the information you have learned in this chapter to approach the following situation.

Your organisation has been doing documentation on Roma rights issues for a number of years in your country, through media monitoring, visits to communities suffering human rights abuses and regular contact with other non-governmental and intergovernmental organisations.

Recently, an extremist youth movement targeting Roma and recent immigrants for violent attack has risen in strength. The wave of anti-Romani violence perpetrated by adherents of this extremist movement has been on the rise and authorities have done little to prevent it or to punish those responsible for it. In a newspaper interview, one of the leaders of the extremist youth movement announced that it is the movement's intention to "clean up the country within the year".

Over the past weekend, seven men wearing facemasks surrounded the homes of two Romani families and attacked members of both families with baseball bats and other unidentified objects. According to

medical reports, the Romani victims suffered concussions, broken arms and abrasions. The perpetrators destroyed the belongings of the families, then poured inflammable liquid substances throughout the houses and set them on fire. The buildings and properties, including the personal documents of the Roma were completely destroyed in the fire.

Your country has a Penal Code that has no specific provisions for hate crimes.

In the space provided below (and on a separate sheet if necessary), develop a plan for reporting. Some of the things you may want to consider are:

- What are the prominent issues you will address? What criteria will you use to make these decisions?
- Who is your target audience? To whom are you addressing the report?
- How will you announce and distribute your report?
- What will you recommend? To whom?
- Since politically charged times generally produce reports on many issues, what considerations will make the report stand out?

Endnotes

¹ Helsinki Foundation for Human Rights. *Human Rights Monitoring*. Warsaw, Poland, 2002, p.182.

² Ibid., p.182.

³ Adapted from: Centre on Housing and Evictions, European Roma Rights Center and the Milan Šimečka Foundation. *Defending Roma Housing Rights in Slovakia*. Bratislava, 2004.

⁴ See: www.romapage.hu.

Part B
Making Rights Work

Chapter 7.

Advocacy

Knowing Your Rights and Fighting for Them

7. ADVOCACY

Introduction

This chapter contains basic guidelines to advocating for Roma rights. As an activist, you will likely know what is best for your organisation, working within your local context and should apply these guidelines only as far as they are compatible with your aims and situation. The following section will concentrate on opportunities for advocating of Roma rights issues at both the national and international levels. Much of this chapter thus assumes a familiarity with the mechanisms described in Chapters 3 and 4. It is a good idea to refer back and review the chapters on the United Nations and regional European human rights instruments once more before continuing with advocacy.

As you read through this chapter, remember that defending rights starts at home. Your home country is where you will attain the most direct effects for your cause. The United Nations and various other regional bodies can condemn and shame, but are often limited in the stringent enforcement of their recommendations. If you choose the path of international advocacy mechanisms, it is important to continue to press your government for change at home, using the recommendations and comments set forth by international bodies as advocacy tools.

Finally, if you are a relatively new organisation, it is a good idea to seek advice from local NGOs and other actors who are experienced in advocacy in your area. Many organisations are happy to share their experiences and develop allies to their cause.

What is Human Rights Advocacy?

Human rights **advocacy** is a course of strategic actions and mobilisation aimed at changing behaviour, cultural attitudes, relationships and policies affecting social institutions based on thorough research and documentation of an issue. It identifies issues and brings them to the public political consciousness for the purpose of social change. Like human rights documentation, human rights advocacy is an action in the public interest. The need for advocacy emerges from our inherent right to have equal access to our universal human rights.

Advocacy is a *political action*, although it frequently works in the realm of informal politics. Outside of political parties, governments and legislatures, advocates seek to influence the political community, the private sector, civil society, individual citizens and organisations. Since social change does not occur overnight by influencing merely one segment of society, advocacy often aims to influence policy development or reform in governments as well as empowerment, education and mobilisation. Often,

strategic actions of advocates may try to engage several of these aims at once. For instance, if an advocacy action aims to influence a government policy, advocates may also work to stimulate public consciousness

Many people do not possess adequate knowledge about what access to human rights entails. Capacitating through education is an important function of advocacy

surrounding a certain issue; to educate as well as create public pressure surrounding the issue. Many people do not possess adequate knowledge about what access to human rights entails. Capacitating through education is an important function of advocacy. Advocacy therefore requires certain essential political skills, such as mobilising, organising, communicating, lobbying, negotiating and planning strategies.

Advocacy actions can be directed at influencing policy decisions at the local, national and international levels. This chapter will look at guidelines for strategic campaigning and show actions that can be directed at both these levels.

What Does an Advocate Do?

Since advocacy is not simply a solitary action, but instead involves a strategy for social change, advocates engage in a variety of activities. An individual advocate may not take part in *every* activity listed below, but may focus on a single activity to be most effective.

One of the main functions of an advocate is to *research, analyse and brainstorm* on issues. Advocates need to be up-to-date on the news, policies and legislation (at local, national and international levels) which affect their issues. For instance, are patterns of hate crimes developing in your community? Are local authorities discriminating against Roma in the provision of health care in certain regions of your country? As an accession state, has your government transposed the EU’s Race Directive into national law? These issues are all related to Roma rights and are important to Roma rights advocacy. Advocates draw links between local issues, national struggles and international movements. Using your own human rights documentation and others’ reports can keep you current on trends of human rights violations and progressive victories in policy and legislation. Those who are interested in affecting policy may try to draft legislation they would like to see passed or make an analysis and comment on the (in)effectiveness of current laws. Opportunities open up when you possess good and reliable information.

An Advocate is....

- knowledgeable
- professional
- persuasive
- organised
- prepared
- self-reflective
- creative
- vigilant

Advocates *strategise* and *network*. Creating an advocacy strategy includes making choices about campaigning based upon your organisation's stated mandate and available resources and planning actions. The creation of long- and short-term goals can help with the focus of a campaign. Advocates must decide what doors to knock on and which actions are best to pursue. Questions reflected upon may include:

- *What does this campaign hope to achieve?*
- *Who is the target of appeal?*
- *Is the aim to reform or create new policy?*
- *Will other organisations be helpful in attaining the action's goal?*
- *Are there any individuals or groups that would be natural allies?*
- *What have been the results of past similar actions?*
- *What is the political climate like right now?*
- *What combination of actions would be most effective?*

From meetings with governments and IGOs to conferences on local issues or meeting with various media, advocates are seen as “experts” in their field and issues. This carries with it the responsibility of being well informed and confident in this task.

Persuading and *lobbying* are generally the acts most commonly associated with advocacy. For instance, advocates can play an important role in the public interest through negotiation with lawmakers on designing legislation. Using solid understanding of their issues, political skills and knowledge of the system, advocates can aid in ensuring the creation of effective laws. Persuasive arguments and campaigns are not, however, reserved for politicians and government officials. Advocates also work to impact the attitudes of larger society to stimulate social change.

Finally, an important part of working for social change is to *educate*. Advocates provide current and important information to media, policy makers and communities, raising awareness and public consciousness. This may be through a public education campaign to dispel myths that surround an issue, education on rights enshrined in both national legislation and international law, or by bringing the criticisms and recommendations made by an international body to the attention of a nation's people. Advocates capacitate through education, empowering individuals and encouraging participation of citizens in public affairs.

Creating an Advocacy Strategy for Action

There is no one advocacy template to follow for creating a successful strategy for action. A lot of work in this area is therefore trial and error, requiring well thought-out plans and considerations of local context. When starting out it is a good idea to consult like-minded organisations in your area to share their advocacy experiences. The following is a guide of considerations for advocacy strategies.

Determine Goals and Objectives

You can begin your plan by deciding first if there is a certain issue you wish to focus an entire campaign on or whether you will undertake a variety of advocacy actions within the scope of Roma rights. Determine the goals of your campaign, including objectives in both the long and short term. These should be specific, attainable and realistic. Is there an action you want to take specifically in support of Roma rights? If your advocacy goal is to improve access to housing for Roma, an objective might be to work with a local government to draft new legislation with regard to access to public housing or to pressure the state to live up to its international treaty obligations. Are you looking to change a specific policy or law that overtly or indirectly discriminates against the Romani community or has an otherwise negative impact on Roma? Do you wish to comment on the effectiveness of legislation? Submitting a shadow report to an international body can also do this.

Establish Your Target Audience

Knowing your target audience will help you formulate your message so that it attracts maximum attention. You can aim at:¹

	Example targets
Governments	Local officials, public actors, politicians, public institutions and international organisations.
Civil Society	NGOs, community-based organisations or anyone participating in the public discourse.
The Private Sector	Businesses, multinational corporations and professional associations.
Individuals	Communities, the general public, media outlets and educators.

These are the major sectors to impact for real change to occur. Although a single organisation cannot necessarily impact all of these sectors at once, short-term advocacy goals may begin with aiming at one or two sectors and evolving to others as objectives are accomplished. For instance, beginning with reforming local policy of school segregation and then aiming to change community attitudes toward integrated schooling for Romani and non-Romani children.

Conduct research on who all of the players are. If you are aiming at policy reform, why is this issue important to legislators? How is it in the public interest? Why should the media take notice of your struggle? Who would be your most likely alliances as coalition partners? It is also important to know who your audience is not: Know who will be your biggest opposition. This will help you learn the strengths and weaknesses of your position so you are prepared for opposing arguments.

Develop Your Message and Brainstorm Strategies for Action

Develop your message. Make it clear, simple and well thought out. Be plain about what your goal is and why it is important. Develop points of support for your argument, keeping in mind your target audience. If you are criticising a law or policy, it is a good idea to outline recommendations for improvement or change.

Brainstorm the best ways to get this message across effectively and successfully. Come up with as many ideas as possible, but select only the “cream of the crop”. Select the best strategies based on your strengths, the local context, resources and the opportunities available to you. Remember that the timing of your campaign can be an essential component, especially during elections, policy formulation, international events and anniversaries. Make sure as well, to consider the risks and potential obstacles you will face and how you will prevent or overcome them.

Implement Your Action Plan

Go directly to the ministry, department or local institution concerned. Set up meetings with politicians and/or bureaucrats. Meet and form coalitions with other organisations who have a similar or sympathetic mandate. Draft a copy of the legislation you would like passed into law. Start a letter writing campaign. Implement your plan with confidence and persistence. Be ready for bumps in the road and adjust to circumstances that arise if needed. Do not be shy about seeking advice from other NGOs, academics, professionals, etc. Often outside opinions can offer perspective based on experience as well as establish relationships of mutual respect.

Evaluate Your Results and Actions

Afterwards, design a way of determining the impact of your campaign or action and analyse the results of the choices you made. This is an important but easily overlooked element of campaigning that is essential for increasing the success of future actions. Was it the right strategy? Were you effective in influencing your target audience? Did you achieve the goals you set out? What aspects proved unsuccessful and how were they dealt with during the campaign or action? Evaluate both your outcomes and the methods you chose to attain them. Do not forget to take stock of the materials you used as well as your actions. Some important questions to ask might be:

- Has there been progress in the area we targeted?
- Were decision makers held accountable?

- Did we engage citizens and stimulate discussion and participation?
- Were resources effectively used?

Networking and Building Coalitions

As previously mentioned, getting to know the key players in your issue is an important step. Just as important however is building professional relationships with influential actors. **Networking** encompasses developing allies amongst other NGOs, grassroots movements, political sympathisers, leaders, experts and academics that contribute to the movement you support and strengthen your work. Hosting or attending conferences, panels and workshops provide such opportunities as well as the chance to educate and strategise about relevant issues.

Coalitions can help show that you have the backing of a strong constituency. This showing of political strength and support for your issue can help win the additional support of political actors. Perhaps more importantly, coalition building helps ensure that human rights messages are harmonized and not conflicting. However, there are both advantages and disadvantages to belonging to coalitions. On one hand, you can benefit from shared resources and expertise, which can expand the reach of your action and influence. On the other hand, coalitions can make decision-making processes quite difficult and inefficient, as well as possibly dilute the message you wish to get across. Coalitions can also compromise an organisation's independence. Always weigh the pros and cons of forming a particular coalition before committing. The following activity deals with the advantages and disadvantages of coalition building.

Making Rights Work: Building Coalitions



Consider the following situation:

In your state, the life expectancy of the majority population and smaller minorities is very high and the birth rate is very low. Amongst the Romani minority however (which constitutes roughly 5 percent of the total population), life expectancy is on the decline while the birth rate is very high. International organisations have recently highlighted your state for its high infant mortality rate.

Roma in your area live in isolated settlements with virtually no infrastructure and suffer from high unemployment. International organisations have reported allegations of Roma being denied treatment by health care providers and have documented situations in which Romani residents of segregated

settlements have not been able to reach transportation or phone facilities in order to seek treatment in emergencies. Additionally, Romani families have alleged that some maternity wards separate Romani patients from non-Roma.

Your organisation has decided to undertake an ambitious advocacy project in the area of access to economic and social rights for Roma in your country. This project will involve, inter alia, advocating for the implementation of international standards of non-discrimination and access to housing, health care and education.

- What type of organisations might you approach to form a coalition for this project?
- What are the advantages of forming a coalition in this project?
- What are the disadvantages?

Advantages of forming a coalition	Disadvantages of forming a coalition
<ul style="list-style-type: none"> • • • • • 	<ul style="list-style-type: none"> • • • • •

Advocacy Actions and Campaigning Techniques

There are many ways to get your message out and work toward your goal. Always choose actions that best suit your needs and local context. Campaigns and advocacy strategies are frequently composed of many different actions, so you may want to consider multiple avenues. The following are some examples of advocacy actions.

Urgent action letters: Discussed in the previous chapter as an important tool for reporting, urgent action letters can also be an effective advocacy action. It can be a way of educating about violations, pointing out weaknesses in policy or legislation and pressing for change. If there is an issue or human rights violation that requires immediate action by an official, sending a copy to her or his superiors and

the media can ensure pressure is applied and the issue is exposed. Involving the media is generally a strategic decision however, which may not be useful when first attempting to build a good relationship with an individual official.

Open letters: This type of letter is often written by an organisation or coalition and may be printed in a newspaper or journal, often in an opinion/editorial section. Similar to an urgent action letter, an open letter is intended more specifically as an information/educational device for the public. In the case of an urgent action letter, the media may mention parts of its contents or use it as a source of information for a story, whereas open letters are printed in full. This action is useful for exposing large and politically sensitive issues and creating consciousness.

Letter-writing campaigns: When planned and implemented well, letter-writing campaigns can be a strong advocacy tool. Since volume, in addition to quality, of letters is an important factor, this technique is most effective if you have a strong basis of support or a coalition to work with. Letters can be directed at local officials, government officials, news editors, embassies or international organisations. You can either ask individuals to compose their own letter outlining concern for your issue and action they would like the addressee take, or you can propose a standard template for participants to use. There are both strengths and weaknesses to this type of action. For example, one advantage is that letter writing campaigns are a good demonstration of awareness and concern for your issue. However, the target of your letter may use standard response letters, which can be disheartening. One of the best examples of an organisation that has made its name by campaigning through letter-writing is Amnesty International. Amnesty has consistently used this technique as part of advocacy campaigns, with many successes over the years.

**An Amnesty International Campaign – Indonesia:
Workers’ rights activist Dita Indah Sari released**

Dita Indah Sari, leader of the Indonesian Centre for Labour Struggle, was arrested in July, 1996 at the age of 22 when she took part in a peaceful demonstration calling for a rise in the national minimum wage. After an unfair trial, she was ill treated and sentenced to five-years imprisonment and was released two years early on July 5, 1999. Many Amnesty members mailed postcards and letters on her behalf as part of a major, sustained international campaign for her release, which likely played a major role in the positive outcome.

See: http://www.amnesty.ca/about/good_news_stories.

Tips for Writing Effective Letters

- ✓ Be polite. Your aim is to benefit your advocacy campaign, not to relieve your own feelings. Governments tend not to respond to abusive or condemnatory letters (however well-deserved).
- ✓ Explain who you are and what you do. This indicates that the letter is genuine, and if you are part of a coalition, that there are people from various groups following events concerning Roma rights.
- ✓ Write your letters on the basis that the government concerned is open to reason and discussion.
- ✓ It may be useful where possible to stress a country's reputation for moderation and justice, to show respect for its constitution and judicial procedures and to demonstrate an understanding of current difficulties. This will give more scope to point out ways in which the human rights situation can be improved.
- ✓ Do not use political jargon. It is also a poor tactic to give the impression that you are writing because you are ideologically or politically opposed to the government in question. It is far more effective to stress the fact that your concern for human rights is not politically based, but in keeping with basic principles of international law.
- ✓ **BE BRIEF.** A simple letter is adequate. State your case by outlining the issues of concern including root causes, if known, briefly mention specifics, if possible, and state your requested action or recommendation.

Adapted from: <http://www.amnesty.org/campaign/letter-guide.html>.

Petitions of support: Compiling a petition is an easy and inexpensive way to show support for your cause while simultaneously informing people about human rights issues. When enlisting signatures, be sure to have the campaigning letter at hand. The letter should be properly addressed and on your organisation's letterhead, exactly as it will be sent once signatures have been compiled. It is also useful to have with you brochures, pamphlets and reports to distribute to those who wish to have more information on the issue.

Lobbying: Whenever possible, meet with leaders and political figures who can influence your cause. Governments have the power to bring about major change in public policy and legislation. If it is not possible to meet directly with a relevant politician, meet with a key member of their staff. Get to know how the system works, both formally and with regard to internal politics and “behind the scenes” work. Building relationships with these figures will give credibility to your organisation and your cause.

Before a lobbying meeting, make sure you do your homework. Know as much as you can about the person you are approaching: What is his or her stance on your issue? Does she or he have a history of being sympathetic to your cause? It is valuable to show why the issue you are pushing forward is important to the government.

Be fully prepared and focused to ask for what you want (proposed legislation, public support, etc.), express your expectations clearly and provide information for the person to take with her or him. Whenever possible, identify specific steps that can be taken by the government to bring about positive change, referring to specific policies. Use information (especially solid facts and statistics) that you have gathered in research and human rights documentation efforts, as well as powerful personal stories and accounts. Relate issues to international human rights standards. Be professional, organised, persuasive and offer recommendations. Always follow up with a letter of thanks, reiterating any agreements or commitments made during your meeting.

Educational forums and workshops: These events can take many different forms, but all offer a place to educate, inform, discuss and network. The most important factor in these events is the audience. Educational forums can try to reach the general public, other activists, politicians, police, lawyers, judges or other professionals. Workshops can offer an opportunity to not only create awareness, but also to capacitate individuals with human rights training and develop consciousness surrounding Roma rights issues.

Working with the Media

Working with the media (print, radio, television or Internet) can be a great tool or detriment to human rights advocacy. Like other actions listed above, it has its advantages and disadvantages, which must always be accounted for and become part of your advocacy strategies. Listed below are some of the major pros and cons of dealing with the media.

Advantages of working with the media	Disadvantages of working with the media
<ul style="list-style-type: none"> • Makes a major contribution to shaping public attitudes and opinion. 	<ul style="list-style-type: none"> • May carry political affiliations or ideological slants.
<ul style="list-style-type: none"> • Wide reach helps create awareness to generate action. 	<ul style="list-style-type: none"> • May over-simplify issues or perpetuate stereotypes.
<ul style="list-style-type: none"> • Good tool for exposing widespread human rights violations and shaming governments. 	<ul style="list-style-type: none"> • Is often primarily concerned with sales, leading to a distortion of what information is presented and how it is presented.
<ul style="list-style-type: none"> • Can influence public policy. 	<ul style="list-style-type: none"> • Can be sensationalist.

To work most effectively with the media, be able to identify your target audience and use the most appropriate outlet. Things to consider include choice of medium, circulation and attitude of the outlet toward your issue. Be sensitive to timing of your announcement or release. Events such as elections, anniversaries and legislation discussions can make your issue more “newsworthy” in the eyes of editors.

To work most effectively with the media, be able to identify your target audience and use the most appropriate outlet

It is a good idea to give one specific person within your organisation the responsibility of dealing with most media inquiries and contacts. This person should be knowledgeable, dependable, be able to provide materials or information if requested and be confident in making statements on behalf of the organisation. Compiling a list of media contacts and building good relationships with editors and journalists helps to create a strong media image as being an analytical and reliable organisation.

Finally, planning a press conference can be a good way to announce the launch of a campaign or major event, such as a landmark success in litigation. This is a good way to develop a good relationship with the media, but should only be used in cases that are truly newsworthy; otherwise, a simple press release will do. Like in other media dealings, be professional, creative and analytical, yet concise. Supply background information and be ready to answer questions after a short presentation of your event or announcement.

The King's Daughter

In late September 2003, the international media reported extensively a story of human rights violation in a Romanian Romani community. The event, which garnered an unusual degree of attention, was that a Romani girl under the age of 16 fled from church as her father, a self-declared Romani King, was conducting her wedding service to a 15-year-old bridegroom. Although evidently frightened, the girl was persuaded to return to the event and go through with the wedding. The marriage quickly became an international media event. CNN, BBC and several other major media outlets carried the story. As a result, among other things, of international media attention, Romanian authorities intervened and separated the couple, a fact for which the ERRC and many other human rights organisations praised the Romanian government.

The days that followed brought a great deal of debate about human rights and culture into the public domain. The minimum legal age for marriage in Romania is 16, but the practice of underage marriages is common in some Romani communities.

Although expressing concern for the welfare of the children involved, some Roma rights activists were also skeptical at the international media's eagerness to report a more sensational story of human rights violation, while ignoring many grave violations of human rights which are experienced by Roma every day, such as forced evictions and instances of police brutality. The debate as to the proper balance between welcoming the media's role in highlighting human rights abuses (and therefore helping to end them) and the selective reporting of certain kinds of human rights abuse over others, continues.

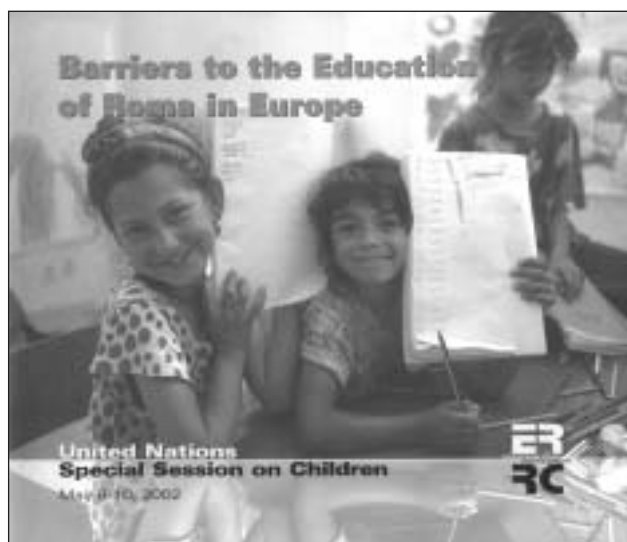
Building an Advocacy Tool Box

It is a good idea to always have at hand materials that can be used for advocacy purposes. These materials can be distributed during advocacy actions so that people have something to take away as a reference for later reflection. In addition to the relevant advocacy information, these materials should include your organisation's name and contact information, a brief description of your mandate and the publication date.

Fact Sheets: Developing fact sheets or pamphlets can be an easy way to clearly illustrate your argument, which can be distributed in advocacy efforts. Now that you have a fully developed message with solid

supporting arguments and recommendations for change, a fact sheet is the perfect place to profile your strongest and most persuasive points. Those who receive it have an easily accessible document for later reflection and reference.

Reports: Those resources developed from research and reporting functions can be used as advocacy tools for future endeavours. This includes shadow reports, which will be described later in this chapter, as well as the various reporting mechanisms that were described in Chapter 6.

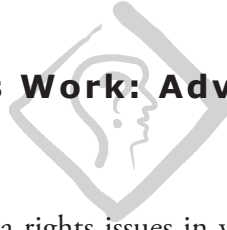


FAQ sheets: Another easily distributed way of educating and getting your message out is to create Frequently Asked Question (“FAQ”) information sheets. This is a great way to display your message and outline the major issues facing your struggle. Come up with a list of questions that frequently come up in lobbying or educating those unfamiliar with your issue. These can be questions that will inform as well as outline the main arguments of your goal. Then provide thoughtful but concise answers immediately below each question. A similar and often-used information sheet is the “Myths and Facts” form. This is used to dispel common misconceptions about your issue. In similar form to FAQ sheets, a commonly conceived “myth” is followed by a clearly supported “fact” about the issue at hand.

Press releases: As mentioned in Chapter 6, it is a good idea to create a basic template for press releases to have on hand when needed. Some basic information will carry through most of your releases, such as an introduction to your organisation and contact information for your media representative. Many of the details will depend on the subject of the release. Try to provide “sound bites” or quotes to comment on the event or issue at hand, which can be easily worked into an article.

Website: If it is within your means, building a website can be a great advocacy tool. It is a useful reference point for sharing your research and message with a wide audience of people. Any of the advocacy tools outlined above can be included on your website, as well as transcripts of interviews with media or other coverage received on your issues.

Making Rights Work: Advocacy at Home



1. What are some of the current Roma rights issues in your region that can be addressed through advocacy?

2. What are some of the current advocacy activities in your region?

3. What types of changes would you like to see at the national level?

4. How can advocacy make a difference to Roma rights issues faced by communities in your country?

Advocacy at the National Level

Advocacy is about influencing and stimulating change in the system and in society as a whole, therefore it is essential to know and understand thoroughly the functions of your state's governing and legislative systems

Advocacy is about influencing and stimulating change in the system and in society as a whole, therefore it is essential to know and understand thoroughly the functions of your state's governing and legislative systems – at the local, state/provincial and national levels. This means knowing the official workings as well as the more subtle nuances and political underpinnings and requires investigation into institutions, networking with bureaucrats and politicians. You should find out if there are lobbying rules or regulations in your country.

You should also know: How are laws made? Is there a public consultation process? How can your organisation or coalition serve in a consultative or influential role? Which departments or ministries affect the issue or legislation you are working on? Which politicians are most sympathetic to your cause? Once familiar with the system and its most influential actors, it is easier to build your strategy.

At the International Level

Once again, it is important to have a solid understanding of the institutions outlined in Chapters 3 and 4 in order to undertake the international advocacy functions described in this section.

Also keep in mind, if you choose to act internationally, make sure you bring the results home. It is important to bring the comments, criticisms and recommendations of committees and other bodies to the attention of the public at home. Use this information in your national lobbying and media campaigns and expose your state's violations of international agreements to international media. Findings and comments by international bodies can help heighten the profile of your issue and be used to enforce compliance with international obligations. States concerned with their international reputation will react.

If you choose to act internationally, make sure you bring the results home

Determine what your state's interests are. Is international prestige of great value? Are there economic or aid considerations? How significant a factor is public pressure from inside or outside the state? Timing is also an important consideration in this regard. For instance, in states that seek to join the EU, there has been a window of opportunity to expose Romani issues as human rights issues that need to be addressed.

When getting started in international advocacy, there are several things to consider. Decide which body you would like to approach. Ask yourself: What are our advocacy objectives? What is the body's history on Roma rights issues? Is your country coming up for review by a certain treaty body? The following is a general overview of United Nations and regional European advocacy possibilities.

The United Nations

The UN is complicated and has many avenues for action, so it is key to choose the one best suited to your organisation. Opportunities for NGO action are mainly divided into reporting and complaint procedures. This section will concentrate on reporting functions and the following chapter on litigation will take up the issue of complaint procedures.

Treaty-based Mechanisms

As outlined in Chapter 3, treaty bodies are committees of independent experts who monitor the implementation of human rights provisions of treaties. These bodies review and comment on reports submitted regularly by states, issue interpretations of articles and may examine individual complaints, if stipulated within the treaty.

Since treaty bodies only report on states that have ratified the concerned treaty, investigate which treaties your state has ratified. If your state is not party to a treaty, the committee has no jurisdiction over the state and will not review. You can check which treaties your state has ratified on the UN's website at: <http://www.unhchr.ch/html/menu2/convmech.htm>.

The goal of state reporting is to measure and assess the extent of state compliance with a treaty and thus their respect of international law. States are generally reviewed approximately every 4 or 5 years under treaty mechanisms. You can check whether your state is coming up for review by a committee at: <http://www.unhchr.ch/hrostr.htm>.

During the review, it is the state's responsibility to produce a report, like a self-evaluation, showing the extent of their compliance with the treaty. The committee reviews, questions state representatives and issues comments based on their findings regarding state compliance. NGOs can submit what are called **shadow reports** to the committee concerned, either detailing a specific issue or outlining patterns of human rights violations which are incompatible with treaty provisions. The submission of shadow reports helps the body reach accurate conclusions, prompts questions, makes recommendations, etc.

Tips for Creating a Shadow Report

A shadow report can be a long report or shorter letter, but should:

- Be addressed to the concerned committee;
- If possible, be submitted in the working language of the committee;
- Introduce the submitting organisation and give contact details;
- Provide a brief outline of the political/social/economic context of the state;
- Summarise the situation of the Romani minority;
- Establish patterns of violations;
- Give specific and detailed examples of human rights violations;
- Provide any available supporting documentation, such as statistics, if possible, including the method of collection;
- Include questions which the committee should pose to state representatives;

- Provide recommendations for the improvement of conditions or the prevention of human rights violations; and
- Use previous comments by the committee as a measurement of state's effort to meet its international obligations.

As in all reporting, it is important to be objective when submitting shadow reports to UN bodies. Refrain from sensational or emotional language. Attempt to construct your report around treaty provisions. If possible, try to comment specifically on the state report, which should be available 4 to 6 weeks before the review.

Advocacy Actions Surrounding Shadow Reports

- **Establish** when a state report will be considered – use the internet or contact the secretary of the relevant body;
- **Send** detailed and accurate information to the body;
- **Announce** the government's report along with your own shadow report;
- **Submit** suggestions for questions to be posed by the committee to your state;
- **Publicise** conclusions and recommendations made by the committee; and
- **Employ** the recommendations of the committee to press for change at home.

Extra-conventional Mechanisms

In Chapter 3, the functions of the Commission on Human Rights, which is the centre of UN extra-conventional human rights mechanisms, were described.

Within its functions, the Commission appoints **Special Rapporteurs**, who are independent experts in areas of human rights concern, who report their findings to the Commission annually. Special Rapporteurs communicate with governments and undertake monitoring when possible (if the permission of the country concerned can be obtained). Monitoring is either undertaken on a theme or country where human rights abuses are occurring. NGOs are able to raise concerns directly with a rapporteur by arranging a meeting through the High Commissioner's Office in Geneva. Requests can be made for the rapporteur to communicate with a government for information or action about a human rights abuse.

Some Important Special Rapporteurs by Theme

- Special Rapporteur on contemporary forms of racism, racial discrimination xenophobia and related intolerance;
- Special Rapporteur on the human rights of migrants;
- Special Rapporteur on the right to education;
- Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living;
- Special Rapporteur on the Independence of Judges and Lawyers;
- Special Rapporteur on Torture;
- Special Rapporteur on Violence Against Women; and
- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Working Groups are committees that look into specific issues and respond quickly through letters to the government in question requesting answers about the accusation of human rights violation. These groups do not do their own investigation and often rely on information provided by NGOs and other groups.

Relevant Working Groups

- Working Group on Enforced or Involuntary Disappearances;
- Working Group on Arbitrary Detention; and
- Working Group on the effective implementation of the Durban Declaration and Programme of Action.

If you or your organisation decides to contact one of these mechanisms, include all of the information in your possession about the specific case in question. In particular, do not forget:

- Your name and address;
- Specific details of the violation;
- Details about the victim(s);
- Details (if known) about the perpetrator(s);

- Details of state action taken (if any); and
- Recommended response or action of the working group or rapporteur.

Another non-treaty mechanism at the United Nations is the **1503 Procedure**, which allows people to write direct petitions to the Commission for investigation into patterns of human rights violations. However, every year the Commission receives thousands of these petitions on various human rights abuses and only a very small number of these receive any attention.

Finally, NGOs with “consultative status” can testify to the United Nations Commission on Human Rights at its annual meeting. To learn about pursuing consultative status or to learn about NGOs who currently possess this status, go to: www.un.org/esa/coordination/ngo.

European Mechanisms

As outlined in Chapter 5, within Europe there are 3 main governing bodies which are concerned with human rights. These are the European Union, the Organization for Security and Co-operation in Europe and the Council of Europe.

European Union

Since amendments in 1999 to the European Union’s basic establishing treaty, the European Union’s governing bodies, “may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”. This means that the EU can take action to combat discriminatory law and policy in member states. In recent years, the EU has undertaken a range of measures to combat racial discrimination both inside and outside the borders of the European Union.

There are several avenues for advocacy within the European Union that are available to activists and NGOs. The primary institutions of the EU are the European Council (not to be confused with the Council of Europe, described below), the European Commission and the European Parliament. All 3 provide opportunities for advocates. For example, statements of the European Parliament or members of the European Parliament can be used to support advocacy within your home state, if it is a member of the Union. Some Members of European Parliament are also available to discuss human rights issues in member states and how the EU can address these. Those who choose to pursue this possibility should take the same approach to lobbying as one would in their home state – get to know the official and unofficial systems of the organisation as well as those individuals who are most interested in Romani or minority issues.

In those in states which are hoping to join the European Union such as Croatia, Romania, Bulgaria and Turkey, NGO lobbying efforts are especially important during this window of opportunity. States hoping to accede are particularly sensitive to criticism of human rights abuse at this time as they undertake reforms aimed at proving their readiness to join Europe's political and economic alliance. As outlined in Chapter 4, all states joining the European Union are obligated to transpose the EU Race Directive before becoming members. This includes ensuring the domestic legal order includes the possibility of sanctions for discriminators and compensation for victims. Roma rights activists in these countries currently possess a unique window of opportunity to push awareness campaigns and lobby governments for progressive anti-discrimination policies.

Finally, although it is often said that the European Union is an opaque and difficult institution to learn about, in fact, in many ways the opposite is true, since the EU places a huge amount of its basic documentation on its Internet website. It is definitely worth your while to take the time to look carefully at the EU website to learn more about its structures, laws and programming: <http://europa.eu.int>.

The Organization for Security and Co-operation in Europe (OSCE)

As outlined in Chapter 4, the most significant bodies for Roma rights advocacy in the OSCE are the Office for Democratic Institutions and Human Rights, which includes the Contact Point for Roma and Sinti Issues, and the High Commissioner on National Minorities. Although limited in advocacy options compared with other organisations, these bodies may take action on the basis of information you send, such as taking up field missions. Field missions respond to specific events and situations, relying heavily on info from various sources.

Additionally, the OSCE annually holds "Human Dimension" meetings, which concentrate on human rights issues in certain regions. These meetings provide a good opportunity for NGOs to network and press their issues because of the many opportunities provided to NGOs to present their issues. In addition to possibilities for presenting statements on the main floor of the meeting, NGOs can hold side events as a strategy for coalition building and furthering the discourse on human rights issues. Also, the OSCE regularly holds so-called "ad hoc" meetings on issues of urgency. These are announced on the OSCE website and can be important fora for advocates to press their agenda with governments. The OSCE calendar of events is available on the OSCE website at: <http://www.osce.org>.

OSCE Meeting Issues Action Plan to Combat Discrimination Against Roma, Sinti Minorities

The Organization for Security and Cooperation in Europe (OSCE) Ministerial Council approved an action plan on 2 December 2003 in Maastricht aimed at eradicating discrimination against the Romani and Sinti minorities, according to an official statement.

The plan, subtitled “For Roma, with Roma”, details ways to fight different forms of discrimination and racism directed against members of these groups. It deals with issues such as treatment of the Roma and Sinti by police and in the media, housing and living conditions, unemployment, health care, and improving access to education. The OSCE’s Office for Democratic Institutions and Human Rights (ODHIR) is to take over new responsibilities, such as assisting OSCE members in developing anti discrimination legislation and setting up anti discrimination bodies, collecting documentation, and developing policies on Roma-related issues in cooperation with other OSCE institutions and structures. MS

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Council of Europe

The Council of Europe has 45 Member States and a number of observer states. All Member States must sign and ratify the European Convention for the Protection of Human Rights and Fundamental Freedoms. The European Convention is law in all Council of Europe Member States. As a result of the primacy of the European Convention at the heart of the Council of Europe system, human rights are a central priority of the Council of Europe.

Much of the strength of the Council of Europe’s human rights mechanisms rests in the European Court of Human Rights, the enforcement mechanism of the European Convention. The European Court of Human Rights and its relevance for Roma rights is discussed in the next chapter. In addition to the Court, many opportunities for advocacy exist within this regional institution. Activists should familiarise themselves with, at minimum, the following institutions within the Council of Europe:

- (Revised) European Social Charter;
- European Commission against Racism and Intolerance;
- Committee for the Prevention of Torture;
- Framework Convention for the Protection of National Minorities; and
- Parliamentary Assembly.

European Social Charter: Social rights secured under the Charter are monitored through a system of submitting regular reports by those states party to the Charter. The European Committee of Social Rights reviews these reports. NGOs with consultative status are able to play a role through the “collective complaints” procedure, which accepts reports of state violations of the Charter. NGOs without special status may also provide materials to the Committee to assist in its regular review of states’ compliance with the Charter.

European Commission against Racism and Intolerance (ECRI): As you may recall from Chapter 4, ECRI is not a treaty body, but does engage in the monitoring of Member States of the Council of Europe. ECRI reviews states every 4 to 5 years through its “country-by-country” approach. ECRI also makes General Policy Recommendations, collects and disseminates examples of “good practices” and otherwise promotes non-discrimination. Two of the most relevant General Policy Recommendations for Roma rights advocacy are General Recommendation number 3 on *Combating Racism and Intolerance against Roma/Gypsies* and General Recommendation number 7 on *National Legislation to Combat Racism and Racial Discrimination*.

During the preparation of its reports, the Commission organises information sessions with NGOs where you can provide information with regard to the cases and forms of discrimination and racism you have documented in the communities where you work.

Committee for the Prevention of Torture (CPT): The CPT undertakes monitoring and fact-finding in Council of Europe Member States, investigating primarily conditions of – and other matters pertaining to – detention. The Committee makes recommendations then reports confidentially to the state concerned. These reports can only be made public with state consent or if the state refuses to co-operate with recommendations. In the latter case, if 2/3 of the Committee is in support, the report will be made public.²

The Committee makes regular as well as *ad hoc*³ visits. NGOs can send information to the Committee either reporting a singular incident or a pattern of torture. The Committee will indicate that it has received the information, but will not express opinion about it due to the confidential nature of its reporting mechanism. Receiving information is essential for the Committee’s workings so it is important that reports are sent for long term prevention.

Framework Convention for the Protection of National Minorities: Supervision of this Convention is undertaken by the Committee of Ministers of the Council of Europe. This is done through periodic reports submitted by states parties to the Convention (i.e., those states which have ratified the Convention). NGOs are able to provide input in regular reviews of states, either by meeting with members of the Advisory Committee of the Framework Convention for the Protection of National Minorities during country visits or by sending materials to the secretariat.

Council of Europe Commissioner of Human Rights: During the brief tenure of the first Commissioner, the Commissioner has already proved to be an important advocate of Roma rights and has, on a number of occasions, raised important human rights concerns relating to Roma. Individual complaints can be sent to the Commissioner, who can make public comments about human rights violations. The Commissioner has, to date, undertaken a number of reports concerning countries and/or themes.

Parliamentary Assembly: Lastly, activists and NGOs can lobby members of the Parliamentary Assembly of the Council of Europe. Recommendations made by Parliament are also good tools to use in national advocacy efforts. On some issues, such as the expulsion of Roma by Germany to Serbia and Montenegro, the Parliamentary Assembly has acted in a timely and engaged manner when no other official bodies would.

Also under the auspices of the Parliamentary Assembly are Monitoring Committees authorised to monitor new states' compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms. Monitoring is done by:

- The Committee on Legal Affairs and Human Rights;
- The Committee on Political Affairs; and
- The Monitoring Committee.

You can find a list of the states being monitored at: http://stars.coe.fr/Synopsis_works.htm Information on human rights violations and requests for action on law or practice in other member countries can also be sent to the Legal Affairs or Political Affairs committees.

Further information on all of these and other Council of Europe bodies is available on the Council of Europe website at: www.coe.int.

Making Rights Work: Strategising for International and Regional Advocacy

Consider the following situation

Your state is coming up for review by the United Nations Committee on the Elimination of Racial Discrimination in six months.

1. What steps will you take nationally to ensure that Roma rights issues do not go unnoticed in the context of this event?
2. What actions will you take internationally?

3. What are your advocacy goals for this situation?
4. What tools do you have at your disposal?

Now, consider the above questions for another situation. Your state is hoping to join the European Union in the near future. The situation of Roma in your country is very serious, with widespread racism and discrimination present overtly in many public institutions. Currently, there is no comprehensive anti-discrimination policy in existence in your state.

Endnotes

- ¹ Adapted from: Just Associates. *A New Weave of Power, People & Politics: The Action Guide for Advocacy and Citizen Participation*. Available at: <http://www.justassociates.org/ActionGuide.htm>.
- ² Steiner, H. and P. Alston. *International Human Rights in Context*. New York: Oxford University Press, 2000, p.796.
- ³ Ad hoc visits are those which are in response to serious, urgent allegations of torture.

Part B
Making Rights Work

Chapter 8.

Human Rights Litigation

Knowing Your Rights and Fighting for Them

8. HUMAN RIGHTS LITIGATION

Introduction

In the preceding chapters we have been looking at actions in the public interest and how to stimulate social change to reflect our inherent and inalienable right to universal human rights. This chapter will look at litigation as a form of human rights action.

Few people seek contact with a legal professional without a compelling reason for doing so. Many people have negative associations with lawyers. For the poor, basic legal advice can be simply unaffordable, often wildly so. When faced with the choice of paying for legal advice or services and eating, few people would choose the legal services. Many people would only seek the assistance of an attorney when one would be most urgently needed – for example when they or a family member have been arrested for a crime.

These facts aside, it is worth considering the following:

- In democracies, using the judicial system can be among the most effective means of bringing about social change without violating the law;
- As noted in previous chapters, international law guarantees fundamental human rights. When fundamental rights are violated, a person has the right to justice. Courts are the primary official bodies charged with providing justice;
- In fact, many of the great social movements of the previous 2 centuries have either been played out in court or have been built upon legal action and court decisions.

Take for example, the US civil rights movement. From the early part of the 20th century, civil rights activists fought racist laws, policies and practices in the United States by suing in court to have them declared illegal. At the time, before the development of international human rights law, US civil rights activists repeatedly went to court to show that various local laws and practices violated the US Constitution. Following the famous *Brown v. Board of Education* ruling by the US Supreme Court in 1954, which declared racial segregation in education illegal, US civil rights activists repeatedly made reference to the ruling and sought to have it enforced in the struggle to bring about equal education for all in the US.

The importance of litigation as a human rights action is felt on different levels. In some human rights situations, a lawyer may be needed simply to secure justice. For example, if a person is being maliciously prosecuted for a crime, simply because the prosecutor has decided that he or she does not like the person or because the person is an activist causing trouble for the government, there may be a need for legal action to protect that person. Litigation can be an effective method of seeking justice for individuals

whether trying to rectify a rights violation or seeking compensation for victims. Additionally, human rights litigation can serve the purpose of contributing to social change. The term which has been coined for this is strategic litigation, which is described further below.

Strategic Litigation

The growth of the power of international human rights law after World War II, as well as the importance of legal action in providing support to social movements, has given rise to a new term: Strategic litigation.

Strategic litigation is not merely corrective of individual wrongs, but is far-reaching in its ambitions and outcomes

Strategic litigation is legal action in the service of social change. Strategic litigation seeks to bring about a change in social reality through the use of the law courts. In a strategic litigation case, the plaintiff sues not only on his or her own behalf, and not only to secure justice in his or her individual case, but further also to end a degrading or humiliating practice for a group of people, move a government to adopt or amend human rights-based policies,

or otherwise reshape the social and legal landscape. Strategic litigation combats systemic injustices. It is not merely corrective of individual wrongs, but is far-reaching in its ambitions and outcomes.

Litigation procedures are not swift and often can take many years before a result is obtained – especially when pursuing international remedies

This section will be an introduction to strategic litigation with particular reference to international legal action. For practical reasons, the specifics of national procedures will not be addressed in this handbook. However, it is important for anyone wishing to engage in national or international litigation procedures over a human rights issue to know the role that domestic courts take and the technical procedures to follow. Litigation procedures are not swift and often can take many years before a result is

obtained – especially when pursuing international remedies. Please consult a lawyer, an experienced national NGO or the ERRC for additional help or advice.

Strategic Litigation by Roma: The Ostrava Case

On June 15, 1999, 12 Romani children in Ostrava and their parents, with the support of several Romani leaders and human rights organisations and co-ordinated by the ERRC, filed an action with the Constitutional Court of the Czech Republic, challenging and seeking remedies for systematic racial segregation and discrimination in Czech schools. The lawsuit in the Constitutional Court was filed against 5 Ostrava special school directors, the Ostrava School Bureau and the Ministry of Education.

It alleged that the general practice and application of regulations in the special education school system resulted in *de facto*¹ and *de jure*² racial segregation and discrimination of the 12 Romani applicants.³

The problem of the overrepresentation of Romani children in special schools in the Czech Republic was long known and government officials in fact acknowledged the problem in interviews. However, no reform sufficient to bring about change had been implemented. Since well before 1989, Czech school authorities have knowingly assigned Romani children to special schools in disproportionate numbers. As far back as 1984, according to official government statistics, half of all Romani students were attending special schools. The government's continued application over many years of a policy generating massively discriminatory effects shows, at a minimum, a willingness to tolerate the wholesale denial of educational opportunity to generation after generation of Romani children. The 12 Romani children in Ostrava and their parents who brought this lawsuit were no longer willing to pay this price.

The legal complaint asserted that the applicants and numerous other Romani children had been segregated into special schools for the mentally disabled specifically because they were Roma. It also alleged that the applicants had been subjected to racial segregation and discrimination in their assignment to special schools. The result of such segregation has been a denial of equal educational opportunity for most Romani children. Among other sources of law, the complaint relied upon the jurisprudence⁴ of the European Court of Human Rights. It alleged that racial segregation and discrimination in education violates the Constitution of the Czech Republic, the Czech Charter of Fundamental Rights and Freedoms, provisions of Czech domestic law and numerous binding international treaties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In their complaint, the applicants' sought to obtain, cumulatively, the following remedies:

- A judicial finding that they had been the victims of racial discrimination and segregation in violation of Czech and international law;
- The establishment of a compensatory education fund to pay for the extra education and training required to compensate the plaintiffs – and others similarly situated – for the harm caused to them by segregation in special schools, enabling them to compete adequately for entrance to non-vocational secondary education; and
- An order compelling the Ostrava school board and the Ministry of Education to end racial segregation in Ostrava schools within 3 years and to develop an educational reform plan capable of achieving racial balance in Ostrava schools within that time.

In addition, the applicants requested that there be a requirement of informed parental consent when children are placed into special schools and that it be given in writing only after parents have been adequately informed of their rights and the consequences of giving such consent.

The ERRC spent 8 months setting up the legal case in Ostrava. In early 1999, there were 8 special schools in the district of Ostrava that, according to the Ostrava School Bureau, were responsible for “educating mentally retarded pupils”. There were 70 basic schools for “normal” pupils. The ERRC collected statistics from every school in the city of Ostrava. Each special school and each basic school stamped and signed a document testifying to the exact number of Romani and non-Romani pupils in their school. As noted above, the results of the collected data were shocking. The data showed that, whereas only 1.80 percent of non-Romani students in Ostrava were in special schools, 50.3 percent of Ostrava’s Romani students were in special schools. Thus, the proportion of the Ostrava Romani school population in special schools outnumbered the proportion of the Ostrava non-Romani school population in special schools by a ratio of more than 27 to 1. Stated differently, Romani children in Ostrava were over 27 times more likely to end up in special schools than were non-Romani children.

The statistics gathered by the ERRC further indicated that although Roma represented less than 5 percent of all primary school-age students in Ostrava, they constituted more than 50 percent of the special school population. Ostrava is far from an isolated example. Nationwide, as the Czech government itself conceded, approximately 75 percent of Romani children attend special schools and substantially more than half of all special school students are Roma.

The degree of racial segregation shown by the above statistics was reproduced within the schools. Thus, of the 8 special schools in Ostrava, Roma amounted to more than 50 percent of the student population in 5 schools, more than 75 percent of the student population in 4 schools, more than 80 percent in 3 schools and more than 90 percent in 2 schools. In none of the Ostrava special schools did the Romani proportion of the student body fall below 16 percent – well over triple the Romani percentage of the Ostrava student population as a whole.

By contrast, among Ostrava basic schools, 32 had not a single Romani student. In another 21 basic schools where the ERRC collected data there were Romani students, but they numbered fewer than 2 percent of the student population. Thus, in a total of 53 basic schools in Ostrava – 75 percent of all basic schools in the district – Roma constituted fewer than 2 percent of the student population, although Roma as a whole constitute more than 4 percent of the overall Ostrava primary school-age student population. Ostrava’s special and basic schools are effectively segregated on the basis of race. In other words, there exist 2 separate school systems for members of different racial groups – special schools for Roma; basic schools for non-Roma.

At the request of the ERRC, Professor Daniel Reschly, Chair of the Department of Special Education at Vanderbilt University in the United States and one of the most renowned experts in the world on the overrepresentation of minorities in special education, examined the data from the Ostrava schools and prepared a report. He stated that the degree of overrepresentation of Roma students in Ostrava special schools is unprecedented and is itself *prima facie* evidence of racial segregation and discrimination.

The report of Professor Reschly demonstrated that the size of the overrepresentation of Roma in special schools in the Czech Republic is qualitatively higher – indeed, it is of a different dimension – than analogous measures of overrepresentation of racial minorities in other contexts. For example, a recent United States government study of overrepresentation of racial minorities in special education classes in the New York City area expressed concern about what it termed “wide discrepancies” in special education placements that appeared to be based on race and ethnicity where “black students were more than twice as likely as white students to be referred to special education”. In Ostrava, by contrast, the percentage of Roma in some special schools is several hundred percent higher than the Romani proportion of the overall school-age population. Several laws and court cases in the United States testify to the fact that discrimination based on faulty IQ tests or improper use of tests has occurred in US public schools, but never to the extent documented by the statistics from Ostrava.

The legal complaint asserted that, like many other Romani children in Ostrava and around the nation, the Romani children concerned have suffered severe educational, psychological and emotional harm, which include the following:

- They were subjected to a curriculum far inferior to that in basic schools;
- They were effectively denied the opportunity of ever returning to basic school;
- They were prohibited, by law and practice, from entrance to non-vocational secondary educational institutions, with attendant damage to their opportunities to secure adequate employment;
- They were stigmatised as “stupid”, with effects that will brand them for life, including diminished self-esteem and feelings of humiliation, alienation and lack of self-worth; and
- They were forced to study in racially segregated classrooms and hence denied the benefits of a multicultural educational environment.

The presence of such high numbers of Romani children in special schools has often been explained by the fact that they fail the IQ tests administered in the Educational Psychological Centres (“PPP centres”). However, there are many indications that the evaluation mechanisms employed to assess “intelligence” are flawed and unreliable as testing methods. Many of the IQ tests administered to evaluate “intelligence” have been shown to generate racially-disproportionate effects and none of the testing techniques have ever been validated for the purpose of assessing Romani children in the Czech Republic. In administering tests to Romani children, insufficient care has been taken to account for, and overcome, predictable cultural, linguistic and/or other obstacles which often negatively influence the validity of “intelligence” assessments. Indeed, several psychologists informed the ERRC that there were no standard procedures for IQ testing and that each psychologist could simply choose whichever method s/he thought to be appropriate in such an assessment leaving the assessment process vulnerable to influence by racial prejudice, cultural insensitivity and other irrelevant factors. Finally, few, if any, Roma were consulted in the selection or design of the most commonly used tests.

The applicants addressed the above-mentioned issues in their complaint arguing that their assignment into special schools was a part of the “common practice in the application of respective statutory provision resulting in factual racial segregation and discrimination”. They argued that first, by being placed into separate educational facilities on the grounds their race, they had been subjected to de facto racial segregation. And additionally, by the result of such segregation, they also suffered discrimination through interference with the enjoyment of their right to education; namely that they had been denied an adequate education because of their racial origin.

Exhaustion of National Remedies

On October 20, 1999, the Constitutional Court issued its decision dismissing the 12 cases. The Constitutional Court found, among other things, that the allegations of racial segregation and discrimination were unsubstantiated. The Court, acknowledging that the “persuasiveness of the Applicants’ arguments must be admitted”, found that it had authority only to consider the particular circumstances of individual Applicants, and was not competent to consider evidence demonstrating a pattern and/or practice of racial discrimination in Ostrava or the Czech Republic. The Court stated that “the plaintiffs [substantiated] their complaint by [extensive] statistical data and expert opinions but that they failed to recognise that the Constitutional Court is entitled to decide – with regard to constitutional cases – only individual legal acts and is bound to evaluate only particular circumstances of the individual cases” [and is not authorised to comment or rule on societal or cultural discrimination as a whole]. It held that the Applicants had not proved the existence of racial discrimination on an individual basis.

The Court also observed that the Applicants had not appealed the initial decisions that placed them in special schools and that the Applicants’ parents had – with the exception of one Applicant – consented in writing to their placement in special schools. In effect, the Court ruled that such procedural failures barred the Applicants from obtaining any remedy as to their racial discrimination in education, however well substantiated. As to the Applicants’ allegation that the parents were not informed as to the consequences of their children being placed in special schools, the Court held that the blame in this case lies with the parents, who could have requested such information but failed to do so. In so holding, the Court simply refused to apply the applicable European Court of Human Rights legal standards for proving racial discrimination under Article 14 of the Convention, even though Article 10 of the Czech Charter of Fundamental Rights and Freedoms stated that international law takes precedence over domestic law where the two conflict. Implicitly acknowledging the force of Applicants’ claims, the Court “assumed that the relevant authorities of the Czech Republic shall intensively and effectively deal with the plaintiffs’ proposals”.

In response to the Applicants’ claim that the special schools were not sufficiently monitored and that they, the Applicants, were exposed to racial segregation and discrimination, the Court held that the Applicants failed to prove these claims on an individual basis and in fact went further to state that they did not even make an attempt to do so. The Court stated that “they [the Applicants] only refer to

statistical data of the social, and cultural aspects of the problem” and that this “cannot play a decisive role in [adjudicating] individual cases”. Finally, the Court stated that it did not have jurisdiction to consider the Applicants’ request for an educational reform plan or an all-out ban on racial discrimination and compensatory schooling.

Engaging the European Court

The ERRC believed the judgement of the Constitutional Court to be fatally flawed. Having **exhausted domestic remedies** – that is, having no other court or other authority to turn to for justice in the Czech Republic – on April 18, 2000, the Romani parents and children turned, with the assistance of the ERRC, to the European Court of Human Rights in Strasbourg. Their application to the European Court contends that their assignment to special schools constitutes “degrading treatment” in violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In so doing, it relies on earlier decisions by the Strasbourg Court, which made clear that “a special importance should be attached to discrimination based on race”. The submission further argues that the Applicants have been denied their right to education, in breach of Article 2 of Protocol 1 of the Convention; that they have suffered racial discrimination in the enjoyment of the right to education, in violation of Article 14; and that the procedure which resulted in their assignment to special school did not afford the minimal requisites of due process required by Article 6(1). The Application asks the European Court of Human Rights to find violation of the above-noted Convention provisions and to award just satisfaction. The complaint now included the parents of 18 children, as new plaintiffs came forward after the original complaint.

Before the lawsuit against racially segregated schooling of Roma in the Czech Republic, many people in the Czech Republic – in fact probably most people in the Czech Republic – were aware that most Romani children attended schools for the mentally disabled. The Czech government was certainly aware of the problem that Romani children were obscenely over-represented in “special schools”. And of course Romani parents were painfully aware that their children were receiving a more-or-less worthless education. However, no one in the Czech Republic had pursued this as a legal issue, an issue of fundamental human rights, to be claimed by lawsuit in the courts.

In fact, during the course of documentation toward the lawsuit in the Czech Republic, many otherwise sympathetic people told the ERRC that a lawsuit would be “too radical” and that other means should be found to address the problem of racially segregated schooling in the Czech Republic. The ERRC and the Romani parents concerned nevertheless pursued the lawsuit, among other reasons because without the pressure of a court order, it did not seem likely that the Czech government would ever find sufficient political will to begin to tackle the problem of racially segregated education.

At the time of the preparation of this human rights manual – in early 2004 – the European Court still had not ruled on the complaint. This fact alone is sobering – lawsuits can take a long time. Indeed,

many of the children concerned in the lawsuit have now been schooled in substandard schools for so long that it is an open question as to whether a victory in the case would have the possibility bring about a positive change in their lives.

The fact of an open lawsuit against the government has brought pressure on the government to demonstrate that it is trying to change the situation and that it has policies to desegregate the school system

However, the fact of the lawsuit has begun to alter the social landscape in the Czech Republic. The fact of an open lawsuit against the government has brought pressure on the government to demonstrate that it is trying to change the situation and that it has policies to desegregate the school system. In addition, the fact of a lawsuit has brought widespread awareness of the problem of racial segregation in schooling in the Czech Republic. This also has increased pressure on the Czech government to bring about real change.

The lawsuit has been important in raising awareness among Roma in the Czech Republic that they have fundamental rights that can be claimed, in court or elsewhere, when violated. Also, the lawsuit has acted as a model to Romani activists in other countries as well: Since the Ostrava lawsuit, Roma in Bulgaria and Croatia have challenged racially segregated education by filing lawsuits.



Making Rights Work: Reflecting on Ostrava

In addition to illustrating the importance of strategic litigation for human rights work, the Ostrava case also demonstrates the process of pursuing litigation through domestic and international courts.

Using the Ostrava example, answer the following questions.

1. What were the domestic remedies sought by the Applicants?
2. What were the steps taken through the European Court?
3. What forms of evidence were used to support the Applicants' claims?
4. What role did 'experts' play in the case?
5. In addition to being an important strategic human rights action in the public interest, how is litigation in the Ostrava case a beneficial action for the individual applicants?
6. Why was this case chosen as a strategic action?
7. If the case is not successful in its final ruling at the European Court, has the case been successful as a strategic action?

Domestic Remedies in Cases of Human Rights Violations

Roma from a number of countries – including Belgium, Bulgaria, Croatia, the Czech Republic, Germany, Hungary, Italy, Macedonia, Serbia and Montenegro, Slovakia and the United Kingdom – have sought and in many cases, received justice when their fundamental human rights have been violated. Issues which Roma have brought to international human rights courts include, as noted above, racially segregated education, as well as:

- Racial discrimination in access to various goods and services, such as employment, social services, housing, public accommodation, health care, etc.;
- Police abuse, including killings by police officers;
- Illegal collective or individual expulsion from a country;
- Illegal forced eviction from housing;
- Failure to provide justice in cases of racially motivated violent attack or racially discriminatory refusal to provide services; and
- Coercive sterilisation of Romani women.

... as well as in relation to a number of other fundamental human rights issues.

Before taking your case to an international court or tribunal, however, in most cases you must seek justice in a local court. International human rights courts as a rule do not hear complaints if there has been no attempt to make use of the available legal remedies at home. Also, at the domestic level, the complainant will generally receive a much speedier and directly enforceable result than internationally.

Since every country's legal system is different, it would be impossible (and beyond the scope of this manual) to provide full details about the exact procedures for domestic remedies in this manual. We will however, attempt to give a very brief overview of the courses of action that you are most likely to encounter at the national level. The most common possibilities are:⁵

- Criminal proceedings;
- Civil proceedings; and
- Administrative proceedings.

Before taking your case to an international court or tribunal, however, in most cases you must seek justice in a local court. International human rights courts as a rule do not hear complaints if there has been no attempt to make use of the available legal remedies at home

Criminal proceedings: Those who have suffered abuse by a public official (be that police or other state representative) or have been the victim of a violent crime committed by a non-state actor (including a racially motivated violent crime) can make a criminal complaint to the police or public prosecutor. Military personnel may be tried in criminal proceedings, however this may occur through military courts. In some states, it is left to the discretion of the public prosecutor whether to undertake prosecution of a crime. This discretionary power has been a problem in some states for Romani victims of violent attacks, who experience additional discrimination in the system through prosecutors who refuse to prosecute the abuse as a racially motivated crime.

Criminal proceedings aim to punish the offender for the crime committed. In most of the cases, there is no compensation for the victim. Remedies may include the levying of a fine, dismissal in case of police officers, probation or imprisonment.

Civil Proceedings: These proceedings are based on countries' civil codes, common law and/or provisions of the law on the obligations. In civil proceedings, an individual may receive court-ordered financial compensation paid by the responsible party and different forms of injunctive relief. A distinction commonly drawn between criminal proceedings and civil proceedings is that the public interest at stake in criminal proceedings is generally higher than in civil proceedings. As an example, in criminal proceeding against a person accused of murder, the state brings to justice an individual for the very serious act of having deprived a person of their life (with the potential result that the killer will be deprived of her liberty or, in some places, her life). In the criminal case for murder, it is highly unlikely that the family of the victim will receive any form of compensation other than the satisfaction of seeing the killer go to jail. In a civil proceeding in relation to the same crime, the family of the victim would go to court to attempt to force the killer to pay them compensation (usually in the form of money) for the suffering they have endured as a result of the loss of their family member and the harm inflicted by the killer. An example of such a case can be found in the box below.

On July 21, 1995, Romani teenager Mario Goral was the victim of a fatal attack by a group of skinheads in the central Slovak town of Žiar nad Hronom. Approximately 30 skinheads rampaged through the city that day and attacked several young Roma with crowbars and knives. Eighteen year-old Mario Goral was caught before he could escape into his house and was beaten unconscious. Two skinheads then doused him with a mixture of gasoline and polystyrene, which they had prepared in advance and set him on fire. As a result, the Romani youth suffered second and third degree burns to over 60 percent of his body and died in hospital 10 days later, on July 31, 1995.

Two skinheads were found guilty by a criminal court. One was convicted of murder and disorderly conduct and the other of disorderly conduct and racially motivated violence. They were sentenced to 7.5 years and 8 months in prison, respectively. In civil proceedings which

followed, a court awarded the victim's parent compensation not just for the financial damages sustained, but also for the mental anguish suffered as a result of a wrongful death of a child. Should the decision of the court in the case be upheld on appeal and become final (at the time of publication of this handbook, there was no final decision), Goral will most likely qualify as a landmark case because this would be the first time that a Slovak court has awarded a parent compensation not just for the pecuniary damages sustained, but also for the mental anguish suffered as a result of the wrongful death of a child.

For more information on this case, see the ERRC Country Report – *Time of the Skinheads: Denial and Exclusion of Roma in Slovakia*, which can be found at: http://www.errc.org/Countryrep_index.php.

Administrative Proceedings: Administrative proceedings are much less likely to involve issues as grave as killings. Administrative proceedings usually involve complaints against those state organs/bodies that are authorised by the law to perform administrative duties such as municipalities, local councils, state owned companies, etc. Such procedure does not always take place in front of a judge and is often a way of making available procedures for which formal law suits, with their range of procedural guarantees, would be out-of-proportion to the matter at issue. One example of administrative proceedings might be the claims office to which one goes if one believes one has unfairly received a parking ticket, although there can be administrative measures for more serious issues. Often an administrative procedure is the first step in the justice process. If one could not receive satisfaction from an administrative instance, one might then seek judicial review. An example of a Romani case that followed administrative proceedings can be found in the box below.

In an Italian case, the Roma family of Skender Bislimi and Mehreme Bislimi with their six sons, all from Bosnia and Herzegovina, were denied residence permits on humanitarian grounds and asked to leave the country. They originally received residence permits as refugees and in 1999 the residencies were extended for another year on the condition that they secure employment. Failing this, their permits were revoked in 2000.

The local attorney filed an appeal against the decrees of the “Questura” (Local Police Authority) before the Regional Administrative Tribunal for Tuscany (T.A.R.). In addition, she filed petitions to the Civil Tribunal of Florence against the Prefect of Florence's expulsion order. As a result of these legal actions, the Prefect of Florence revoked his decrees of expulsion against the Romani clients, whereas, later on, the Regional Administrative Tribunal granted the permits of stay for humanitarian grounds.

Finally, you should familiarise yourself with your country's constitution and any anti-discrimination legislation or policies that exist. Laws and policies related to specific human rights violations commonly suffered by Romani individuals and communities, such as housing rights and regulations should also be reviewed when tracking these issues.

Bringing a Complaint to the European Court of Human Rights⁶

The European Court of Human Rights in Strasbourg, France is only one of a number of international courts or other tribunals hearing human rights complaints. In Europe, however, it is among the most powerful and accessible international courts for human rights justice issues. Since it is the court to which Romani families turned in the Ostrava case, we will focus on it briefly here.

Many complaints to the European Court of Human Rights are made without the assistance of lawyers. This is a great strength of the system; the European Convention on Human Rights is not a complex body of law; it is based upon basic, universally comprehended concepts of decency, fairness and respect for others. You do not need to be a lawyer to express injustice, to articulate what it feels like to be oppressed. In addition to actual victims, complaints can be initiated by “representatives” who need not have any special qualifications other than the victim's authority to so act. Anyone may be a representative – for instance a friend, community worker, priest etc.

However, early on in any complaint it is important to have the assistance of a lawyer familiar with European Convention law, as many of the complaints received by the Court are found to be technically defective for one reason or another. There are four main hurdles a complainant must cross in order to have his or her complaint considered:

- ✓ The complaint must concern an alleged violation of one of the rights set out in the Convention or one of the protocols thereto;
- ✓ The complainant must have tried to settle his or her complaint by using all available remedies in their own country;
- ✓ The complaint must be made within 6 months of the failure of the last attempted domestic remedy; and
- ✓ The complainant must have been a victim of the injustice that he or she alleges.

Most complaints are rejected by the Court because the complainant has not “exhausted” the potential legal remedies in his or her own country. That is, because she has not tried all reasonable avenues for seeking justice at home before turning to the Court. Many complaints are also rejected because, although there has been an injustice, it does not concern a right protected by the Convention. For instance, the

Convention does not guarantee a person the right to be given social security assistance, if poor, or the right to a house, if homeless. In the case of these examples, all the Convention protects is a person's right (under Article 8) "to respect for his private and family life, his home and his correspondence".

The Initial Letter to the Court

A complaint to the European Court of Human Rights must be made within 6 months of the violation or the dismissal of the last attempt in the domestic courts to resolve the injustice. The 6 month period is ended when the Court receives a letter (or fax) making a complaint. The initial letter should set out the basic details of the complaint and, if possible, be no more than 2 or 3 pages in length. It should give the date and name, address and place of birth of the complainant. It should express as succinctly as possible the essence of the complaint and list the articles of the Convention that have been violated. If possible, the letter should ask the Court to indicate whether it considers that any Convention points have been overlooked in the complaint letter. The letter should conclude by requesting that a formal application form be forwarded. An example of such a letter can be found below.

The Registrar
European Court of Human Rights
Council of Europe

10 March 2004

Dear Registrar,

Complaint – Article 14 European Convention for the Protection of Human Rights and Fundamental Freedoms

I request that the Court consider the following complaint, which I believe amounts to a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms by the United Kingdom.

My name is Fiona Smith. I am a solicitor and the legal representative for my client Michael MacDonald, the alleged victim. I set out below the basic facts of the complaint.

Applicant		Representative	
Full name	Michael MacDonald	Full name	Fiona Smith
Nationality	British		
Occupation	Self employed plumber	Occupation	Solicitor

Date of Birth	15.2.1953		
Permanent Address	Convention Cottage Legalton, Herefordshire England	Address	26 Aubrey Street Hereford HR4 0BU England
Telephone	None	Telephone	01432 272401
Present Address	As noted above	Fax	01432 356080

The complaint is against the **United Kingdom Government**.

I briefly outline the facts of the complaint and what I believe to be the key admissibility grounds.

Facts

The applicant and his family are Gypsies, who lead a traditional travelling lifestyle. They claim that they suffered much from harassment and from being moved on with ever increasing frequency that resultantly they settled on the local authority's Gypsy site at Legalton in Herefordshire (England), where they lived permanently for about 10 years. In February 1999 they moved on, complaining about, among other things, violence and disturbances preventing them from sleeping at night and the children from playing safely during the day. They moved into a rented house but were unable to adapt.

In October 2000 the applicant and his wife returned to Legalton and were licensed to occupy a plot at the site provided they, their family and guests did not cause a "nuisance" to those living on the site or in its vicinity. On 29 March 2000 the applicant's adult daughter Kerry MacDonald was granted a licence to occupy the adjacent plot, where she lived with Patrick Conner. The applicant's adult sons did not live with the applicant, but were frequent visitors to the site.

On 31 May 2001 notice to quit was served on the family requiring them to vacate both plots, on the ground that Patrick Conner and the applicant's children – including his adult sons – misbehaved and caused considerable nuisance at the site. The applicant disputed the allegations. On 20 July 2001 the local council issued proceedings for summary possession of both plots.

At this stage, the applicant and his wife lived with their four young children, aged 14, 13, 10 and 4 months. One child had settled well into full-time education at the nearby primary school and the others were receiving assistance, including teaching at home.

In the early hours of 4 September 2001 the council evicted the family in an operation which lasted 5 hours. The caravan the family owned was not returned, the applicant claims, until late that afternoon. On 6 September the council returned their possessions, which were dumped on the roadside some distance away from the applicant's caravan.

The applicant alleges that the family received no assistance or advice as to where they could go, except for an offer of accommodation at Anytown, which failed to take into account the family's local community ties; they had lived on the Legalton site for almost 10 years and in the Herefordshire area for some 25 years. The applicant states that, since the eviction, his family has been required to move on repeatedly and that the stress and uncertainty has strained family life deeply.

Victim Status

The applicant was denied the opportunity to challenge in a court the allegations made against him and his family. It was unreasonable and disproportionate to evict him and his family for reasons relating to other adults. He had no means of requiring the Council to substantiate its allegations against him and thereby resisting the revocation of his licence or preventing the eviction. No opportunity was given for the submission of evidence, hearing or cross-examination of witnesses on these matters. As a result, there was no meaningful assessment as to whether the measures were proportionate or justified in pursuit of any legitimate aim. There is no evidence in Herefordshire of any encouragement for Gypsies to purchase and occupy their own private sites. Gypsies in that area who wish security of tenure can not move to privately run sites as there are none. On the contrary, there are many examples of enforcement action being taken against Gypsies' occupying their own land. Furthermore, the applicant and his family were rendered homeless with loss of effective access to education and health services.

Time Limit/Exhaustion of Remedies

My client obtained legal aid to challenge the council's decision to evict him and his family on the basis that it was unfair, unjustified and that he should have had the opportunity to defend the allegations stipulated against him by the council. The judicial review was unsuccessful and leave to appeal refused (both by the judge and Court of Appeal). The judicial review judgement was given on 3 December 2003 (4 1/2 months ago) and the Court of Appeal refused to appeal on 1 March 2004 (9 days ago).

Convention Violations Alleged

1. Article 8

There has been an unjustifiable interference with my client's right to respect for his private life, family life and home.

2. Article 1 of Protocol No.1

During the eviction, the Council interfered with my client's personal property by removing essential possessions from the pitch and retaining various items. They failed to return the property promptly and when they did, dumped it on the roadside.

3. Article 6

My client was unable in the summary possession proceeding to challenge the Council's allegations of nuisance whether by giving evidence himself or calling witness. He was at a substantial disadvantage given the terms of the licence, in respect of which he had not been in a free bargaining position. There was no equality of arms and he was denied any effective access to court against the very serious interference with his home and family.

Please accept this letter as formally introducing this complaint today. I would be grateful if you could acknowledge receipt and if you could:

1. Forward to me the appropriate application form; and
2. Advise me if there are any aspects of this complaint upon which you require clarification (or relevant Court or Commission decisions to which I should have regard).

Yours faithfully

The Court will then reply by sending the formal application form. It may also indicate whether it considers that any aspect of the complaint may cause problems (and possibly enclosing a copy of any case that needs to be considered). It may also indicate if it is presently considering any similar complaint.

The complaint form then needs to be completed and forwarded to the Court. In completing the form, the applicant should ensure that all possible articles of the Convention are raised. Very often, although the injustice is apparent, the actual argument under the Convention is not obvious. It is best, in such cases, to approach the problem from many directions.

Example

Depending upon the nature of the injustice, one might initially consider whether the injustice significantly affects the victim's family and personal life; if so was there a simple independent procedure by which the local courts could remedy this? The answer to such a question may cause a complaint to allege violations of Articles 8 (right to family life) and 13 (right to an adequate legal remedy). If a violation of Article 13 is alleged it is generally appropriate to argue, in the alternative, Article 6 (right to a fair trial), and vice versa. Article 6 is relevant because if the state responds by alleging that there is a domestic legal remedy, one could argue that this remedy does not comply with Article 6, which requires such remedies to be fair, independent, relatively quick, etc.. If the Article 8 violation is serious, then it might also be appropriate to include argument on Article 3 (degrading treatment). If the Article 8 violation includes lack of respect for a person's home, then it may also be appropriate to include submissions on Article 1 of the First Protocol (right to enjoy one's possessions). In almost all Romani

cases, it will generally be appropriate to allege a violation of a particular article independent of Article 14 (the anti-discrimination article); but then to include (in the alternative) submissions on Article 14 in conjunction with the particular article.⁷

Quick Reference

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

Article 6

“[...]everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law[...]”.

Article 8 (1)

“Everyone has the right to respect for his private and family life, his home and his correspondence”.

Article 13

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority[...]”.

Article 14

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

Protocol 1, Article 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions[...]”.

Frequently, complaints will of course raise many other articles – and the approach should always be – if in doubt – include it. Whilst the Court does not want to be burdened with irrelevant arguments, it accepts that frequently several Convention articles may bear upon a particular injustice; that the consequences of an injustice may take many forms.

Frequently, complaints will of course raise many other articles – and the approach should always be – if in doubt – include it

Communication of Complaints to Governments

Only about 10 percent of complaints are “communicated” to respondent governments for their “observations”; the other 90 percent being rejected early on for one of the earlier listed reasons. However

once the state is asked for its comments, limited financial legal aid is available for the applicant from the Council of Europe.

After the Court has heard from the government, it will decide whether or not the complaint is admissible. Before doing this it may convene a hearing to which the parties will be invited. If the applicant has legal aid, then this will cover the costs of travel to and accommodation in Strasbourg.

If the Court decides that a complaint is admissible it will encourage the parties to reach a friendly settlement. If at all possible, this should be seriously considered (although a party will not be criticised for not wishing to settle a case). The benefits of such a settlement are that the complainant will often get a better settlement than ordered by the Court and it is impossible to be sure that a case will succeed before the Court.

If no friendly settlement is reached, the Court will proceed to rule on the merits of the case (possibly after convening a hearing).

There is scope, in the Court's process, for third parties (for example NGOs) to intervene and give objective information about the background facts to the complaint. For instance, one might detail the problems faced by Roma in a particular country or region. This can be very helpful in showing that the injustice that gave rise to the complaint is not isolated.

Urgent Cases

If the complaint concerns a serious violation and urgent action is required from the Court, a specific request can be made for help under "Rule 36". If the complaint concerns imminent risk of a danger to life, the Court can be asked to make an interim request to the government to take steps to secure the applicant's safety pending consideration of the applicant's complaint to the Court. Such requests usually relate to impending extradition or deportations.

Where the Court is not prepared to make a request for interim measures against the state concerned, it may however be prepared to expedite to the complaint and to notify the state of its introduction. This step can be a useful mechanism for focusing the state's attention upon a particular problem and making it aware that the Court is also watching; it is amazing how often this helps defuse a difficult problem.

Other International Human Rights Courts or Tribunals

There are a number of other human rights courts and tribunals. Of relevance to Roma, a number of United Nations' treaty bodies have individual complaints procedures. The UN Human Rights Committee (HRC), the UN Committee Against Torture (CAT), the UN Committee on the Elimina-

tion of Racial Discrimination (CERD) and the UN Committee on the Elimination of Discrimination Against Women (CEDAW) all have mechanisms for hearing individual complaints in cases of human rights abuse. Not all countries have ratified the so-called “optional protocols” which make possible complaints before UN committees. However, some of these mechanisms have had quite powerful effects for Roma. For example, after a ruling by the UN Committee Against Torture in 2003, in a case concerning a pogrom against a Romani community in 1995, the government of Montenegro paid close to 900,000 Euro to victims. Further information on UN complaints procedures – as well as whether your country has ratified the relevant optional protocol making possible individual complaints – are available on the Internet website of the United Nations High Commissioner for Human Rights (www.unhcr.ch) or by contacting the offices of the ERRC.

Making Rights Work: Thinking Strategically about Litigation

Consider the below pictures:



Photo A

This man has just been released from police custody.



Photo B

This home is located in a Romani community on the periphery of a major European city.

1. What rights have been violated?
2. What, if any, are your litigation possibilities at the domestic level?
3. If this case were to be taken to the international level, what are the applicable complaint procedures?

In the following table, insert some of the pros and cons mentioned about seeking legal remedies.

Pros	Cons
<ul style="list-style-type: none"> • • • • • • 	<ul style="list-style-type: none"> • • • • • •

Endnotes

- ¹ Latin for “in fact”, “in deed” or “actually”. Often used in place of “actual” to show that the court will treat as a fact, authority being exercised or an entity acting as if it had authority, even though the legal requirements have not been met. In the context of school segregation, de facto refers to segregation being a fact, however, not having been generated from a conscious government action and having no government policy stipulating segregation.
- ² Latin for “lawful” and often used in the place of rightful, legitimate or constitutional. It is usually used to mean “stipulated by law” or “under law”. In this context, it refers to the existence of policy or law requiring racial segregation in schools.
- ³ Further information relating to this case and segregated schooling in general within Central and Eastern Europe can be found in two ERRC reports: *A Special Remedy: Roma and Schools for the Mentally Handicapped in the Czech Republic* (1999), and *Stigmata: Segregated Schooling of Roma in Central and Eastern Europe* (2004). Both publications are available on the ERRC’s website at: www.errc.org.
- ⁴ Jurisprudence is a legal term referring to the entire subject of law, the study of law and legal philosophy. In this context, jurisprudence refers to the case law or judgements of the European Court of Human Rights. Judgements include both majority and dissenting opinions.
- ⁵ Material in this section has been adapted from: Giffard, Camille. *The Torture Reporting Handbook*. Colchester: University of Essex, Human Rights Centre, 2000.
- ⁶ The following passage of this manual is taken in large part from: Clements, Luke. “Litigating cases on behalf of Roma before the Court and Commission in Strasbourg”. In *Roma Rights*. Winter 1998. Budapest: European Roma Rights Center, 1998. Available at: See bibliography for site.
- ⁷ The full text of the European Convention is available at the back of this manual. Other information on the Convention is available at: <http://conventions.coe.int/Treaty/EN/cadreprincipal.htm>.

Part B
Making Rights Work

Chapter 9.

Direct Action

Knowing Your Rights and Fighting for Them

9. DIRECT ACTION

Introduction

This manual concludes with some notes on direct action. **Direct action** on human rights issues involves public and often collective action by individuals and groups to challenge human rights abuses and bring about social change and respect for human rights.

Public Demonstrations

Public demonstrations can be powerful forms of advocacy. Persons willing to take valuable time (and in many cases personal risk), to come to the public sphere to express themselves on an issue can, in the right circumstances, send a powerful message to policy and law makers about the need for action on a particular issue.

Public demonstration is an act underpinned by fundamental human rights law. The International Covenant on Civil and Political Rights guarantees freedom of expression (Article 19) and the right of peaceful assembly (Article 21). The European Convention on Human Rights includes similar guarantees at Articles 10 and 11. Other rights, such as the right to collective bargaining, may also be engaged in the course of public demonstration.

Public demonstration is an act underpinned by fundamental human rights law

In democracies, public demonstrations are a regular part of public discourse. Groups frequently come forward publicly to express their opinions and show that their cause is a shared one and has the support of many members of the public. In unfree societies – those ruled by dictatorships or other forms of abusive or authoritarian power – public demonstrations can be more dangerous, but also potentially very effective, since they constitute a direct challenge to authoritarian rule. In some cases, the collapse of dictatorships is often preceded by public demonstration.

At certain points, public demonstrations can mark a significant turning point in the public life of a society. Massive demonstrations throughout Europe in the 1980s – particularly in the United Kingdom and West Germany – crystallised deep public hostility to nuclear weapons. Similarly, the hundreds of thousands of black and white Americans who joined the “March on Washington for Jobs and Freedom” in 1963 became the visible public affirmation of a popular commitment to the US civil rights movement and an end to segregationist laws and policies in the US.

Public demonstrations can also become a historical reference point for resistance movements. For example, in South Africa, violently suppressed public demonstrations in Sharpeville in 1960 and Soweto in 1976 ultimately became rallying points for resistance to the racist Apartheid regime.

Non-Violent Civil Disobedience

In many instances, public demonstrations are legal. As noted above, they are guaranteed by international human rights law. However, in some cases they are not. At least one school of thought about human rights action – proponents of **civil disobedience** – advocate (non-violently) breaking the law in order to press claims.

In the second half of the 20th century, perhaps the most influential proponent of non-violent civil disobedience as a mode of bringing about social change was Mohandas Karamchand Gandhi. Over the course of a number of decades of work first on behalf of the Indian minority in South Africa and later

“Civil disobedience becomes a sacred duty when the State becomes lawless or – which is the same thing – corrupt.”

at winning independence from British colonial rule for India, Gandhi developed an approach involving “the non-violent weapon of Satyagraha¹ and non-cooperation”. In his writings and actions, the concepts of “civil disobedience” and “non-cooperation” are closely linked: “Non-cooperation and civil disobedience are different but [are] branches of the same tree call Satyagraha (truth-force). [...] Non-cooperation with evil is as much a duty as cooperation with good”. Gandhi characterised

civil disobedience as “the assertion of a right which law should give but which it denies” and at one point stated, “Civil disobedience becomes a sacred duty when the State becomes lawless or – which is the same thing – corrupt”.

Perhaps the clearest example of Gandhi’s civil disobedience was the “Salt Satyagraha” of 1930.² The British monopoly on salt in India dictated that the sale or production of salt by anyone except the British government was a criminal offense punishable by law. Salt was widely available in the low-lying coastal zones of India, but people were forced to pay money for a mineral which they could easily collect themselves for free. Gandhi first addressed a letter to the then Viceroy of India, Lord Irwin on March 2, 1930, stating, “If my letter makes no appeal to your heart, on the eleventh day of this month I shall proceed with such co-workers of the Ashram as I can take, to disregard the provisions of the Salt Laws. I regard this tax to be the most iniquitous of all from the poor man’s standpoint. As the Independence movement is essentially for the poorest in the land, the beginning will be made with this evil”. Gandhi thus drew a connection between the unjust tax laws and the colonial power’s control over India’s resources and thereby argued for sovereignty and independence. Another significant feature of this Satyagraha was that the commodity in question – salt – was used all over India by people irrespective of their caste, class, ethnicity and religion, and thus, could potentially capture the imagination of all Indians.

The Viceroy's secretary replied to the letter, saying Gandhi would be "contemplating a course of action which is clearly bound to involve violation of the law and danger to the public peace". In response, Gandhi decided to launch the movement. On the early morning of March 12, 1930, he set out from the Sabarmati Ashram with 78 volunteers.³ He and his companions travelled nearly 200 miles by foot, stopping in nearby towns and villages, exhorting the people to join the movement. They arrived at Dandi on April 5th. Upon arrival, Gandhi picked up a small lump of natural salt and gave the signal to hundreds of thousands of people to similarly defy the law. Gandhi, himself, was arrested and thousands of others were also hauled into jail. However, Lord Irwin agreed to hold talks with Gandhi and subsequently the British colonial power agreed to hold a Round Table Conference in London to negotiate the possible terms of Indian independence. Gandhi went to London in 1931 and met some of his admirers in Europe, but the negotiations proved inconclusive. On his return to India, he was once again arrested, an affirmation of how powerful the simple act of defying the salt laws had been.

Gandhi's work was very influential in inspiring other human rights movements in the late 20th century. For example, in his now legendary 1963 "Letter from a Birmingham Jail", Martin Luther King Jr. responded to critics who found his tactics (organising US Blacks to non-violently resist white supremacist rule through disobedience of explicitly racist laws) too extreme, with the following:

As in so many past experiences, our hopes had been blasted, and the shadow of deep disappointment settled upon us. We had no alternative except to prepare for direct action, whereby we would present our very bodies as a means of laying our case before the conscience of the local and the national community. Mindful of the difficulties involved, we decided to undertake a process of self-purification. We began a series of workshops on nonviolence, and we repeatedly asked ourselves: "Are you able to accept blows without retaliation?" "Are you able to endure the ordeal of jail?" [...]

You may well ask, "Why direct action? Why sit-ins, marches and so forth? Isn't negotiation a better path?" You are quite right in calling for negotiation. Indeed, this is the very purpose of direct action. Non-violent direct action seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored. [...]

"Non-violent direct action seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue"

The purpose of our direct-action program is to create a situation so crisis-packed that it will inevitably open the door to negotiation. I therefore concur with you in your call for negotiation. Too long has our beloved Southland been bogged down in a tragic effort to live in monologue rather than dialogue. [...]

We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed. Frankly, I have yet to engage in a direct-action campaign that was “well timed” in view of those who have not suffered unduly from the disease of segregation. For years now I have heard the word “Wait!”. It rings in the ear of every Negro with piercing familiarity. This “Wait” has almost always meant “Never.” We must come to see, with one of our distinguished jurists, that “justice too long delayed is justice denied.” [...]

You express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. Since we so diligently urge people to obey the Supreme Court’s decision of 1954 outlawing segregation in the public schools, at first glance it may seem rather paradoxical for us consciously to break laws. One may well ask: “How can you advocate breaking some laws and obeying others?” The answer lies in the fact that there are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but also a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that “an unjust law is no law at all.”

Civil disobedience has more recently been used by environmental activists. For example, the group Greenpeace – now one of the most well-known and successful environmentalist groups – began campaigning against environmental degradation in 1971, when a small boat of volunteers and journalists sailed into Amchitka, an area north of Alaska where the US government was conducting underground nuclear tests to “bear witness” to the tests. To date, one component of Greenpeace’s strategy remains “high-profile, non-violent conflict to raise the level and quality of public debate”.

Direct Action by Roma

Some Romani activists in Europe have resorted to direct action methods. In the late 1980s and early 1990s, the Hamburg-based non-governmental organisation *Roma National Congress* organised a grassroots movement of several thousand Roma, primarily in western Germany, to resist their threatened expulsion to, first, Yugoslavia and then, after that state collapsed, its successor states. During one period of the broad grassroots action, *Roma National Congress* activists, Roma threatened with expulsion and various sympathisers marched for one month from regional capital to regional capital in western Germany, appealing for what they formulated as “the right of stay”: The right to remain in Germany and not be forcibly removed. The protest was one of the high points of the Romani movement to date, in that *Roma National Congress* activists successfully rallied Roma to fight for their rights in the face of intense pressure by German authorities to comply with expulsion orders. In addition, the movement constitutes one of the most visible and coherent civic actions against the extremely restrictive anti-foreigner rules and practices prevailing then as now in Western Europe and presently being adopted in Central and Eastern Europe.

In November 1990, members of *Roma National Congress* and several hundred Roma from the former Yugoslavia attempted to cross the Swiss-German frontier into Switzerland in the German state of Baden-Württemberg in several coaches. The Roma in the coaches were, in most cases, citizens of the former Yugoslavia who had had requests for asylum in Germany rejected by German authorities. The group intended to go directly to the offices of the United Nations High Commissioner for Refugees (UNHCR) in Geneva and request asylum there. Since most of the persons concerned had been refused asylum status in Germany, however, they were refused entry into Switzerland. Mr Rudko Kawczynski, head of *Roma National Congress*, and several colleagues were however, admitted to Switzerland and proceeded alone to the UNHCR office, leaving the coaches and the approximately 300 Roma at the Swiss-German frontier, blocking 1 lane of the border crossing. Police in the town of Lörrach charged Mr Kawczynski (and no one else from the group) with “coercion” (*Nötigung*) – roughly the equivalent of “disturbing the peace” in English – for partially obstructing the border crossing (or for being responsible for a group which partially obstructed the border crossing). After Mr Kawczynski was found guilty as charged, the case was appealed several times and was finally brought before the German Constitutional Court in 1994, where it has remained until today. Mr Kawczynski was ordered to begin serving a 50-day sentence, but has appealed the decision.

Direct Action in a Globalising World

The increasing interconnection of the world has brought about new possibilities and strategies for action. The most obvious new factor is probably the Internet, which has brought together people and communities all over the world and greatly reduced the barriers to communication world-wide. Romani activists have been very active users of the Internet and much of the Roma rights movement today takes place in cyberspace. Many of the recent protest actions by Romani activists have been, first and foremost, Internet-based actions.

The increasing interconnection of the world has brought about new possibilities and strategies for action

But the Internet is not the only new element brought to human rights action by globalisation. The increasing interconnectedness of the world economy means that injustice can be fought through economic sanctions. For example, many people attribute the collapse of the racist Apartheid regime in South Africa to the impact of the so-called “divestment” movement in the 1980s, during which activists successfully put pressure on international companies and governments around the world to persuade them not to invest in South Africa and to withdraw existing investments there. The resulting impact on South Africa’s economy was one of the main factors which ultimately convinced the South African government to begin negotiating a peaceful transition from white supremacist rule to democracy.

Justice

Direct action – like all action – is most powerful and is most likely to garner broad and durable public support if it is rooted, and is seen to be, rooted in justice. There are millions of Roma in Europe. This is a potentially very powerful base for action. However, the Roma rights movement is unlikely to be successful if it does not appeal to, and ground itself in, a broad-based appeal to justice. There are powerful reasons why many feel deep sympathy for the Roma rights movement: Oppression is abhorrent; many are moved to assist others in pursuing dignity, particularly where degradation has been brought about by long-term injustice. The situation of Roma in Europe today is the result of long-term oppression on racist grounds in Europe. This fact makes Roma rights an issue – a justice issue – for all Europeans. Roma can and should build the justice roots of the Roma rights movement also by acting on behalf of oppressed others: Men on behalf of women, heterosexuals on behalf of homosexuals, citizens on behalf of non-citizens, etc. This is first and foremost a requirement above and beyond any pragmatic or real political considerations; it is a moral requirement. It is, however, also good politics: Roma rights activists begin from a position of numerical strength which can only be heightened through common cause and human solidarity.

Endnotes

- ¹ Gandhi coined the term “satyagraha” to signify his theory and practice of non-violent resistance. Gandhi was to describe himself preeminently as a votary or seeker of “satya” (truth), which could not be attained other than through “ahimsa” (non-violence, love) and “brahmacharya” (celibacy, striving towards God). Gandhi variously characterised Satyagraha (truth-force) as: “A law of universal application”; “a relentless search for truth and a determination to search truth”; “a process of educating public opinion, such that it covers all the elements of the society and makes itself irresistible”; and “an effective substitute for violence”.
- ² This section is adapted from *The Salt March To Dandi*. Available at: <http://eee.emory.edu/ENGLISH/Bahri/Dandi.html>.
- ³ Detailed information on the salt Satyagraha is available at: http://www.mkgandhi.org/Civil%20Disobedience/salt_tax.htm.

Knowing Your Rights and Fighting for Them

Appendices

A Guide for Romani Activists

Appendices

Universal Declaration of Human Rights

Knowing Your Rights and Fighting for Them

UNIVERSAL DECLARATION OF HUMAN RIGHTS¹

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21.

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Endnote

¹ Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

Appendices

International Convention on the Elimination of All Forms of Racial Discrimination

Knowing Your Rights and Fighting for Them

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION¹

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

Part I

Article 1

1. In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.
4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such

groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:
 - a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
 - b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
 - c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
 - d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
 - e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.
2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or

promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- a) The right to equal treatment before the tribunals and all other organs administering justice;
- b) The 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;
- c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- d) Other civil rights, in particular:
 - i. The right to freedom of movement and residence within the border of the State;
 - ii. The right to leave any country, including one's own, and to return to one's country;
 - iii. The right to nationality;
 - iv. The right to marriage and choice of spouse;
 - v. The right to own property alone as well as in association with others;
 - vi. The right to inherit;
 - vii. The right to freedom of thought, conscience and religion;
 - viii. The right to freedom of opinion and expression;
 - ix. The right to freedom of peaceful assembly and association;

- e) Economic, social and cultural rights, in particular:
 - i. The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
 - ii. The right to form and join trade unions;
 - iii. The right to housing;
 - iv. The right to public health, medical care, social security and social services;
 - v. The right to education and training;
 - vi. The right to equal participation in cultural activities;
- f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

Part II

Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5.
 - a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee;
 - b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties. (amendment (see General Assembly resolution 47/111 of 16 December 1992);)

Article 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention:
 - a) within one year after the entry into force of the Convention for the State concerned; and
 - b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.
2. The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties

Article 10

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.

3. The secretariat of the Committee shall be provided by the Secretary General of the United Nations.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.
3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.
4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.
5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

Article 12

1.
 - a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;
 - b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.
2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.
5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.
6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.
8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

Article 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.
2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.
3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

Article 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph I of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.
3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.
4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.
5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.
6.
 - a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications;
 - b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
7.
 - a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged;
 - b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.
8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph I of this article.

Article 15

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.
2.
 - a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies;
 - b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in subparagraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.
3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.
4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

Article 16

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Part III

Article 17

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 18

3. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention. 2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.
2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

Article 21

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary General.

Article 22

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

Article 23

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 24

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

- a) Signatures, ratifications and accessions under articles 17 and 18;
- b) The date of entry into force of this Convention under article 19;
- c) Communications and declarations received under articles 14, 20 and 23;
- d) Denunciations under article 21.

Article 25

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.

Endnote

- ¹ Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965. Entry into force 4 January 1969, in accordance with Article 19

Appendices

The European Convention for the Protection of Human Rights and Fundamental Freedoms

Knowing Your Rights and Fighting for Them

THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS¹

The Governments signatory hereto, being Members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members and that one of the methods by which the aim is to be pursued is the maintenance and further realization of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those Fundamental Freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law to take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration;

Have agreed as follows:

Article 1

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Section I

Article 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a) in defence of any person from unlawful violence;
 - b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained;
 - c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term 'forced or compulsory labour' shall not include:
 - a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - b) any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;
 - c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - d) any work or service which forms part of normal civic obligations.

Article 5

1. Everyone has the right to liberty and security of person.

No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- a) the lawful detention of a person after conviction by a competent court;
- b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;

- f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him.
 3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 6

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - b) to have adequate time and the facilities for the preparation of his defence;
 - c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection

of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14

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

Article 15

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons

therefor. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 16

Nothing in Articles 10, 11, and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction on any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Protocol No. 1

Enforcement of certain Rights and Freedoms not included in Section I of the Convention

The Governments signatory hereto, being Members of the Council of Europe,
Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November, 1950 (hereinafter referred to as 'the Convention'),

Have agreed as follows:

Article 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.

Article 3

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Article 4

Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary-General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory. A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 63 of the Convention.

Article 5

As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional articles to the convention and all the provisions of the Convention shall apply accordingly.

Article 6

This Protocol shall be open for signature by the Members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary-General of the Council of Europe, who will notify all the Members of the names of those who have ratified.

Done at Paris on the 20th day of March 1952, In English and French, both text being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the signatory Governments.

Protocol No. 4

Protecting certain additional rights

The Governments signatory hereto, being Members of the Council of Europe,
Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as 'the Convention') and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20 March 1952,

Have agreed as follows:

Article 1

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

Article 2

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety for the maintenance of 'ordre public', for the prevention of crime, for the protection of rights and freedoms of others.
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Article 3

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.
2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

Article 4

Collective expulsion of aliens is prohibited.

Article 5

1. Any High Contracting Party may, at the time of signature or ratification of this Protocol, or at any time thereafter, communicate to the Secretary-General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of this Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.
2. Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may, from time to time, communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of territory.
3. A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 63 of the Convention.
4. The territory of any State to which this Protocol applies by virtue of the ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.

Article 6

1. As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional articles to the convention, and all the provisions of the Convention shall apply accordingly.
2. Nevertheless, the right of individual recourse recognized by a declaration made under Article 25 of the convention, or the acceptance of the compulsory jurisdiction of the court by a declaration made under Article 46 of the convention, shall not be effective in relation to this Protocol unless the High Contracting Party concerned has made a statement recognizing such a right, or accepting such jurisdiction, in respect of all or any of Articles 1 to 4 of the Protocol.

Article 7

1. This Protocol shall be open for signature by the members of the Council of Europe who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of five instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

2. The instruments of ratification shall be deposited with the Secretary-General of the Council of Europe, who will notify all members of the names of those who have ratified.

In witness thereof, the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Strasbourg, this 16th day of September 1963, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the signatory States.

Prorocol No. 6

Concerning the abolition of the death penalty

The member States of the Council of Europe, signatory to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as „the Convention”),

Considering that the evolution that has occurred in several member States of the Council of Europe expresses a general tendency in favour of abolition of the death penalty,

Have agreed as follows:

Article 1

The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.

Article 2

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

Article 3

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 4

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 5

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.

Article 6

As between the States Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

Article 7

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 8

1. This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

Article 9

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a) any signature;
- b) the deposit of any instrument of ratification, acceptance or approval;

- c) any date of entry into force of this Protocol in accordance with Articles 5 and 8;
- d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 28th day of April 1983, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 7

The member States of the Council of Europe signatory hereto,
 Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as „the Convention”),

Have agreed as follows:

As amended by Protocol No. 11

Article 1

1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:
 - a) to submit reasons against his expulsion,
 - b) to have his case reviewed, and
 - c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.
2. An alien may be expelled before the exercise of his rights under paragraph 1.a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

Article 2

1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

Article 3

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Article 4

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
3. No derogation from this Article shall be made under Article 15 of the Convention.

Article 5

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

Article 6

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which the Protocol shall apply and state the extent to which it undertakes that the provisions of this Protocol shall apply to such territory or territories.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the

month following the expiration of a period of two months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of two months after the date of receipt of such notification by the Secretary General.
4. A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.
5. The territory of any State to which this Protocol applies by virtue of ratification, acceptance or approval by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, may be treated as separate territories for the purpose of the reference in Article 1 to the territory of a State.
6. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of Articles 1 to 5 of this Protocol.

Article 7

Chart of Declarations under former paragraph 2 of this article

As between the States Parties, the provisions of Articles 1 to 6 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 8

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 9

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 8.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 10

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- a) any signature;
- b) the deposit of any instrument of ratification, acceptance or approval;
- c) any date of entry into force of this Protocol in accordance with Articles 6 and 9;
- d) any other act, notification or declaration relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 22nd day of November 1984, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 12

The member States of the Council of Europe signatory hereto,

Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;

Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as „the Convention”);

Reaffirming that the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures,

Have agreed as follows:

Article 1

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Article 2

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General of the Council of Europe. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.
4. A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.
5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention in respect of Article 1 of this Protocol.

Article 3

As between the States Parties, the provisions of Articles 1 and 2 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 4

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of

Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 5

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 4.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 6

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- a) any signature;
- b) the deposit of any instrument of ratification, acceptance or approval;
- c) any date of entry into force of this Protocol in accordance with Articles 2 and 5;
- d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Rome, this 4th day of November 2000, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Endnote

- ¹ Only the substantive articles of the Convention and its Protocols have been included here. The full text of the Convention is available at: <http://conventions.coe.int/treaty/en/WhatYouWant..asp?NT=005>.

Appendices

European Council Directive 2000/43 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin

Knowing Your Rights and Fighting for Them

**EUROPEAN COUNCIL DIRECTIVE 2000/43
IMPLEMENTING THE PRINCIPLE OF EQUAL TREATMENT
BETWEEN PERSONS
IRRESPECTIVE OF RACIAL OR ETHNIC ORIGIN**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 13 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the Opinion of the European Parliament²,

Having regard to the Opinion of the Economic and Social Committee³,

Having regard to the Opinion of the Committee of the Regions⁴,

Whereas:

- (1) The Treaty on European Union marks a new stage in the process of creating an ever closer union among the peoples of Europe.
- (2) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States, and should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community Law.
- (3) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination and the United Nations

¹ *OJC*

² Opinion delivered on 18 May 2000 (not yet published in the *Official Journal*).

³ Opinion delivered on 12 April 2000 (not yet published in the *Official Journal*).

⁴ Opinion delivered on 31 May 2000 (not yet published in the *Official Journal*).

Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories.

- (4) It is important to respect such fundamental rights and freedoms, including the right to freedom of association. It is also important, in the context of the access to and provision of goods and services, to respect the protection of private and family life and transactions carried out in this context.
- (5) The European Parliament has adopted a number of Resolutions on the fight against racism in the European Union.
- (6) The European Union rejects theories which attempt to determine the existence of separate human races. The use of the term “racial origin” in this Directive does not imply an acceptance of such theories.
- (7) The European Council in Tampere, on 15 and 16 October 1999, invited the Commission to come forward as soon as possible with proposals implementing Article 13 of the EC Treaty as regards the fight against racism and xenophobia.
- (8) The Employment Guidelines 2000 agreed by the European Council in Helsinki, on 10 and 11 December 1999, stress the need to foster conditions for a socially inclusive labour market by formulating a coherent set of policies aimed at combating discrimination against groups such as ethnic minorities.
- (9) Discrimination based on racial or ethnic origin may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity. It may also undermine the objective of developing the European Union as an area of freedom, security and justice.
- (10) The Commission presented a Communication on Racism, Xenophobia and Anti-Semitism in December 1995.
- (11) The Council adopted on 15 July 1996 Joint Action (96/443/JHA) concerning action to combat racism and xenophobia⁵ under which the Member States undertake to ensure effective judicial cooperation in respect of offences based on racist or xenophobic behaviour.
- (12) To ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, specific action in the field of discrimination based on racial or ethnic origin should go beyond access to employed and self-employed activities and cover areas such as education, social protection including social security and healthcare, social advantages and access to and supply of goods and services.

⁵ O/L 185, 24.7.1996, p.5.

- (13) To this end, any direct or indirect discrimination based on racial or ethnic origin as regards the areas covered by this Directive should be prohibited throughout the Community. This prohibition of discrimination should also apply to nationals of third countries, but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and to occupation.
- (14) In implementing the principle of equal treatment irrespective of racial or ethnic origin, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.
- (15) The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide in particular for indirect discrimination to be established by any means including on the basis of statistical evidence.
- (16) It is important to protect all natural persons against discrimination on grounds of racial or ethnic origin. Member States should also provide, where appropriate and in accordance with their national traditions and practice, protection for legal persons where they suffer discrimination on grounds of the racial or ethnic origin of their members.
- (17) The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular racial or ethnic origin, and such measures may permit organisations of persons of a particular racial or ethnic origin where their main object is the promotion of the special needs of those persons.
- (18) In very limited circumstances, a difference of treatment may be justified where a characteristic related to racial or ethnic origin constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. Such circumstances should be included in the information provided by the Member States to the Commission.
- (19) Persons who have been subject to discrimination based on racial and ethnic origin should have adequate means of legal protection. To provide a more effective level of protection, associations or legal entities should also be empowered to engage, as the Member States so determine, either on behalf or in support of any victim, in proceedings, without prejudice to national rules of procedure concerning representation and defence before the courts.
- (20) The effective implementation of the principle of equality requires adequate judicial protection against victimisation.
- (21) The rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought.

- (22) Member States need not apply the rules on the burden of proof to proceedings in which it is for the court or other competent body to investigate the facts of the case. The procedures thus referred to are those in which the plaintiff is not required to prove the facts, which it is for the court or competent body to investigate.
- (23) Member States should promote dialogue between the social partners and with non-governmental organisations to address different forms of discrimination and to combat them.
- (24) Protection against discrimination based on racial or ethnic origin would itself be strengthened by the existence of a body or bodies in each Member State, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims.
- (25) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.
- (26) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.
- (27) The Member States may entrust management and labour, at their joint request, with the implementation of this Directive as regards provisions falling within the scope of collective agreements, provided that the Member States take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive.
- (28) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the EC Treaty, the objective of this Directive, namely ensuring a common high level of protection against discrimination in all the Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the proposed action, be better achieved by the Community. This Directive does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General Provisions

Article 1

Purpose

The purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment.

Article 2

Concept of Discrimination

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.
2. For the purposes of paragraph 1:
 - (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;
 - (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.
4. An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1.

Article 3

Scope

1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

- (a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
 - (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
 - (c) employment and working conditions, including dismissals and pay;
 - (d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
 - (e) social protection, including social security and healthcare;
 - (f) social advantages;
 - (g) education;
 - (h) access to and supply of goods and services which are available to the public, including housing.
2. This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

Article 4

Genuine and Determining Occupational Requirements

Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to racial or ethnic origin shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

Article 5

Positive Action

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.

Article 6

Minimum Requirements

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.
2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

CHAPTER II Remedies and Enforcement

Article 7

Defence of Rights

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.
2. Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.
3. Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.

Article 8

Burden of Proof

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.
2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

3. Paragraph 1 shall not apply to criminal procedures.
4. Paragraphs 1, 2 and 3 shall also apply to any proceedings brought in accordance with Article 7(2).
5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.

Article 9

Victimisation

Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.

Article 10

Dissemination of Information

Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by all appropriate means throughout their territory.

Article 11

Social Dialogue

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.
2. Where consistent with national traditions and practice, Member States shall encourage the two sides of the industry without prejudice to their autonomy to conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and the relevant national implementing measures.

Article 12

Dialogue with Non-Governmental Organisations

Member States shall encourage dialogue with appropriate non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of racial and ethnic origin with a view to promoting the principle of equal treatment.

CHAPTER III

Bodies for the Promotion of Equal Treatment

Article 13

1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.
2. Member States shall ensure that the competences of these bodies include:
 - without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
 - conducting independent surveys concerning discrimination,
 - publishing independent reports and making recommendations on any issue relating to such discrimination.

CHAPTER IV

Final Provisions

Article 14

Compliance

Member States shall take the necessary measures to ensure that:

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
- (b) any provisions contrary to the principle of equal treatment which are included in individual or collective contracts or agreements, internal rules of undertakings, rules governing profit-making or non-profit-making associations, and rules governing the independent professions and workers' and employers' organisations, are or may be declared, null and void or are amended.

Article 15

Sanctions

Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Com-

mission by* at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 16

Implementation

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by* or may entrust management and labour, at their joint request, with the implementation of this Directive as regards provisions falling within the scope of collective agreements. In such cases, Member States shall ensure that by*, management and labour introduce the necessary measures by agreement, Member States being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 17

Report

1. Member States shall communicate to the Commission by** and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.
2. The Commission's report shall take into account, as appropriate, the views of the European Monitoring Centre on Racism and Xenophobia, as well as the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender mainstreaming, this report shall, inter alia, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

Article 18

Entry into Force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

* Three years after the entry into force of this Directive.

** Five years after the entry into force of this Directive.

Article 19

Addressees

This Directive is addressed to the Member States.

Done at

For the Council
The President

Appendices

Selected Bibliography

Knowing Your Rights and Fighting for Them

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Appendices

Important and Useful Links

Knowing Your Rights and Fighting for Them

IMPORTANT AND USEFUL LINKS

Intergovernmental Organisations

United Nations (UN)	www.un.org
Council of Europe (CoE)	www.coe.int
Organization for Security and Co-operation in Europe (OSCE)	www.osce.org
European Union (EU)	www.europa.eu.int
European Court of Human Rights (ECHR)	www.echr.coe.int
Office of the High Commissioner for Human Rights (OHCHR)	www.ohchr.org
OSCE Contact Point for Roma and Sinti Issues	www.osce.org/odihr/cprsi
European Commission Against Racism and Intolerance	www.coe.int/ecri
European Monitoring Centre for Racism (EUMC)	www.eumc.eu.int/eumc

Nongovernmental Organisations

Amnesty International (AI)	www.amnesty.org
Centre on Housing Rights and Evictions (COHRE)	www.cohre.org
European Centre for Minority Issues (ECMI)	www.ecmi.de
European Roma Rights Center (ERRC)	www.errc.org
Human Rights Internet (HRI)	www.hri.ca
Human Rights Watch (HRW)	www.hrw.org
Interights	www.interights.org
Legal Defence Bureau for National and Ethnic Minorities (NEKI)	www.neki.hu
Milan Šimečka Foundation (MSF)	www.nadaciamilanasimecku.sk
Minority Rights Group (MRG)	www.minorityrights.org
Open Society Institute (OSI)	www.soros.org
Open Society Justice Initiative (OSJI)	www.justiceinitiative.org

Public Interest Law Initiative (PILI)	www.pili.org
Roma Participation Program (RPP – part of OSI)	www.soros.org/initiatives/roma/focus_areas/rpp
Roma Press Centre (RSK)	www.romapage.hu
Romani Criss	www.romanicriss.ro

Also Useful...

Legislationline.org – a joint initiative of the European Union and OSCE Office for Democratic Institutions and Human Rights (ODIHR) – is a free-of-charge online database containing national and international legislation related to the protection of human rights and the rule of law.

www.legislationline.org

Appendices

Glossary

GLOSSARY

Acronyms

CAT	Committee Against Torture
CEDAW	Committee on the Elimination of Racial Discrimination
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social, and Cultural Rights
CoE	Council of Europe
CRC	Convention on the Rights of the Child
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ERRC	European Roma Rights Center
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
IGO	Intergovernmental Organisation
NGO	Non-governmental Organisation
OSCE	Organization for Security and Cooperation in Europe
UDHR	Universal Declaration on Human Rights
UN	United Nations

1503 Procedure: A non-treaty mechanism at the United Nations which allows people to write direct petitions to the Human Rights Commission for the investigation of patterns of human rights violations.

Acts of commission: Acts of commission are acts taken deliberately by the state against a person or group of people. An example of an act of commission is the forced eviction of individuals from their homes.

Acts of omission: Acts of omission are the state's failure to act, intervene and/or legislate, resulting in the violation of a person or group's human rights. Examples are failing to provide infrastructure and basic services such as water, electricity and sewage to certain communities.

Administrative proceedings: Administrative proceedings usually involve complaints against those state organs/bodies that are authorised by the law to perform administrative duties, such as municipalities, local councils, state owned companies, etc. Such procedures do not always take place in front of a judge and are often a way of making available procedures for which formal law suits, with their range procedural guarantees, would be out-of-proportion to the matter at issue.

Assimilation: Assimilation policies try to force a minority to become like the “mainstream” majority population or culture. This is done through coercive policies that attempt to “civilise” the minority group. Although such policies are frequently (though not always) justified with the intention of bettering or benefiting the minority, assimilationist policies are ethnocentric and paternalistic and aim to decimate the minority culture.

Civil disobedience: This action seeks to change a policy or law by refusing to comply with it. Acts of civil disobedience are deliberate, open and peaceful refusals to obey laws that are regarded as unjust. Civil disobedience may be practiced by individuals, groups or masses of people and advocates non-violently breaking the law in order to press claims.

Civil proceedings: These proceedings are based on a countries civil code, common law and/or provisions of the law on the obligations. In civil proceedings, an individual may receive court ordered financial compensation paid by the responsible party and different forms of injunctive relief.

Coalition: Coalitions seek to create a union of diverse groups and individuals into one group seeking a common goal. The coalition can have individual, group, institutional, community and public policy goals.

Consultative status: Organisations are often given status by other IGOs or NGOs where the organisations can provide technical expertise to, advise and consultat with the IGO or NGO. Such a status is called “consultative status”.

Convention: A binding agreement between states; used synonymously with Treaty and Covenant. Conventions are legally binding for states that have ratified them. When the UN General Assembly adopts a convention, it creates international norms and standards.

Criminal proceedings: Those who have suffered abuse by a public official (be that police or other state representative) or have been the victim of a violent crime committed by a non-state actor (including a racially motivated violent crime) can make a criminal complaint to the police or public prosecutor. Criminal proceedings aim to punish the offender for the crime committed.

Declaration: A document stating agreed upon standards, but which is not legally binding. These are important political and moral commitments made by states.

De Facto: Latin for “in fact”, “in deed”, or “actually”. Often used in place of “actual” to show that the court will treat as a fact, authority being exercised or an entity acting as if it had authority, even though the legal requirements have not been met. In the context of school segregation, “de facto” refers to segregation being a fact, however, not having been generated from a conscious government action and having no government policy stipulating segregation.

De Jure: Latin for “lawful” and often used in the place of rightful, legitimate or constitutional. It is usually used to mean “stipulated by law” or “under law”.

Direct action: Direct action on human rights issues involves public and often collective action by individuals and groups to challenge human rights abuses and bring about social change and respect for human rights.

Direct discrimination: Direct discrimination has occurred “where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin”. An example might be an employment office which, as a matter of policy, refuses to accept Romani job applicants or a housing office, which by intention and design assigns Roma sub-standard housing.

Discrimination: Discrimination can be defined as treating one person or group as separate, superior or inferior to another based on arbitrary criteria such as race, colour, sex, language, religion, political opinion or national or social origin.

Exclusion: These policies or practices seek to exclude or segregate minorities in aspects of economic, political, socio-cultural life as well as in physical geography. Policies and practices of exclusion are generally protectionist and based upon xenophobic assumptions, attempting to “protect” the majority population from the dangerous “other” group. This results in social exclusion. Examples of exclusionary policies toward Roma include the educational segregation of Romani children in schools for the mentally disabled or other substandard schooling arrangements in a number of countries in Europe.

Executive summary: The executive summary of a report is often an optional inclusion. It may include an overview of the research and work conducted by the organisation, including patterns discovered through monitoring.

Exhaustion of domestic remedies: This requires the use of all available procedures to seek protection from human rights violations and to obtain justice for abuses. Access to international enforcement mechanisms is as a last resort, after the State has failed to correct a violation or to carry out justice. Local remedies can range from making a case in court to lodging a complaint with local police.

Human rights advocacy: Human rights advocacy is a course of strategic actions and mobilisation aimed at changing behaviour, cultural attitudes, relationships and policies affecting social institutions based on thorough research and documentation of an issue. It identifies issues and brings them to the public political consciousness for the purpose of social change. It is an action in the public interest.

Human rights documentation: Human rights documentation is a blanket term that refers to the gathering of information on human rights standards, abuses, issues, themes or any other topic related to human rights.

Human rights: All people possess certain rights from birth, simply because they are human beings, which are known as human rights. Human rights are universal, belonging equally to all human beings regardless of age, race, ethnicity, gender, sexual orientation, political beliefs, religion, national or social origin, language, property, birth or any other external factor. Human rights are inherent. They do not have to be bought, earned or inherited. Human rights are inalienable and can not be taken away, given up or transferred. Human rights are interdependent. The violation of one right affects the enjoyment of others. They are interconnected, indivisible and all equally essential to protect human dignity.

Indirect discrimination: Indirect discrimination occurs “where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”. Examples might be a department store that states that no persons with long skirts may enter the store or a government office that prohibits entry by persons with covered heads. These rules, though neutral on their face as to ethnicity, in fact may disproportionately disadvantage members of certain minority groups that have a tendency to wear long skirts or headscarves.

Informed consent: This involves making sure that when an individual consents to something, such as submitting a complaint to an official body, they are fully informed of both the potential benefits and negative consequences of the proposed course of action. Genuine risks should never be concealed and consent must be freely given.

Integration: Integration policies aim to bring individuals into society as full members, while respecting individual rights, including cultural rights.

Investigation: Investigation consists of gathering information about events (i.e. elections and trials) and incidents (i.e. individual cases of police violence), visiting sites where human rights violations may be occurring (i.e. refugee camps or detention centres) and/or checking facts with and requesting information from governing authorities.

Litigation: Litigation is the act or process of carrying on a legal dispute or lawsuit. It generally consists of a legal proceeding in a court to determine and enforce legal rights.

Lobbying: Lobbying is an advocacy strategy used by activists. It attempts to influence legislation by influencing the opinion of legislators, legislative staff and government administrators directly involved in drafting legislative proposals.

Minority rights: Policies that support minority rights grant certain protection for minorities as a group. This means that minority group members are entitled to their universally guaranteed individual human rights, as well as certain protections that flow from their status as members of a minority group. These ‘special rights’ are not privileges, but measures adopted to make it possible for minority groups to preserve their identity, characteristics and traditions.

Negative rights: According to some theories of human rights, negative rights are those rights that do not require an action for their fulfilment. Negative rights are fulfilled only with the absence of action. Examples of negative rights include the right to life, freedom from torture and freedom of expression. A person is free to enjoy these rights until someone (or some force) violates them.

Networking: This action encompasses developing allies amongst other NGOs, grassroots movements, political sympathisers, leaders, experts and academics and contributes to the movement you support and strengthens your work.

Positive rights: According to some theories of human rights, positive rights are those rights which require a positive action to be taken by another party in order for the right to be realised. Some rights cannot be realised without the engagement of others – a responsibility that generally falls upon governments. Governments are required to take positive measures to fulfil certain rights obligations. Examples of positive rights include the right to education and the right to health. Without government intervention and the establishment of certain institutions (i.e. schools and hospitals), these rights could not be realised.

Protocol: A treaty that modifies another treaty (e.g., adding procedures or substantive provisions).

Public demonstrations: A public demonstration is a gathering or public action aimed at informing the public and relaying a message. This may be a message of the need for change and social justice or the commemoration of an event. The International Covenant on Civil and Political Rights guarantees freedom of expression (Article 19) and the right of peaceful assembly (Article 21). The European Convention for the Protection of Human Rights and Fundamental Freedoms includes similar guarantees at Articles 10 and 11.

Racism: Racial discrimination – especially direct racial discrimination – is based on or underpinned by prejudices and stereotypes about certain groups and on the belief that race is the primary factor determining human traits and abilities. Commonly known as racism, this belief purports that genetic or inherited differences produce the inherent superiority or inferiority of one race over another.

Reservation: An assertion, entered by the state when ratifying a treaty, which indicates the wishes of the state not to be bound by specific provisions of the treaty.

Segregation: Segregation is the policy or practice of separating people of different races, classes or ethnic groups in schools, housing and public or commercial facilities.

Shadow reports: During the review process of states by treaty bodies, the committee reviews, questions state representatives and issues comments based on their findings regarding state compliance with the relevant treaty. NGOs can submit what are called “shadow reports” to the committee concerned, either detailing a specific issue or outlining patterns of human rights violations which are incompatible with treaty provisions. The submission of shadow reports helps the body reach accurate conclusions, prompts questions, makes recommendations, etc.

Special rapporteurs: These are independent experts in areas of human rights concern who report their findings to the Human Rights Commission annually.

Strategic litigation: Strategic litigation is a legal action in the service of social change. It seeks to bring about a change in social reality through the use of the law. Strategic litigation combats systemic injustices.

“Testing” (to prove racial discrimination): Testing is a technique that is used to collect evidence when there is an allegation of discrimination. Testing is used mainly by civil rights organisations to uncover unlawful acts of discrimination. It is applied if a member of a protected group suspects disparate treatment on grounds of his or her national origin, religion, gender, the colour of his or her skin, or other characteristics covered by legal prohibitions on discrimination.

Travellers: Travellers are a group of people living mainly in Great Britain and Ireland facing similar discrimination as Roma elsewhere in Europe and, as such, are frequently grouped with Roma in the international framework.

Treaty bodies: A committee of independent experts who monitor the implementation of the human rights provisions of treaties. The committee members are nominated and elected by states that have ratified the treaty.

Working groups: Working groups are committees within the United Nations human rights framework that look into specific issues and respond quickly through letters to the government in question requesting answers about accusations of human rights violations.

Xenophobia: Xenophobia is the fear of strangers or foreigners and is often manifested through rejection, hostility or violence against a certain targeted group.