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# Preface

The **EU Accession Monitoring Program (EUMAP)** was initiated in 2000 to support independent monitoring of the EU accession process. More specifically, and in keeping with the broader aims of the Open Society Institute, EUMAP has focused on governmental compliance with the political criteria for EU membership, as defined by the 1993 Copenhagen European Council:

Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, human rights, the rule of law and respect for and protection of minorities.

EUMAP reports are elaborated by independent experts from the States being monitored. They are intended to promote responsible and sustainable enlargement by highlighting the significance of the political criteria and the key role of civil society in promoting governmental compliance with those criteria – up to and beyond accession.

In 2001, EUMAP published its first two volumes of monitoring reports, on minority protection and judicial independence in the ten candidate countries of Central and Eastern Europe. In 2002, new and more detailed minority reports (including reports on the five largest EU member States) have been produced, as well as reports on judicial capacity, corruption and – in cooperation with OSI's Network Women's Program/Open Society Foundation Romania – on equal opportunities for women and men in the CEE candidate States.

EUMAP 2002 reports on minority protection and the implementation of minority protection policies point to areas in which minorities appear to suffer disadvantages or discrimination, and assess the efficacy of governmental efforts to address those problems. The reports offer independent analysis and evaluation, policy assessment and recommendations.

EUMAP methodologies for monitoring minority protection in 2001 and 2002 (available at [www.eumap.org](http://www.eumap.org)) were developed by EUMAP with input from an international advisory board. The case study methodology used in five EU member States (France, Germany, Italy, Spain, and the United Kingdom) provides for a broad survey of the legislation and institutions for minority protection, drawing on existing research, statistical data, and surveys on minority issues in conjunction with interviews carried out by country reporters to assess the situation of one vulnerable minority group.

The policy assessment methodology used in the CEE candidate States provides for an evaluation of the special programmes these States have adopted to ensure protection of vulnerable minority groups and to promote their integration into society. The Reports assess the background to and process of developing these policies, as well as their content and the extent to which they have been implemented.

First drafts of each report were reviewed by members of the international advisory board and at national roundtables. These were organised in order to invite comments on the draft from Government officials, civil society organisations, minority representatives, and international organisations. The final reports reproduced in this volume underwent significant revision based on the comments and criticisms received during this process. EUMAP assumes full responsibility for their final content.

# Foreword

Minority protection has been a concern of the Organization for Security and Co-operation in Europe (OSCE) since the conclusion of the historic Helsinki Accords in 1975. Since its inception, monitoring respect for the Accords and for the human and minority rights commitments undertaken by OSCE Member States in successive OSCE Documents has been key to its mission. OSCE ODIHR, including the Contact Point for Roma and Sinti Issues, has engaged in case by case monitoring across the OSCE region, combining fact-finding with practical advice in shaping governmental policies for Roma.

The adoption of the Copenhagen criteria by the EU in 1993, which included “respect for and protection of minority rights,” *inter alia*, opened another chapter in minority rights protection in Europe. With the adoption of the Copenhagen criteria, the EU joined the OSCE, the Council of Europe, and other international organisations in the endeavour to articulate the content of minority rights, and to press States to respect those rights in practice.

Although the European Union is only one segment of the OSCE framework, it is nevertheless an extremely important segment, with capacity to influence the development of policies far beyond its political borders. Thus there is a critical need to streamline the EU’s own standards and practices, and monitoring is an optimal tool to this end.

The monitoring activity initiated by EU Accession Monitoring Program (EUMAP) of the Open Society Institute in 2000 is implemented in the spirit of the Helsinki Final Act. It encourages independent monitoring of governmental efforts to comply with the human rights principles to which they have expressed their adherence. Like OSCE commitments, EU candidate State commitments cannot be “met” once and for all; they must be revisited time and time again, and the role of independent, non-governmental monitors in ensuring that Governments remain honest in revisiting their commitments is key to the health of all democracies. Among EUMAP’s recommendations in its 2001 reports were the following:

- Make clear that the political criteria for membership in the European Union are applicable equally to candidates for EU accession and to EU member States.
- Undertake systematic monitoring of governmental policies and practices on a continuous basis throughout the EU and in the candidate States.

As revealed by EUMAP 2002 reports, which have taken up these recommendations by monitoring policies to protect Roma as well as the situation of Muslims and Roma in

five EU member States, there are new challenges to minority protection in Europe. Roma in EU member States face similar issues to those that have been highlighted in candidate States; member States must also find ways to affirm their commitment to protection of Muslim minorities, in the context of widespread anti-Muslim public sentiment and Islamophobia.

EU enlargement has drawn one step closer with the Commission's recommendation for the admission of ten new members, yet it is increasingly clear that enlargement will not in itself provide instant or easy solutions to the problems that Roma currently face in both candidate and member States. Indeed, as the OSCE has affirmed throughout its existence, and as EUMAP underlines through its reports, ongoing monitoring is more important than ever. It is the means by which international organisations can press States to honour their human rights commitments, by which States can ensure that public goods and benefits flow to all members of society; and by which citizens can hold their Governments to the highest standard of performance. I particularly welcome EUMAP's attempt actively to involve Roma, Muslims, Russian-speakers, and other minorities in monitoring State minority rights commitments; this is the only way to ensure that these commitments are judged to have been met in practice.

I welcome the EUMAP reports as a contribution to our joint efforts better to define and implement minority rights standards, and to the development of a culture of monitoring in Europe.

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# Monitoring the EU Accession Process: Minority Protection

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# Monitoring the EU Accession Process: Minority Protection

## 1. INTRODUCTION

*The European Union's one boundary is democracy and human rights. The Union is open only to countries which uphold basic values such as free elections, respect for minorities and respect for the rule of law.*<sup>1</sup>

This Overview and the accompanying country reports prepared by the EU Accession Monitoring Program (EUMAP) assess the state of minority protection in ten Central and Eastern European States seeking full membership in the European Union<sup>2</sup> and in five current member States.<sup>3</sup>

The geographical enlargement of the European Union has been accompanied by a parallel enlargement in the understanding of what the Union represents; from an essentially economic arrangement, the Union has evolved towards a political alliance based on common values. In the Community's foundational documents, there was little attention to fundamental rights or freedoms.<sup>4</sup> However, over time, and especially

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<sup>1</sup> *The Future of the European Union – Laeken Declaration*, available at: <[http://europa.eu.int/futurum/documents/offtext/doc151201\\_en.htm](http://europa.eu.int/futurum/documents/offtext/doc151201_en.htm)>, (accessed 19 September 2002).

<sup>2</sup> In these reports, the term “candidate States” refers to the ten States in which EUMAP has conducted monitoring – Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia – and do not include consideration of Malta or Cyprus; nor does it include consideration of Turkey. References to the situation in specific candidate States in this Overview are generally made without citation; full citations are included in the accompanying country reports.

<sup>3</sup> The situation of Roma in Germany and Spain, and the situation of Muslims in France, Italy, and the United Kingdom.

<sup>4</sup> “The founding Treaties contained no specific provisions on fundamental rights. The credit for gradually developing a system of guarantees for fundamental rights throughout the European Union has to go to the Court of Justice.” See <<http://europa.eu.int/scadplus/leg/en/lvb/a10000.htm>>, (accessed 5 October 2002).

in response to the demands of enlargement, the EU has increasingly articulated its aspiration to represent not only stability and prosperity, but also democratic values, culminating with the adoption of explicitly political criteria for membership at the Copenhagen Council in 1993, including “respect for and protection of minorities.”

The immediate consequence of the Copenhagen declaration was that candidate States have been required to demonstrate that they ensure minority protection in order to gain admission to the EU. This has led to intense scrutiny of the situation of vulnerable minorities in candidate States, and triggered considerable activity by candidate State Governments,<sup>5</sup> each of which has adopted a programme to improve the situation of minorities or to promote their integration into society. It has also led to the realisation that the EU’s own commitment to minority protection is insufficiently well-developed and inconsistently applied.

The accession process has thus done much to identify problems in thinking about the relationship of majorities to minorities, and to spur meaningful change. Yet the period of candidacy that marked the accession process is, for most States, coming to an end.

On the eve of enlargement, there is an urgent necessity to ensure that the momentum generated by the accession process is not lost. There are some indications that candidate State Governments have viewed their efforts to demonstrate compliance with the political criteria instrumentally, rather than as a genuine and permanent commitment. For example, a Bulgarian official recently observed that candidate State Governments “think in terms of closing chapters, not solving problems.”<sup>6</sup> Such attitudes must be answered definitively, and prior to admission; it must be made clear that compliance with basic democratic standards is more than a condition for entry; it is a condition of membership. This will inevitably require a different approach that focuses on the EU’s ability and willingness to maintain its focus on minority protection in the post-enlargement context.

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<sup>5</sup> “The most important result of enlargement is how the parliaments of the new member states have worked day and night to change their legislations, to protect minorities, to [provide] local democracy. This is the most important job of Europe.” Romani Prodi, speaking at the Council on Foreign Relations. R. McMahon, “EU: Membership Depends Primarily on Human Rights Criteria,” RFE-RL Reports, 14 January 2002. Available at <[www.rferl.org/nca/features/2002/01/14012002085048.asp](http://www.rferl.org/nca/features/2002/01/14012002085048.asp)>, (accessed 19 September 2002).

<sup>6</sup> OSI Roundtable Meeting, Sofia, May 2002. *Explanatory Note: OSI held roundtable meetings in each candidate and member State monitored to invite critique of its country reports in draft form. Experts present generally included representatives of the Government, minority groups, academic institutions, and non-governmental organisations.*

*Minority protection as a continuing condition of EU membership*

As EUMAP argued in its 2001 reports, a comprehensive approach to minority protection should consist of specialised legislation, institutions, and policies to ensure both protection from discrimination and promotion of minority identity.<sup>7</sup> In fact, such an approach has been reflected in the European Commission's Regular Reports on progress towards accession and in the statements of EU officials.<sup>8</sup> Moreover, EU institutions consistently underline the benefits of multiculturalism and diversity, values that imply a commitment to this approach.<sup>9</sup>

Yet even though this is clearly the EU's position, the standards for minority protection require clearer articulation. The Union has not matched the strength of its rhetorical commitment to democratic values and inclusiveness with a comprehensive clarification of the content of those values in policy and practice.

At a minimum, to make it clear that respect for and protection of minorities is a core EU value, the Copenhagen criteria – including “respect for and protection of minorities” – should be fully integrated into existing EU standards,<sup>10</sup> and stronger

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<sup>7</sup> See EU Accession Monitoring Program, *Monitoring the EU Accession Process: Minority Protection*, Open Society Institute, Budapest, September 2001, available at <<http://www.eumap.org>> (hereafter, *Minority Protection 2001*).

<sup>8</sup> In addition to the clear EU non-discrimination standards, Commission officials have alluded to EU reliance on international minority rights standards elaborated by the UN, The Council of Europe, and the Organization for Security and Co-operation in Europe (OSCE). For example, when asked to spell out the Copenhagen criteria's description of “respect for minorities,” a Commission representative answered that: “the Commission devotes particular attention to the respect for, and the implementation of, the various principles laid down in the Council of Europe Framework Convention for the Protection of National Minorities, including those related to the use of minority languages.” Answer given by Mrs. Reding on behalf of the Commission to written parliamentary question by MEP Nelly Maes, 15 May 2001 OJ C 261 E, 18 September 2001, p. 162.

<sup>9</sup> For example, one Commission representative stated that “respect for cultural and linguistic diversity is one of the cornerstones of the Union, now enshrined in Article 21 of the Charter of Fundamental Rights.” Written question E-3418/01 by Ionnis Marinos (PPE-DE) to the Commission 21 December 2001, C 147 E/174, Official Journal of the European Communities, 20 June 2002.

<sup>10</sup> The requirement to demonstrate “respect for and protection of minorities” is not matched in internal EU documents binding upon member States. Art. 6(1) of the Treaty on European Union (TEU) defines the principles “common to Member States” as “liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.” Art. 49 TEU makes clear that only a European state “which respects the principles set out in Article 6(1) may apply to become a member of the Union.” The EU Charter of Fundamental Rights and Freedoms does not mention minority rights explicitly.

mechanisms should be set in place to monitor compliance with human and minority rights standards by all EU member States.<sup>11</sup>

Beyond this, EUMAP member State reports reveal that the EU framework for minority protection is itself in need of reinforcement and review. First, despite its clear declaration at Copenhagen concerning the obligations on *new* candidates for membership, there is no consensus within the EU as to whether recognition of the existence of minorities is a *sine qua non* of membership,<sup>12</sup> nor any clear EU standard in the area of minority rights.<sup>13</sup> Even if they were applied clearly to candidate and member States, the Copenhagen criteria remain ill-defined, admitting of such broad and disparate interpretations as to render them of minimal utility in guiding States' actions.

Second, although the EU Race Equality and Employment Directives<sup>14</sup> provide clear benchmarks against which States' performance in the area of non-discrimination can be measured, they give primacy to race and ethnicity as indicators, with the result that religion has largely been missing from the discourse on minority protection. Discrimination on grounds of religious belief is covered only under the Employment Directive.

The Union, and its members, must do more to clarify the content of the common values it proclaims. This will not be an easy task. It seems clear that, in part, the EU has not given clear voice to the content of its professed values because of the difficulties in defining them, especially when 15 members with widely varying practices on minority protection – ranging from extensive protections to a denial that minorities legally exist – each have a legitimate stake in ensuring that any common definition is fair. Yet although the scope for choice in adopting particular policies may be very

<sup>11</sup> For a recent and forceful articulation of the need for such mechanisms, see J. Swiebel, "Draft Report on respect for human rights in the European Union, 2001, 2001/2014(INI), European Parliament, 27 August 2002.

<sup>12</sup> Member States France and Greece do not recognise the existence of minorities. Bulgaria has expressed some ambivalence on the question. See EU Accession Monitoring Program, *Monitoring the EU Accession Process: Minority Protection in Bulgaria*, Open Society Institute, Budapest, 2001, available at <<http://www.eumap.org>>.

<sup>13</sup> The European Court of Human Rights recently noted an "emerging international consensus... recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle," but was "not persuaded that the consensus is sufficiently concrete for it to derive any guidance as to the conduct or standards which Contracting States consider desirable in any particular situation." *Chapman v. United Kingdom*, ECHR Judgement, 18 January 2001 (No. 27238/95), paras. 93–94.

<sup>14</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, published in the Official Journal of the European Communities, 19 July 2000, L 180/22; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, 27 November 2000, L 303/16.

broad, it is not infinite; to the degree that the Union and its members do wish to create a community of shared values, some measure of common standards should be identified that constitutes the minimum that membership requires.

### *The role of monitoring in defining standards*

Equally importantly, the EU still has insufficient means of ensuring member States' compliance with the human rights commitments it is in the process of defining. While compliance with the *acquis communautaire* is subject to monitoring and compliance mechanisms, the fundamental political commitments expressed in the Copenhagen criteria are not considered part of the *acquis*; compliance with the Copenhagen criteria is monitored only in *candidate* States, and upon accession, this monitoring will end.

Yet such monitoring, if continued, would place no unwanted burdens on member States. The Union and its members decide for themselves what values they share in common, and to what degree they wish to bind themselves to a common political model. All Union-wide monitoring requires is that whatever the Union, through its members, agrees upon as constituting its shared values must have universal application. Monitoring may provide an impetus to the articulation of shared standards.

EUMAP's candidate State reports draw attention to the importance of devoting attention not only to the adoption of standards, but to their practical implementation, and to the role of civil society monitors in both prompting greater articulation of standards and in demanding that Governments comply with those standards, up to and beyond accession.

Monitoring is also an important instrument in ensuring that principles are translated into practice. Candidate State Governments have all adopted special programmes to improve the situation for vulnerable minority groups, or to encourage their integration into society more generally. The EU has allocated significant amounts of funding towards the implementation of these programmes. However, there has been little systematic evaluation of their impact and efficacy,<sup>15</sup> and insufficient involvement from minority representatives in their design, implementation and evaluation (see Section 2).

More regular and consistent monitoring is clearly necessary in member States as well, as demonstrated by the experience of Roma and Muslims (see Section 3). Yet existing

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<sup>15</sup> The European Commission acknowledges that it has devoted insufficient attention to evaluation and monitoring, which it defines as "the continuous process of examining the delivery of programme outputs to intended beneficiaries, which is carried out during the execution of a programme with the intention of immediately correcting any deviation from operational objectives." See *Official Journal of the European Commission*, C 57/12, 22 February 2001.



EU monitoring mechanisms provide for little between silence and sanctions.<sup>16</sup> Regular evaluation – with participation from representatives of minority communities<sup>17</sup> – is vital to ensure that the standards are themselves subject to regular review, and that public policies are operating in fact to protect minorities from disadvantage and exclusion (see Section 4).<sup>18</sup>

### *Organisation of this Overview and the reports*

The remainder of this Overview will examine, first, candidate States' implementation of their minority protection or integration programmes, and second, five member States' laws, institutions, and practices relating to minority protection of Roma or Muslims.

The choice of topic in the candidate States follows from EUMAP's 2001 finding that these programmes have been insufficiently reviewed and evaluated. Because EUMAP is monitoring member States for the first time in 2002, it has adopted the same methodology employed in 2001 for the candidate States, providing for a broad survey of the scope of minority protection in each country as a whole. This will allow for some measure of comparability between the two series of reports, since the present member State reports and last year's candidate State reports all survey the general state of minority protection according to similar criteria within a relatively narrow timeframe.

EUMAP has chosen to monitor the situation of one vulnerable minority group in each of the five largest EU member States to test the strength of their legislative and institutional frameworks for minority protection in general; the situation of Roma was monitored in Germany and Spain because Roma face serious problems of marginalisation and discrimination in both those countries, as in candidate States; Muslims in France, Italy and the United Kingdom constitute a particularly important group for testing States' commitment to minority protection, because of their great

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<sup>16</sup> Art. 1(1) of the Treaty of Nice, Amending the Treaty on European Union, and treaties establishing the European Communities and certain related acts (2001/C 80/01), amends Article 7 of TEU as follows: "The Council [...] may determine that there is a clear risk of a serious breach by a Member State of principles mentioned in Article 6(1) and address appropriate recommendations to that State [...] The Council shall regularly verify that the grounds on which such a determination was made continue to apply."

<sup>17</sup> The majority of EUMAP country monitors or monitoring teams included one or more representatives of the minority group whose situation is being monitored.

<sup>18</sup> For more recommendations on the need to strengthen EU mechanisms for monitoring and evaluating the commitment and performance of EU member States with respect to human rights and common European values, see M. Ahtisaari, J. Frowein, M. Oreja, *Report on the Commitment of the Austrian Government to Common European Values*, 8 September 2000, para. 117. See also Comité des Sages, *Leading by Example: A Human Rights Agenda for the European Union for the Year 2000*, European University Institute, 1998, para. 19(e).

numbers, and because their perceived difference from the local majority and the relatively late arrival of their communities in western Europe have contributed to limited levels of assimilation and acceptance. A focus on Muslims also highlights the shortcomings with the Race Directive and with thinking about minorities more broadly, since discrimination against them tends to have a religious as well as an ethnic or racial aspect.

Monitoring such as that done by EUMAP could well address the situation of any discrete minority group, in any (or all) of the EU member States. No system of minority protection – whether at the State or Union level – is adequate if it protects only certain minorities, but not others, or only in certain places, but not universally; therefore monitoring the situation of a particular vulnerable group is a useful way of testing a system's effectiveness and commitment. One of the purposes of this limited project is to demonstrate that monitoring of minority protection on a broad scale is both feasible and necessary for the creation of a Union of common values. EUMAP supports the extension of monitoring to examine the situation of vulnerable minority groups throughout the EU.

## **2. CANDIDATE STATES: ASSESSING GOVERNMENT POLICIES FOR MINORITY PROTECTION AND INTEGRATION**

The Commission noted in its Enlargement Strategy Paper 2001 that “in all countries with sizeable Roma communities national action plans are now in place to tackle discrimination, which remains widespread, and to improve living conditions that continue to be extremely difficult.”<sup>19</sup> Several countries with smaller Roma communities – Lithuania, Poland, and Slovenia – have also adopted such programmes, largely on their own initiative. In Estonia and Latvia, the adoption of programmes to promote the integration of large Russian-speaking minorities or non-citizens have been encouraged and praised by the Commission.<sup>20</sup> The very fact that all candidate States have adopted these programmes constitutes not only a response to the requirements of accession, but

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<sup>19</sup> The full text of the Enlargement Strategy Paper is available at <http://europa.eu.int/comm/enlargement/report2001/index.htm>, (accessed 5 October 2002).

<sup>20</sup> See European Commission, *2001 Regular Report on Estonia's Progress Towards Accession*, Brussels, 2001, p. 24, available at [http://europa.eu.int/comm/enlargement/report2001/ee\\_en.pdf](http://europa.eu.int/comm/enlargement/report2001/ee_en.pdf), (accessed 9 October 2002).

also a mark of Governments' willingness to take positive action to demonstrate their compliance with the political criteria.

Volume I of EUMAP's 2002 minority protection reports examines the degree to which these special policies and programmes have been implemented in practice. Although the reports focus on one programme in particular in each country, the findings are intended to have wider relevance for the development of more effective minority protection policies in general. Indeed, most Governments have taken initiatives and expend resources on minority communities outside the context of these programmes, although such activity falls beyond the scope of this study.<sup>21</sup>

As these programmes are relatively new, implementation is still at an early stage. Still, even at this point it is possible to evaluate the content of the programmes, their structures and mechanisms for implementation, and the initial results that have been achieved. Moreover, it is precisely at this early stage that it would be most useful to develop more effective ways of ensuring that monitoring and evaluation – both by the Government and the civil society organisations that often partner with the Government – are incorporated into the plan for programme implementation.

Although the programmes vary considerably, several reflect an insufficiently comprehensive approach to minority protection. Common issues affecting implementation are: ineffective coordination, lack of funding, lack of public support, and insufficient commitment of political will.

## 2.1 Programme Content

Several Government programmes – notably those of Bulgaria, the Czech Republic, Hungary and Romania – reflect a comprehensive approach to minority protection, clearly stating an intent to address discrimination as well as to promote minority identity. In Estonia and Latvia, where the principal target is Russian-speaking populations, Government programmes do not purport to guarantee comprehensive minority protection; instead, they promote societal integration through acquisition of proficiency in the State language.

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<sup>21</sup> EUMAP reports do not evaluate Government policy towards minorities in its broadest sense, or over an unspecified period of time. Assessment is focused on the special programmes adopted by candidate State Governments in response to the accession process, and their record of implementation through August 2002. It does not attempt to either catalogue or assess all governmental funding that benefits minorities. Thus, for example, State social assistance benefits – to the extent they fall outside the realm of these programmes – also fall beyond the scope of EUMAP reports.

Direct EU influence is evident in the content of several programmes; expert input has been provided to support policy development or the drafting of legislation in Bulgaria, the Czech Republic, Romania, and Slovakia. However, condemnation of discrimination is still largely declarative. Legislative and policy initiatives to combat discrimination are still at an early stage; where they exist, they are still largely untested. Public officials as well as members of the legal profession have not received sufficient training on existing (or planned) anti-discrimination measures.<sup>22</sup> With EU encouragement, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia and Slovakia are all engaged in reviewing their legislation with a view towards ensuring full compliance with the EU's Race Equality Directive. Romania has already adopted comprehensive anti-discrimination legislation and has taken steps towards establishing an institutional framework to guarantee implementation. Slovenia also has fairly comprehensive legislation in place.

Although the protection of Roma culture is a priority for many Roma civil society organisations, this dimension of minority policy is not fully elaborated in any of the Government programmes, though integration is often identified as an objective. In fact, the inclusion of "socialisation" elements in many programmes (Hungary, Lithuania, Poland, and Slovenia) suggests that Roma culture is still identified with poverty, deviance, and other negative characteristics, and is viewed as being at odds with majority society. For example, the Slovenian Employment Programme attributes the marginalisation and segregation of Roma to "different sets of living standards and moral values followed by the Roma..." The "Programme on the Integration of Roma into Lithuanian Society 2000–2004" attributes the persistent marginalisation of Roma to their "linguistic, cultural and ethnic features." The tendency to view Roma values as inherently inferior undermines the respect for cultural difference that is a foundation of multicultural society.

Both of the States with large Russian-speaking minorities prioritise linguistic integration instead of linguistic rights protection. The Estonian Integration Programme asserts that integration is a two-way process. However, its practical measures relate principally to the creation of a common linguistic sphere as a means of enhancing minority integration. Minority representatives have expressed concern that the exclusive emphasis on language does not take into account other barriers to integration in the legal and political spheres. The "Integration of Society in Latvia" Programme also declares support for minority integration and the need to protect minority rights, but does not address discrimination

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<sup>22</sup> For a general review of judicial training as well as non-technical legal training on a wide range of legal issues, see EU Accession Monitoring Program, *Monitoring the EU Accession Process: Judicial Capacity*, Open Society Institute, Budapest, 2002 (forthcoming), available at <<http://www.eumap.org>>.

and proposes few measures to promote minority identities. In fact, Latvian officials state that minority protection is not the aim of the Integration Programme.

The ability to develop comprehensive policies is impaired in many candidate States by the absence of comprehensive statistics or other reliable data on the situation of minority groups. The lack of information is often justified by reference to legislation guaranteeing privacy and the protection of personal data. Yet in some cases it is apparent that police departments and other governmental agencies keep at least informal statistics on minority groups and their members, in apparent violation of data protection laws.

However, in many cases, legislation does not prohibit the collection of sensitive personal data *ab initio*; rather, it simply requires that protective mechanisms should be incorporated.<sup>23</sup> Some EU member States, such as the UK, have demonstrated that such data can be collected to good effect, allowing the development of more targeted, effective public policies to improve minority protection, and without violating personal privacy. Appropriate mechanisms should be devised to allow for the collection of ethnic and racial statistics necessary for the conduct of effective monitoring; these mechanisms should be developed and employed in cooperation with minority representatives to allay fears that such data could be abused.

## 2.2 Programme Implementation – Problems of Coordination and Capacity

Implementation of minority protection and integration programmes has not been comprehensive. In most cases, the bodies charged with responsibility for coordinating implementation are themselves marginalised, working within the constraints imposed by a lack of funding, staff and political support.

Governmental minority protection programmes are policy documents, rather than legislative acts; as such, in most cases the bodies primarily responsible for fully elaborating them and overseeing their implementation are specialised departments within Government ministries. However, these bodies seldom are authorised to do more than compile reports using information voluntarily supplied by participating ministries, and lack the mandate to coordinate the activities of other Government institutions efficiently and effectively.

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<sup>23</sup> See *Ethnic Monitoring and Data Protection – the European Context*, Central European University Press – INDOK, Budapest, 2001.

In Bulgaria, the National Council on Ethnic and Demographic Issues (hereafter, NCEDI) has been given responsibility for coordinating minority policy generally, and for managing the Government's programmes for Roma.<sup>24</sup> However, the NCEDI has no authority to require implementation from other Government offices. It disposes of little funding.<sup>25</sup> As a result, though on paper the Framework Programme in particular is widely considered to be one of the more comprehensive in the region, implementation has been almost completely stalled. In Romania, the Joint Committee for Monitoring and Implementation has suffered not only from a weak mandate, but also has met only irregularly and often with the participation of lower-level staff not authorised to make decisions on behalf of their respective ministries. The Inter-Ministerial Committee in Hungary can propose that the Government address cases where ministries have failed to meet their obligations under the Government programme for Roma, but can only register its disagreement or disapproval by referring reports to the Government if appropriate action is not taken.

Although steps should be taken to guarantee coordinating mechanisms the support and authority they need to act effectively, the experience in Estonia, where the Integration Programme's Steering Committee appears to enjoy good cooperation from participating ministries, demonstrates that such bodies can be effective without being granted more coercive powers; where the importance of programme objectives are generally recognised at the Government level, administration is more functional and coordination more successful.

Without proper coordination, moreover, even otherwise successful projects run the risk of effecting only temporary relief to long-standing problems. The Czech "2000 Concept of Governmental Policy Towards Members of the Roma Community Supporting Their Integration into Society" is informed by a strong human and minority rights perspective, and offers a solid conceptual framework. However, effective central coordination and support is lacking, and practical implementation has consisted largely of *ad hoc* projects carried out by different ministries at their discretion, often with uncertain or time-limited funding; though some of these projects have posted positive results, their relationship to each other and to the Concept itself is ill-defined. Without coordinated measures to address systemic discrimination and to effect changes at the legal and institutional level, the implementation of such projects as a means of addressing deeply-rooted problems will have little long-term impact; without greater commitment of political will to the Concept, structural changes are

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<sup>24</sup> The Framework Programme for Equal Integration of Roma in Bulgarian Society, and the "Integration of Minorities" section of the Government's comprehensive program "People are the Wealth of Bulgaria."

<sup>25</sup> Particularly low levels of funding have also been recorded in Lithuania, Poland, Romania, and Slovenia.

unlikely to occur, and bodies of national and local public administration will not take implementation seriously.

In Slovakia, despite recent attempts to enhance the administrative capacity to implement the Government Strategy, coordination of ministries' activity remains a weak point, as there is no mechanism to require their active involvement. Funding from the State budget has been insufficient.

In Latvia, most of the activities implemented under the Integration Programme to date had been initiated before it was adopted. Although mechanisms for administering and funding its implementation have begun functioning only recently, already the lack of effective coordination between various State and non-State actors involved and the lack of a clear implementation strategy are causing problems.

Slovenia's programmes for Roma also lack adequate central oversight mechanisms to ensure consistent funding. Under the general "Programme of Measures," adopted in 1995, the governmental Office for Nationalities is responsible for overall coordination of the Programme. In fact, no ministry or Government body has set aside dedicated funds for Roma programmes, as is the practice for other recognised minority groups. Municipal offices have also suggested that the Office for Nationalities should have more control over funding decisions than individual ministries, which are not as well informed about the situation of Roma, and should be responsible for allocating those funds to the local authorities.

The adoption of special programmes for minorities also raises certain risks. Namely, they may be used as a pretext for the State to divest itself of responsibility to provide minorities with the protection, benefits and services that are due to all. There has been little effort to promote awareness within the Roma community that all governmental policies should enable them to realise their fundamental rights to education, housing and healthcare, *inter alia*. While specialised programmes may be essential to address the specific needs of a minority community, care should be taken that these do not lead to the perception that Roma are not included in general programmes to alleviate poverty or improve education standards.

At the same time, special advisors or bodies to promote minority identity and culture should not be asked to take on social assistance functions. For example, minority self-government representatives in Hungary are sometimes asked to handle questions related to social assistance, though this is properly a responsibility of the local government. Czech and Slovak "Roma Advisors" – intended to facilitate the formulation of local policies and projects to improve the situation for Roma – instead have been placed in the role of social workers, a job for which they have received no training and are thus not qualified.

Though positive measures may be justified to ensure equal access in practice, they must not come to be seen as a replacement for essential State functions. Advisory positions should be clearly defined as such; programmes should always include guidelines for implementing officials and “communications components,” which raise general public awareness of programme objectives and of the responsibilities of public officials.

### 2.3 Decentralisation: the Role of Local Government

In several countries, such as the Czech Republic, Hungary, Poland, Slovakia, and Slovenia the central bodies responsible for developing and implementing governmental minority protection policy lack the competence to influence local public administration effectively. Thus, efforts to enact reforms at the national level – particularly reforms which run counter to popular attitudes and perceptions resistant to giving minority groups “special treatment” may be undermined by local opposition and sometimes by contradictory local policies.

The Czech Republic, Poland, Romania and Slovakia have recognised the importance of integrating local public administrations in programme implementation by decentralising responsibilities and by appointing local and regional Roma experts or advisors. In some cases individuals occupying these offices have managed to raise the profile of governmental programmes, to facilitate better communications between Roma communities and local governmental structures, and to increase awareness of the needs of local Roma communities. However, most work with little institutional support, without clear definition of their competencies, and receive little or no specialised training for their positions. Moreover, following public administration reform in the Czech Republic, the central Government can no longer require the new regional bodies to employ Roma Advisors as it could under the former district system, and the future of this initiative is uncertain. In Slovakia, only a handful of Roma Advisors have been appointed thus far.

In Romania, for example, “Roma experts” were appointed in mayor’s offices throughout the country. Many of these experts were selected and appointed on the basis of affiliation with a single Roma political party, through a particularly opaque and politicised process. Others are merely civil servants who have had the title “Roma expert” added to their existing responsibilities, without receiving training or support. A representative from a County Bureau for Roma noted that, “these civil servants do not have any knowledge and motivation to work for solving Roma problems; it is just another responsibility for them.”<sup>26</sup> A large pool of qualified Roma candidates, many of whom have benefited from a successful tertiary-level affirmative action programme

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<sup>26</sup> Interview with V. Gotu, Roma expert, County Office for Roma, Galați, 1 August 2002.



introduced by the Ministry of Education, as well as those with extensive experience in the NGO sector, could offer the expertise and initiative needed for these posts.

A decentralised approach to implementing both the 1995 “Programme of Measures for Helping Roma” and the Employment Programme in Slovenia has proven to be an effective means to address the varied and distinct problems of different Roma communities. However, there are several serious drawbacks to a system that devolves most of the programming decisions to local authorities. First, without counterbalancing coordination at the central level, there has been little opportunity to duplicate or build upon successful programmes; too, local officials have received little training or preparation for implementing projects for Roma. At the local level, there is little recognition of the role discrimination plays in compromising opportunities for Roma and many civil servants still express very negative attitudes, undermining constructive relations with Roma communities (and thus prospects for success) from the outset.

Though decentralisation can bring benefits in terms of encouraging local initiative and vesting responsibility in local decision-makers and communities, it should be balanced against the need for the expertise, capacity and authority of a Government-level body. Local officials assigned responsibilities to manage or oversee implementation of special projects to benefit Roma or other minorities should be provided with training to ensure that they are aware of programme goals and objectives; of higher-level political support for the programme; and of the culture and situation of the minority group(s) with whom they are being requested to work. Such training could be prepared and conducted in cooperation with local minority representatives.

## **2.4 Evaluation and Assessment**

Candidate State Governments have evinced increasing support for the importance of regular assessment and evaluation of the minority protection programmes they have adopted.

Notably, while the Hungarian Government has not undertaken any formal evaluation of the present package of measures to improve the situation of Roma, the preparation of guidelines for the elaboration of a long-term strategy has involved substantial public discussion and comment. Moreover, the guidelines adopted indicate that some assumptions underlying the current policy have been challenged and the present programme may be modified following wider public debate and greater input from Roma representatives.

In several countries, lack of concrete progress on programme implementation has necessarily constrained monitoring activities. In Romania, the Government has

demonstrated an early commitment to monitoring its own performance in implementation of its “Strategy to Improve the Situation for Roma” with the publication of an internal evaluation report in April 2002.<sup>27</sup> However, the comprehensiveness of the report is limited by a lack of available information on implementation – the report itself was released late due to difficulties gathering data from the relevant ministries.

For governmental monitoring reports to provide a basis for public scrutiny and a tool to increase public awareness of programme objectives and achievements, they must be publicly available. The annual media and general monitoring reports prepared by the Estonian Government are comprehensive, professionally presented, and widely available. In Slovenia, though reportedly some Government implementation reports have been prepared, they have not been made available to the public or to local officials. As a result, their utility for the purpose of improving existing projects and developing new projects on the basis of prior experience is limited.

The Czech 2000 Concept incorporates a requirement for an annual review and Update. This provides a valuable possibility for regular revision and amendment to integrate experience gained during implementation; though the quality of Updates has suffered to some extent from poor or incomplete information received from participating ministries and insufficient capacity to collect and compile the information, the idea of incorporating monitoring as an integral part of Concept implementation is sound. In Slovakia, too, annual evaluation reports are largely descriptive; there are no mechanisms for evaluating the effectiveness of the activities that have been realised on an ongoing basis.

In Lithuania, there is no overview available of the status of tasks being implemented under the Roma Integration Programme; in fact, there is some confusion over the extent to which various initiatives to improve the situation for Roma are related to the Programme.

## 2.5 EU Funding to Support Implementation

EU support has played a key role not only in prompting the adoption of minority protection and integration programmes, but in supporting their implementation. In some cases, such as Bulgaria, Lithuania, and Romania, implementation has been largely dependent on international funding; governmental funding has been minimal. Estonia, Hungary, Latvia and Slovakia have also received significant EU and other international

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<sup>27</sup> Ministry of Public Information, “Report on the Status of Implementation,” Bucharest, April 2002, p. 4.

funding, but have also committed significant Government co-funding to programme implementation.

In Bulgaria, the EU commended the adoption of the Framework Programme and has commented on implementation in its Regular Reports. However, EU funding for Roma-related projects has not consistently followed the strategies articulated in the Programme, and the observations in the Regular Reports have occasionally lacked the emphasis and specificity that would encourage better adherence to Programme goals. In Romania, however, the EU has backed up its praise for the Government Strategy's decentralised approach by allocating funding primarily to local initiatives and pilot projects fostering partnerships between local institutions and Roma groups. In the Czech Republic and Slovakia, though EU funding has supported implementation of many of the priority areas identified by the respective Governments, little funding has been allocated to address the serious issue of unemployment. EU funding should closely support the objectives that candidate State Governments have been at pains to elaborate.

Prior to the adoption of the Estonian Government's Integration Programme in 2000, the EU had contributed to funding Programme goals for several years. Like the Integration Programme itself, Phare funding has been focused primarily on Estonian language instruction. However, the 2001 Regular Report noted that proper attention and resources should be given to *all* elements of the integration programme, presumably alluding to the legal and political spheres, which have so far been accorded lower priority. As more than three-quarters of all Programme funding in 2000, including Phare funds, was allocated to measures related to language instruction, the EU's own funding priorities should emphasise measures to increase the rate of naturalisation support minority media, and other non-linguistic objectives.

In the Czech Republic and Slovakia, the share of Roma NGOs among implementing organisations in Phare projects appears to be particularly low, although the issue has been raised in a number of other countries as well, including by minority NGOs in Estonia. This may be due in part to extremely complicated application and reporting procedures. At the same time, often it is precisely the smaller or more local groups that have the greatest insight into the solutions most likely to improve the situation for Roma at the ground level.

The EU and other international donors should ensure that the selection process identifies proposals demonstrating authentic links to the intended beneficiaries and an understanding of their needs, and that local communities are involved in articulating their problems and addressing them. EU programmes should review their application and grants administration procedures with a view toward simplification and transparency; they should also accompany grants announcements with in-country training and assistants for potential applicants. Availability of this form of assistance is

likely to increase in importance as levels of EU funding available to Central European and Baltic States increase.

## 2.6 Minority Participation

Minority participation in the development, implementation, and evaluation of programmes that are designed to benefit them has been called for by numerous international organisations,<sup>28</sup> including the EU. Minority participation is important not only for its own sake, but for the sake of programme effectiveness. Programmes which integrate minority perspectives and sensitivity to minority needs and concerns are more likely to be accepted by minority communities; projects which involve minorities actively in their development, implementation, and evaluation are more likely to be accepted by majority society and to facilitate integration than alternative measures such as the distribution of charity or social assistance.

Perceptions that Roma deliberately abuse the social welfare system are prevalent throughout the accession region. Programmes placing Roma in leading, management, decision-making roles are important to counter the popular misconception that Roma “prefer to remain on welfare;” “don’t want anything better;” “aren’t interested in school;” or “prefer to live together,” which provide the justification for a whole range of discriminatory behaviours and policies.

In a number of countries initiatives to improve employment opportunities for Roma centre around public works projects. Public works projects constitute the primary source of government-sponsored employment for Roma in Slovenia. Despite the fact that such positions offer neither a steady income nor the opportunity to develop marketable skills, demand for such positions continues to outstrip availability. Public works programmes have been implemented in the Czech Republic and Slovakia as well, but their efficacy as a means of addressing long-term unemployment has been questioned. As most involve some form of manual labour, they tend to target men exclusively; there are especially few projects designed to increase women’s capacity to enter the workforce.

Few projects implemented under Integration Programmes in Estonia and Latvia target employment inequalities; initiatives in this area generally focus on the linguistic dimension. Improving workers’ language skills is intended to promote greater labour flexibility and mobility and increased employment opportunities. Adequate Latvian

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<sup>28</sup> See e.g., Organization for Security and Co-operation in Europe, *The Situation of Roma and Sinti in the OSCE Area*, High Commissioner on National Minorities, 2001.

language proficiency is also a requirement for the assistance of the State Employment Service, as well as for some jobs in the private sector.

In Slovenia, projects where consultation with Roma has taken place appear more successful and durable than those elaborated by local authorities alone, who may be more focused on meeting the needs of the municipality than the needs of the Roma community. Poorly targeted projects offer few obvious benefits to the target group and fail to encourage a long-term shift away from dependence on social welfare or other forms of State support. An evaluation of one project implemented under the EU's Partnership Fund for Roma in Romania also found that there were significant differences in the way in which local officials and Roma partners understood the project goals. The Roma saw the project as a source of direct assistance to participants, while the municipal representatives prioritised the interests of the municipality, seeing training as secondary. Consequently, the Roma participants were dissatisfied with their role, and the official assessment also concluded that the level of Roma participation should have been greater.<sup>29</sup>

In Hungary, little attention was given to minority input when the Government programme was first drafted. However, guidelines for the follow-up strategy place greater emphasis on the active participation of Roma, on encouraging independence, and increasing the future role of Roma-interest organisations in the process of European integration. In line with this shift in priorities, a new advisory body was formed in Summer 2002, directly under the Prime Minister's office; it will include a majority of Roma representatives from both the political and civil-society spheres.

The Estonian Integration Programme drew little input from minority organisations during drafting and there has been low participation during implementation (although there have been improvements. As a result, a clear divide between minority and majority perceptions of the goals and priorities of the integration process persists, and must be addressed in order to achieve mutually satisfactory results. Evaluations – though regular, comprehensive and publicly available – reportedly give little consideration as to how the Programme's shortcomings as perceived by the Russian-speaking community could better be addressed.

In Latvia, although the Integration Programme is based on a Framework Document that was debated widely and revised accordingly, including by minority consultants, direct minority participation as authors was low. Minority participation in implementation has also been low, although there have been recent efforts to involve minority NGOs and civil society to a greater extent.

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<sup>29</sup> MEDE Evaluation Fiche, "The Establishment of the Ecological Guardians Corps in rural area of upper Timiș, Caraș-Severin county" (PFRO 322), Cluj Napoca, 2002.

Developing political and civil society movements within Roma and other minority communities promise to develop into an increasingly powerful lobby for minority interests; these can help to ensure that Government commitments to the Roma – both as minorities and as members of the broader society – are met. As one Bulgarian Roma leader has stated, “we have one document, the Framework Programme, which showed that we can unite for a common cause.” It remains for Roma and other minority representatives to unite around efforts to press for more effective implementation of the minority protection programmes that have been articulated.

## 2.7 Minority Representation

Often, when Government have sought input from minority communities, they have done so through an official representative. This approach raises a number of difficulties. First, the designation or election of a single representative (or representative body) belies the diversity of minority populations. Second, it perpetuates dependency. Representative bodies are reliant on the Government for political and budgetary support, and are thus less likely to maintain a critical stance. Finally, making access open to only certain representatives, to the exclusion of others, engenders competition and mutual distrust within minority communities.

In some candidate States, mechanisms are in place to ensure minority representation at the Parliamentary or local levels. These measures constitute an important means of ensuring minority participation, but in several countries, Government policy has tended to distort or even co-opt this process, with negative implications for programme effectiveness.

In Hungary, a system of minority self-governments is established through the Minorities Act at both the national and local levels. This system has given rise to internal tensions among Roma groups, due to the fact that the Government has tended to rely upon the National Roma Self-Government as the sole “official” representative of the Roma nationally. The Government has negotiated principally with the National Roma Self-Government when preparing decisions affecting the Roma populations, although other organisations offer different perspectives and opinions. Relying exclusively on one organisation, which is itself dependent on the Government for funding and support, raises the risk that that organisation may be easily controlled. At the same time, an organisation which fails to make substantive or critical recommendations for fear of losing governmental support may quickly lose its legitimacy within the minority community. The Minorities Act should be reviewed to allow for amendments to encourage more diverse representation on national advisory bodies.

In Romania, the Roma Social Democrat Party (RSDP) holds the single parliamentary seat for Roma under provisions granting minorities representation where they fail to meet minimum electoral thresholds. However, in large part due to the Government's exclusive consultation with the RSDP, the organisation has come to be accepted as the sole representative for Roma at all levels, to the point where administrative hiring procedures are ignored in favour of simply accepting RSDP nominees for local civil service posts. According to some Romani activists, the Government's reliance on a single political organisation to represent the entire spectrum of Roma political and civil society organisations has had the effect of fragmenting the Roma NGO Community.

In Latvia, the lack of transparency in the selection process for nomination of NGO representatives (including minority NGOs) to the Council which supervises the work of the Society Integration Fund has been criticised by minority representatives.

Governments should work with minority communities to elaborate more sophisticated mechanisms for minority participation in public life, which would provide for the involvement of as broad a range of groups representing minority interests as possible and feasible. Where single official negotiating partner institutions are maintained for the purposes of facilitating communications between the Government and the minority community, alternative mechanisms for encouraging these institutions to engage in broad-based dialogue with other minority organisations should be devised.

Again, both Governments and minority communities stand to gain from enhanced minority participation in the refinement of policies, identification of best practices, and modification or elimination of under-performing projects.

## 2.8 Public Support

Policies perceived to have been adopted largely to satisfy EU requirements, regardless of whether they were adopted with good will and honest intentions, do not necessarily reflect a sea-change in public opinion: indeed, EU exhortations to improve the situation for minorities often have drawn resentment from majority populations and politicians as unwarranted and unwelcome external interference.

Broad public support is generally considered necessary for the implementation of any large-scale political programme, but the rapid pace of the accession process has meant that building public support for governmental policy often has been given short shrift in the wake of the broader accession imperative. Measures adopted to comply with economic requirements can be more easily justified by political leaders in terms of the economic benefits that Union membership is widely expected to produce. However, the case for the benefits and advantages to society as a whole of improving the situation for minorities has not been so persuasively made.

Indeed, resistance to the implementation of positive measures to improve the situation for Roma or to promote integration has constituted one of the principal obstacles to effective implementation. For example, in Slovenia, one local official reported that politicians deliberately do not prioritise Roma programmes because the local non-Roma inhabitants would react negatively;<sup>30</sup> similar observations have been noted in Bulgaria, the Czech Republic, Hungary, Lithuania, Poland, Romania and Slovakia. Allocating substantial sums of money to programmes to improve the situation of minority groups – particularly during periods of economic austerity, or when the minority group in question is held in low esteem – without corresponding efforts to build tolerance and understanding among the population as a whole will inevitably meet with resistance, placing such efforts at serious risk of failure.

Resistance to the adoption and implementation of minority protection programmes has emerged not only among the public, but among public officials as well. For example, Bulgarian officials have questioned why Roma have been singled out for support through a special programme, when other minority groups are also disadvantaged,<sup>31</sup> and the Ministry of Education recently cautioned against too-rapid integration of Roma and non-Roma schools, on the grounds that it could provoke a backlash against the minority population and even “lead to further exclusion of Roma living in segregated neighbourhoods.”<sup>32</sup>

Public awareness of Government programmes for Roma is low in each of the candidate countries analysed. Few programmes incorporate provisions for promoting increased awareness, either among the target population or society as a whole; those that do have been insufficiently implemented. For example, the Czech 2000 Concept highlights the importance of public discussion, yet the necessary funds and human resources to launch a concerted public campaign to promote the Concept and related activities seem to be lacking. The Office responsible for coordination of Concept implementation has no public relations staff and efforts to publicise the Concept have not been systematic.<sup>33</sup>

Under the Estonian Integration Programme, quite extensive promotional efforts have been carried out, and regular monitoring of public opinion expressed through the media is also an important component of the Programme. These measures have been only partially successful in forging a common vision of integration, however; minority

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<sup>30</sup> Interview with S. Ličen Tesari, Semič, 30 March 2002.

<sup>31</sup> OSI Roundtable Meeting, Sofia, May 2002.

<sup>32</sup> Ministry of Education and Science, “Organization and government of the activities of the schools of general education, professional and special schools,” Sofia, 2002, p.156.

<sup>33</sup> OSI Roundtable Meeting, Prague, June 2002.



and majority society continue to hold quite different views as to the goals of integration and what its priorities should be.

Without sufficient public information, unscrupulous officials can misrepresent expenditures on minority programmes for political purposes. In Hungary, it has been observed that some public officials have emphasised expenditures for the benefit of Roma without underlining that these measures were undertaken to ensure equal access to opportunity in Hungarian society.<sup>34</sup> This approach can foster resentment, and may lead to a weakening of confidence and initiative among Roma communities.

Initiatives to improve minority participation in media organisations are particularly important for shaping more positive public perceptions of minority communities. In Hungary, non-governmental initiatives to promote Roma participation in and access to the media have proven successful. The Roma Press Centre produces news articles and other reportage for distribution to the mainstream media. It has also offered training to young Roma in collaboration with the Center for Independent Journalism, which has also supported the establishment of a similar agency in Bucharest.

Across the region, the lack of authentic political will to develop and carry out effective minority policies can be traced back to the lack of broader public sympathy and support for the common political values and principles underlying enlargement – and thus, perhaps, to insufficient efforts on the part of the EU successfully to underline the importance of these values and principles. EU structures and candidate State Governments must articulate and communicate more convincing arguments that minority protection is a fundamental component of the EU's common values.

### **3. MONITORING MINORITY PROTECTION IN EU MEMBER STATES – THE SITUATION OF MUSLIMS AND ROMA**

*More than ever, the European model rests on universal values: freedom, democracy, respect for human rights and fundamental freedoms, and the rule of law. For the most part, these ideals have essentially been achieved. Nonetheless, there is still some fighting to be done, even in our old democracies, to realise them to the full.<sup>35</sup>*

<sup>34</sup> OSI Roundtable Meeting, Budapest, June 2002.

<sup>35</sup> Louis Michel, Preface to the European Parliament's Annual Report on Human Rights 2001, p. 7, available at <[http://ue.eu.int/pesc/human\\_rights/en/HR2001EN/pdf](http://ue.eu.int/pesc/human_rights/en/HR2001EN/pdf)>, (accessed 18 September 2002).

Volume II of EUMAP's 2002 reports focuses on the situation of a vulnerable minority group in each of the five largest EU member States.<sup>36</sup> These reports reveal some of the same problems evident in candidate States; Roma in Germany and Spain face prejudice, exclusion and discrimination in the same areas, including employment, education, housing, access to public goods and services, and the criminal justice system, as well as barriers to the full enjoyment of minority rights. Moreover, in contrast to candidate States, Germany has not adopted a special Government programme to address those issues.<sup>37</sup>

EUMAP member State reports also reveal a number of new and different issues. The emergence of large Muslim communities in France, Italy and the United Kingdom with different traditions and values – as well as the desire fully to participate in public life – poses challenges to the underlying assumptions of the European system for minority protection, which tends to view minority communities in terms of race and ethnic background, rather than religion.

### 3.1 Public Attitudes

Although there is great diversity within the population of Sinti and Roma in Germany and Roma/gitanos<sup>38</sup> in Spain, they are viewed as a single group by the majority society. Similarly, though “the Muslim community” is in fact composed of different national, ethnic and linguistic communities, Muslims are nonetheless often viewed as a monolithic group.<sup>39</sup>

In fact, disparate Muslim communities do share certain values and interests, and increasingly identify themselves as a group for the purpose of protesting discriminatory treatment and advocating for certain minority rights. This is also true for Romani communities. The fact that they do so should not undermine official efforts to encourage greater understanding of and appreciation for their internal diversity.

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<sup>36</sup> EUMAP only examined the five largest EU member States, so this Overview refers primarily to minority protection in these five; obviously, the Program supports the extension of monitoring to cover all fifteen member States, to allow the conclusions drawn here to be expanded upon and refined further.

<sup>37</sup> Spain's “Roma Development Programme” was adopted in the 1980s, and, according to Roma representatives, is outdated and in need of revision.

<sup>38</sup> The terminology as recommended by the Romani Union of Spain: “Roma” as a general term, “Romani” for the singular feminine genitive form, meaning “of the Roma” or “characteristic of the Roma community” and “Roma/gitanos” or “Roma” when referring to the Spanish Roma.

<sup>39</sup> See European Monitoring Centre on Racism and Xenophobia (hereafter, “EUMC”), *Summary Report on Islamophobia in the EU after 11 September 2001*, Vienna, 2002, pp. 23–24.

Both Roma and Muslims are often perceived as foreigners in the countries in which they live<sup>40</sup> – even when they have resided there as citizens for generations, or even centuries, as is the case with Roma in Germany and Spain. As a result, minority policy is sometimes conflated with policies to fight xenophobia or provide social assistance to immigrants or foreigners. In Germany, for example, issues related to discrimination or violence against minorities<sup>41</sup> are referred to the “Commissions for Foreigners’ Affairs;” there is no specialised body competent to deal with discrimination and violence against minority citizens or the promotion of minority identity at the Federal level.<sup>42</sup>

Though the majority of Muslims living in France are French citizens, segments of the public continue to consider Maghrebi Muslims – unlike immigrants from other countries such as Italy, Spain and Portugal – to be immigrants even after four generations in France. Perhaps due to the fact that Muslims are highly visible, Italians tend to overwhelmingly associate immigration with Islam, even though Muslims do not in fact constitute the majority of immigrants.<sup>43</sup> In the UK, there has been growing official acknowledgement of prejudice and discrimination against Muslim communities since the publication of a 1997 report of the Commission on British Muslims and Islamophobia.<sup>44</sup> However, Muslim community groups argue that the Government has been slow to translate the official acknowledgement of discrimination faced by Muslim communities into policy initiatives and legislative measures, claiming that the Government is “hot on rhetoric but slow on delivery.”<sup>45</sup>

Both Roma and Muslims face prejudice from majority societies. The common perception of Romani communities in both Germany and Spain is negative and widely shared. A 1992 poll indicated that 64 percent of Germans had an unfavourable opinion of Roma, a higher percentage than for any other racial, ethnic or religious

<sup>40</sup> The EUMC has noted that “uncertainty about our identity, our belonging and our traditions has led to an increased fear of ‘foreign’ influences and to a corresponding resistance to anything that appears ‘foreign’ and different.” Statement by Bob Purkiss, chair of the EUMC, and Beate Winkler, Director, on the occasion of the international day against racial discrimination, 21 March 2002, EUMC Newsletter Issue 11 March 2002, available at <<http://eumc.eu.int>>.

<sup>41</sup> Reference here is made to “visible” minorities, for example Sinti and Roma.

<sup>42</sup> In Italy as well, the situation of Roma and Sinti – the majority of whom (about 70 percent) are historically resident in Italy – has been dealt with by the Commission for Integration of Foreigners.

<sup>43</sup> Christians are the largest group, numbering about 800,000 (48 percent of the immigrant community).

<sup>44</sup> Commission on British Muslims and Islamophobia, *Islamophobia – a Challenge for Us All*, London: The Runnymede Trust, 1997.

<sup>45</sup> Interview with organisation G, London, 6 June 2002.

group,<sup>46</sup> and a 2001 survey revealed a pattern of continuing prejudice.<sup>47</sup> In Spain, Roma/gitanos are seen as resistant to integration, and relations with the rest of the Spanish population are marked by segregation in all areas of life – a “coexistence without togetherness.”

A recent report of the European Monitoring Centre Against Racism and Xenophobia (EUMC) noted that media representations of Islam are frequently “based on stereotypical simplifications,” and portrayed as a religion and ideology “completely extraneous and alternative to the enlightened secularity of the West.”<sup>48</sup> Muslim leaders in France, Italy and the UK all assert that mainstream media tend to rely upon the same sources for information (allegedly, these are often radical or extremist sources that are not considered representative *within* Muslim communities), failing to represent a broad range of views and contributing to public stereotyping of Muslims as a threat to the values and culture of the societies in which they live.<sup>49</sup> According to one French Muslim organisation: “The media has used each incident ... to feed Islamophobia and demonstrate that Islam is incompatible with the Republic.”<sup>50</sup> Such media practices may contribute to growing Islamophobia and may have the unintended and unfortunate result of strengthening Muslim identity around a shared sense of vulnerability and exclusion from the majority society.

Public officials have a special responsibility to provide leadership in condemning discriminatory attitudes and acts and to counter prejudice. Yet while many have lived up to this responsibility, others have themselves made statements that fuel intolerance and undermine core European values. EU human rights monitoring bodies should assume a “watchdog” role, monitoring official discourse and media reports with an eye towards encouraging responsible discourse by public officials, condemning racist statements unequivocally, and expressing official disapproval when appropriate.

<sup>46</sup> 17 percent had an unfavourable opinion of Muslims; of Indians, 14 percent; of guest workers, 12 percent; of dark-skinned persons, 8 percent, and of Jews, 7 percent. Cited in G. Margalit, “Anti-Gypsyism in the Political Culture of the Federal Republic of Germany: A Parallel with Anti-Semitism?” See <<http://sicsa.huji.ac.il/9gilad.htm>>, (accessed 9 April 2002).

<sup>47</sup> This study was a part of a project, financed by the European Commission, to assess the situation of Sinti and Roma in select EU Member States (Germany, Italy and Spain) and to advise respective governments on policy. Interim report is on file with EU Accession Monitoring Program.

<sup>48</sup> European Monitoring Centre on Racism and Xenophobia, *Racism and Cultural Diversity in the Mass Media. An Overview for Research and Examples of Good Practice in the EU Member States, 1995-2000*, Vienna, February 2002, pp. 252, 262.

<sup>49</sup> See, e.g., E. Poole, “Framing Islam: An Analysis of Newspaper Coverage of Islam in the British Press,” in K. Hafez, ed., *Islam and the West in the Mass Media*, New Jersey: Hampton Press, 2000, p. 162.

<sup>50</sup> Interview with the director of *Institut Formation Avenir*, 17 May 2002.

At present, however, negative attitudes and perceptions towards Muslims and Roma continue to colour behaviour towards them and form the context within which legislation is implemented and institutions operate.

### 3.2 Protection Against Discrimination

Not all EU member States have brought their legislation into compliance with EU standards in the area of non-discrimination, as set forth in the Race Equality and Employment Directives. Moreover, assessing the situation of Muslims living in Europe demonstrates that even these standards are not sufficiently comprehensive; discrimination on grounds of religious affiliation is covered only in the Employment Directive.

Neither Germany nor Spain has adopted comprehensive anti-discrimination legislation.<sup>51</sup> In both countries, efforts are underway to bring domestic legislation into compliance with the Race Directive, but little progress has been made. Even in those States that have already adopted comprehensive anti-discrimination legislation, there are still important gaps. For example, French anti-discrimination legislation recognises and sanctions discrimination on religious grounds, but does not offer a clear definition of indirect discrimination; according to one expert, doing so “would imply referring to [special] categories of the population (which is prohibited by the French Constitution).”<sup>52</sup>

The situation of Muslims reveals that the EU system itself is not comprehensive. The UK’s legislative and institutional framework for guaranteeing protection against racial and ethnic discrimination largely complies with the Race Directive, yet there are indications it does not provide adequate protection to its Muslim citizens. Though some religious communities have won protection against discrimination by emphasising the extent to which they also constitute ethnic groups (i.e. Bangladeshis and Pakistanis), this option is not open to Muslims originating from countries in which Muslims do not constitute a majority. Outside of Northern Ireland, the governmental bodies for the promotion of equal treatment operate within the existing legislative framework addressing racial and ethnic inequality; they do not contemplate Muslims or other non-ethnic religious groups.

<sup>51</sup> For a detailed comparison of Spanish and German law and the minimum standards set by Council Directive 2000/43/EC, see “Anti-discrimination Legislation in EU Member States,” chapters on Germany and Spain, European Centre for Monitoring Racism and Xenophobia, Vienna, 2002, available at <http://www.eumc.eu.int/publications/Article13/index.htm>, (accessed 10 October 2002).

<sup>52</sup> See D. Borillo, *Les instruments juridiques français et européens dans la mise en place du principe d’égalité et de non-discrimination*, (French and European legal tools in the implementation of the principle of equality and non-discrimination), note 3, p. 126.

Moreover, legislation is only a first, if necessary, step. Even in States which have relatively comprehensive anti-discrimination legislation, such as Italy and France, public awareness of the possibility of legal recourse is low and few cases have been advanced through the courts; awareness seems to be particularly low among immigrants and other vulnerable communities.<sup>53</sup> Public authorities in these countries have made some efforts to encourage more effective implementation of anti-discrimination legislation. For example, French courts have sought to facilitate discrimination cases by allowing the use of evidence gathered through “testing.”<sup>54</sup> In Italy and Spain, a simplified procedure for filing complaints of discrimination is available.

In the UK, anti-discrimination legislation is complemented by an obligation on public bodies actively to encourage greater equality of opportunity between different ethnic and racial groups through policy development. To ensure non-discriminatory access to public services for Muslims, this obligation should be extended to cover religious belief.<sup>55</sup> As the UK Government itself has acknowledged, “modern local authorities are those in touch with all the people they serve, with an open decision-making structure and service delivery based on the needs of users rather than providers.”<sup>56</sup>

Pan-European forums should be organised to encourage the development of a common baseline understanding and interpretation of the shape that national anti-discrimination legislation should take, in theory and in practice, to the extent permitted by differing legal and political traditions. Article 13 of the Treaty on the European Union provides for protection against discrimination on grounds of religion and belief as well as race and ethnic origin.<sup>57</sup> This paves the way for future initiatives to broaden the Race Equality Directive or to elaborate new directives covering other areas such as religion and language. The EU could also enhance its anti-discrimination framework by encouraging member States to sign Protocol 12 to the ECHR, which

<sup>53</sup> See I. Schincaglia, *Lo straniero quale vittima del reato (The Foreigner as a Victim of Crime)*, research report funded by CPII, DAS, Office of the President of the Council of Ministers, 1999.

<sup>54</sup> Court of Cassation, n. W 01-85.560 F-D. The technique of “testing,” was pioneered by SOS Racisme to demonstrate the unjustified refusal of nightclubs and other public places to allow entry to persons of foreign or immigrant origin. SOS Racisme has argued that testing could be a useful tool for fighting against discrimination in other areas, such as employment and work. See <[http://www.le114.com/actualites/fiche.php?Id\\_Actualite=68](http://www.le114.com/actualites/fiche.php?Id_Actualite=68)>, (accessed 26 September 2002).

<sup>55</sup> This is already the case under the Northern Ireland Act 1998 (NIA), which requires public authorities to give due regard to the need to promote equality of opportunity “between persons of different religious belief.” NIA, s. 75(1).

<sup>56</sup> Local Government Association, *Faith and Community*, LGA Publications, London, 2002, p. 3.

<sup>57</sup> Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) contains a free-standing prohibition of discrimination.

contains a free-standing prohibition of discrimination, including on grounds of religious affiliation, and by acceding to the ECHR itself.<sup>58</sup>

Moreover, member States, through the EU, should formally embrace and act upon the principle that prohibition against discrimination must be accompanied by positive measures. State officials should be required to seek out ways of ensuring that public services are available on equal terms to all, with special consideration for vulnerable minority groups; opportunities for information-sharing among member States on positive practice in this area should be created. Until such time as States are in a position to adopt comprehensive legislation, they should issue guidelines or codes of practice to give practical assistance to public officials to prevent discrimination in the provision of State services.

### 3.2.1 Lack of data

The extent of discrimination against minority groups in many EU member States is obscured by the unavailability of comprehensive statistics or other reliable data. As in candidate States, lack of data is often justified by concerns for privacy and protection of personal data. At the same time, the absence of sufficient information presents a clear obstacle to the formulation of effective non-discrimination policy.

For example, there are no nation-wide, reliable statistics about the situation of Roma in either Spain or Germany, or about Muslims in France or Italy – a gap which specialised human rights bodies have encouraged the authorities to fill.<sup>59</sup> For example, CERD has highlighted that the lack of official socio-economic data on the Spanish Roma/gitano population may impair the effectiveness of policies to improve their situation.<sup>60</sup> The Race Directive also recommends the use of statistical evidence to establish instances of discrimination.

The Spanish and German Governments maintain that legal norms on gathering ethnically sensitive data make systematic data collection impossible. In fact, Spanish

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<sup>58</sup> This recommendation has been supported by a wide range of human rights NGOs, including Amnesty International and Human Rights Watch, in a joint submission to the Convention on the Future of Europe.

<sup>59</sup> The UN Committee on the Elimination of Racial Discrimination (CERD), the UN Committee on Economic, Social and Cultural Rights (ECOSOC), the Advisory Committee on Implementation of the FCNM and the European Commission against Racism and Intolerance (ECRI) have all made recommendations regarding the importance of collecting statistics as a tool for establishing and combating discrimination.

<sup>60</sup> CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Spain*, CERD/C/304/Add.8, 28 March 1996.

legislation does not prevent the collection of sensitive data, provided that respondents are properly informed and that legal provisions on the processing of data are respected.<sup>61</sup> The German Federal Constitutional Court stated that such data could be collected if the secrecy of the data could be assured.<sup>62</sup> The Government has argued elsewhere that collecting ethnic data on the situation of Sinti and Roma is impractical in any case, as it “could only be achieved with disproportionate investments of time and effort.”<sup>63</sup>

Moreover, in some cases such data is already collected on a selective basis. For example, according to the Spanish Data Protection Agency as of 2000 there were 85 public and 60 legally registered private databases collecting and processing information related to the race/ethnicity of subjects,<sup>64</sup> and the laws on elaboration of statistics for community purposes contain few or no limitations on collecting racial or ethnic data.<sup>65</sup> This data is used to design policies for the benefit of recognised “peoples of Spain.” Thus the lack of statistical data on Roma/gitanos appears to be due to lack of political will rather than legal obstacles, and constitutes a serious impediment to the development of targeted public policies to address the serious issues of discrimination and exclusion they face.

Ironically, some States have used the lack of reliable ethnic data as grounds for dismissing critiques of their record on providing adequate protection to minority groups against discrimination and violence. For example, Germany has rejected allegations that Romani children are disproportionately represented “special schools” by stating that there is “no reliable statistical evidence to suggest that this group has a lower rate of participation in education... [though] some Länder have reported that in *isolated cases* children of Sinti and Roma have a particularly high level of representation

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<sup>61</sup> See, e.g., *Ethnic Monitoring and Data Protection – the European Context*, Central European University Press – INDOK, Budapest, 2001, pp. 200–227.

<sup>62</sup> However, it found that existing statistics legislation did not provide a sufficient guarantee. No steps have been taken since 1983 to amend the legislation to guarantee secrecy. See 1983 decision by the German Federal Constitutional Court, BVerfGE 65, 1ff.

<sup>63</sup> Comments of the Government of the Federal Republic of Germany to the Opinion of the Advisory Committee on the Report on Implementation of the FCNM in the Federal Republic of Germany, p. 9. See <<http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/AdvisoryCommittee/Comments.htm>>, (accessed 10 October 2002).

<sup>64</sup> “Distribution of files containing sensitive data, registered in the General Register for Data Protection,” *Catalogue of Files 2000*, CD-ROM issued by the Data Protection Agency.

<sup>65</sup> *Ethnic Monitoring and Data Protection – the European Context*, Central European University Press – INDOK, pp. 212–213.



in general remedial schools” [emphasis added].<sup>66</sup> Italy objected to ECRI findings that the number of racist acts in Italy was higher than the number of criminal proceedings before courts, on the grounds that this conclusion was “not enough supported by factual elements, or statistical data,”<sup>67</sup> though such data are not officially available.

In the UK, comprehensive ethnic statistics have proven an invaluable tool for the development of differentiated policies to improve the quality of public services offered to racial and ethnic minority groups. These statistics have revealed that in the areas of education, healthcare, social protection, housing, public service provision, employment, and criminal justice the Pakistani and Bangladeshi communities (which are overwhelmingly Muslim) experience particularly high levels of disadvantage, deprivation and discrimination even in comparison to other minority ethnic communities. On this basis, and on the basis of reports of discrimination from Muslim representatives, additional research and the compilation of statistical data on religious communities in the UK as well as in other member States seems justified. As decisions about how to categorise people reflect political decisions about which patterns are likely to be important, and which groups deserve protection, launching such research initiatives would send a strong signal that member States are committed to the protection of Muslim communities along with racial and ethnic minority communities.

Statistical information provide a solid basis for assessing the situation of minority groups, and for the development of effective public policies to address the disadvantages they may face, *before* they lead to alienation, disaffection and even conflict. The EU should devote resources toward researching, in close collaboration with minority representatives, acceptable methodologies for conducting research while ensuring respect for privacy and protection of personal data; it should also encourage member States to utilise these methodologies to compile more comprehensive research on the situation of vulnerable minority populations than is currently available.

### 3.2.2 Discrimination against Roma

Despite the almost complete lack of reliable data, EUMAP reports contain abundant anecdotal evidence that Romani communities in Germany and Spain face serious disadvantages in many areas; on the basis of this evidence, more comprehensive analytical and statistical research is warranted.

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<sup>66</sup> Comments of the Government of the Federal Republic of Germany to the Opinion of the Advisory Committee on the Report on Implementation of the FCNM in the Federal Republic of Germany, p. 13.

<sup>67</sup> European Commission against Racism and Intolerance, Second report on Italy, adopted on 22 June 2000 and made public on 23 April 2002, p. 30.

Like their counterparts in Central and Eastern Europe, Romani communities face crippling disadvantages in gaining equal access to **education**. These disadvantages stem in part from poor living conditions and poverty, but severe marginalisation and discrimination also play a role. In Germany, a disproportionate number of Sinti and Roma children are placed in “special schools” for mentally retarded or developmentally disabled children, regardless of their intellectual capacity; graduates of such schools have little prospect of attaining further education or gainful employment. Though levels of enrolment among Spanish Romani children have improved since 1980, high drop-out rates and absenteeism continue to pose serious problems, and few Roma/gitanos complete higher education. Spanish public schools are increasingly “ghettoised,” and difficulties in accessing kindergartens and certain schools have been reported.

Both the German and Spanish Governments have acknowledged that inequalities in education need to be addressed. The Spanish Government has developed “compensatory” educational programmes to provide extra assistance for Roma/gitano children. However, some Roma leaders are concerned that these initiatives may reinforce – and at the very least do little to address – educational segregation. Moreover, a lack of central coordination has led to uneven implementation from one Autonomous Community to another.

The German Government has advanced “promoting schools” as a means of equalising opportunities for Sinti and Roma children. In the opinion of Sinti and Roma leaders, many of these “promotional opportunities” are imposed on Sinti and Roma children arbitrarily, and some school authorities acknowledge that “promoting schools” are merely “a new name for an old problem.”<sup>68</sup> A number of German states provide support for NGO initiatives to overcome disadvantages faced by Sinti and Roma children in access to education. However, there has been no systematic evaluation of their effectiveness or assessment of “good practices” with a view towards sharing and exchanging these experiences, and no comprehensive policy to ensure that adequate and sustained financial support is committed to successful initiatives.

There are significant barriers to legal **employment** for Roma and Sinti. In addition to the disadvantage of generally low levels of education and training, they appear to face strong prejudices in hiring and at the workplace. Many Romani families are engaged in a combination of formal and informal employment, in jobs considered undesirable by the rest of the population, such as street-vending, solid waste collection, or seasonal work. Although there has been no systematic research on the subject, German and Spanish Romani leaders and human rights organisations concur that discrimination against Roma in the labour market is a daily reality. Employment offices in Spain report that many companies openly refuse to employ Romani applicants. According to

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<sup>68</sup> OSI Roundtable Meeting, Hamburg, April 2002.

one representative of a special employment programme for Roma, “in five cases out of ten the employers tell me directly that they do not want Roma.”<sup>69</sup> In neither Germany nor Spain are complaints of discrimination brought to court and there is little case-law in this area in either country.

Governmental response to employment issues affecting the Spanish Romani community have been framed in terms of clichés and generalisations about lack of skills and different cultural attitudes towards work among Roma/gitano communities; little consideration has been given to the role played by racial discrimination, and as a result few strategic policy responses to the reality of discrimination have been developed. One encouraging development is “Acceder,” an EU-supported programme, which for the first time includes the Romani community as a special target group for the operative programmes of the European Social Fund.

Public authorities in some German states have made attempts to reduce high levels of unemployment among Sinti and Roma through various job-creation projects; however, the effectiveness of these projects has been limited. As in the area of education, there has not been any large-scale evaluation or assessment of successful job-creation projects with a view towards exchanging experiences to identify positive practices. Doing so could support the development of more systematic policy measures to alleviate the disadvantages faced by Sinti and Roma on the labour market.

The majority of Roma live in sub-standard **housing**, often in segregated shantytowns (in Spain) or settlements (in Germany) on the outskirts of urban centres, with minimal infrastructure, and often in conditions that pose serious **health** risks. Discrimination in access to public and private housing as well as other **goods and services** has been reported from both Germany and Spain. Advertisements for apartments to let that stipulate “no foreigners,” “no Arabs,” “no gitanos” or “no people from the East,” are common in central Madrid and other big cities in Spain, and recent polls indicate persistent support for segregation: many non-Roma assert that that “[Roma] should live separately,” “should not be allocated housing in our districts,” or “should be expelled from the country.”<sup>70</sup> In one 1994 survey, about 68 percent of Germans stated that they did not wish to have Sinti and Roma as neighbours.<sup>71</sup>

<sup>69</sup> Interview with a Romani woman who works in an employment office, anonymity requested, December 2001.

<sup>70</sup> T. C. Buezas, as cited by A. Piquero, “Received Worse than People from Maghreb,” *G. El Comercio*, 10 April 2000.

<sup>71</sup> Cited in D. Strauss, “Anti-Gypsyism in German Society and Literature” in S. Tebbutt, ed., *Sinti and Roma: Gypsies in German-Speaking Society and Literature*, Berghahn Books, Oxford, 1998, p. 89.

The German Government has both acknowledged the need and confirmed the intention to improve the living conditions of Sinti and Roma and to promote their integration into society, and some *Länder* have initiated successful re-housing projects.<sup>72</sup> German Roma and Sinti representatives emphasise that most successful projects involve them directly in the decision-making process, and call for the integration of *ad hoc* projects into a broader and more comprehensive governmental housing policy to address widespread segregation.

In Spain, there were attempts in the 1980s and 1990s to eradicate segregated shantytowns by moving Roma/gitanos into “transitional” housing, consisting of basic (and sometimes sub-standard) buildings, often on the periphery of urban centres, as an interim step to full integration in mixed neighbourhoods. In the short term, though the policy did little to address patterns of marginalisation and segregation, the transfer of thousands of families from shanties to flats with water, electricity and sanitary facilities constituted an undeniable improvement.

However, the transfer was not conceived of or implemented as part of a long-term policy, and there is no central body to coordinate its implementation. Though this has granted local authorities great flexibility and discretion to design policies responsive to local conditions, and some have designed successful integration policies, it has also meant that there has been little or no coordinated exchange of positive and negative experiences among communities, and little evaluation or assessment. Solutions which were initially improvised to deal with crisis situations threaten to become permanent: as of August 2002, thousands of Roma are living in transitional housing, without any indication of when the transition period will end.

Like German Sinti and Roma, Spanish Romani leaders claim that the failure significantly to improve the housing situation is a direct result of State authorities’ failure to secure their active participation in programme development and implementation. Moreover, there has been a tendency to displace responsibility for addressing housing problems to NGOs, which – particularly in the absence of a comprehensive State policy – lack the necessary authority and expertise to deal with problems of this scale systematically or effectively.

There are no national statistics or studies on the **health** situation of Romani communities in either Germany or Spain. However, data gathered at the regional or local level in Spain and abundant anecdotal evidence from both countries suggest that Roma suffer from lower life expectancy, a higher incidence of disease and illness, and

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<sup>72</sup> See, P. Widmann, *An den Rändern der Städte. Sinti und Jenische in der deutschen Kommunalpolitik (On the Margins of Cities. Sinti and Jenishes in German Social Policy)*, Metropol, Berlin, 2001.

greater difficulty in accessing health services than the majority.<sup>73</sup> Roma in both Germany and Spain allege that healthcare personnel are often insensitive to their distinct cultural traditions and attitudes, which is a contributing factor to their under-utilisation of primary and preventive healthcare services and over-reliance on emergency services; in Germany, there is a legacy of mistrust for healthcare institutions dating back to the Nazi-era medical experimentation on Sinti and Roma.

The direct consequence of the almost complete lack of information in this area is that no specific Government programmes or policies exist in either country to address the serious health issues that Romani communities clearly confront. As a first step, there should be systematic attempts to confront widespread long-standing suspicion and mistrust toward healthcare providers among Roma communities. Health mediator projects implemented in a number of Central and East European countries, including Romania, might provide an example to be emulated. In Spain, State support for Romani health programmes focuses on AIDS, substance abuse or mental disorders – a selection that Romani leaders have criticised as inopportune and prejudiced.

The most troubling manifestation of discriminatory attitudes, of course, is **racially motivated violence**, which has been on the rise in both Germany and Spain. The effects of such violence are exacerbated by persistent and widespread allegations of discrimination in the **criminal justice system**, including ill-treatment and harassment by law enforcement officers. Despite the seriousness of these allegations, which have been made by several international monitoring organisations with regard to both countries, German legislation does not stipulate either enhanced sentencing for crimes committed with racial motivation, or specific sentencing enhancements for racially motivated crimes perpetrated by law enforcement officers. Moreover, the award of legal aid is based on the likelihood of a successful outcome. Though the Spanish Penal Code prohibits incitement to racially motivated discrimination, hatred, or violence, and stipulates sentencing enhancement for offences committed with a racial motivation, these provisions have been applied extremely rarely.

### 3.2.3 Discrimination against Muslims

As noted above, it is often difficult to substantiate the extent of discrimination against Muslims, as little data has been collected using religion as an indicator. However, the experience of Muslims in the UK may prove useful: many British Muslims arrived as immigrant workers several generations ago. It is only after several decades and the compilation of extensive ethnic and racial statistics indicating higher levels of

<sup>73</sup> See, e.g., J. F. Gamella, *The Roma Population in Andalusia*, Junta de Andalusia, Sevilla, 1996, p. 171.

disadvantage among predominantly Muslim Bangladeshi and Pakistani communities that awareness of religious discrimination and the need for targeted policies to address it has become increasingly apparent. Collecting differentiated data about the situation of Muslim communities in the UK as well as in other EU countries would allow policy-makers in those countries actively to develop effective two-way integration policies before problems emerge.

Patterns of segregation of Muslim children in **education** have been noted in some towns and cities in the UK, and are considered to have been one of the key contributing factors to serious rioting in Bradford, Burnley, and Oldham in the Summer of 2001.<sup>74</sup> The European Commission against Racism and Intolerance (ECRI) has raised concerns regarding the separation of foreign children or children of immigrant background in specialised education courses and certain districts and schools in France as well.<sup>75</sup>

There are still comparatively few immigrant children in the Italian education system, but patterns of lower than average attendance and achievement, and higher drop-out rates are already emerging, which the Government is seeking to address through the employment of “cultural and linguistic mediators” to assist and support teachers working with large numbers of foreign students.<sup>76</sup> The “linguistic mediator” is usually an adult of the same nationality as foreign students, who has the task of helping them adjust to school and easing relations between the school and the family. “Cultural mediators” assist teachers of publicly funded literacy and integration classes for foreign adults.<sup>77</sup>

However, no differentiated data are available to indicate the situation of Muslim children in particular in either France or Italy. In light of ethnic statistics in the UK, indicating that pupils from the Pakistani and Bangladeshi communities perform less well than other pupils at all stages of compulsory education, the collection of such data might be advisable in order to fashion effective education policy.

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<sup>74</sup> Report of the Ministerial Group on Public Order and Community Cohesion, *Building Cohesive Communities*, London: Home Office, 2001; Report of the Independent Review Team chaired by Ted Cantele *Community Cohesion*, London: Home Office, 2001

<sup>75</sup> See European Commission against Racism and Intolerance, Second report on France, adopted on 10 December 1999 and made public on 27 June 2000, paras. 21–22; 44. The French Government acknowledged that “the phenomenon of disproportionate representation of disadvantaged categories of the population does exist,” though it objected to ECRI’s use of the term “separation.”

<sup>76</sup> *Programmatic Document regarding state policy towards immigration and foreigners in the territory of the state*, on the basis of Art. 3 of Law 1998/40: 2001–2003, p. 50.

<sup>77</sup> These classes are offered at specially established *Centri Territoriali Permanenti* (Permanent Territorial Centres) for the education and training of adult immigrants. The Centres are established and receive state funding on the basis of O.M. 455/97.

British and French Muslims also report unfair treatment as a result of educational policies and practices that are insufficiently sensitive to their background and culture.<sup>78</sup> In France, for example, it is considered an important function of public educational institutions to impart Republic values, including *laïcité* (secularism). This has led to tensions when Muslim students have asserted their right to wear veils, revealing the difficulties inherent in balancing the requirements of *laïcité* and other Republic values – which largely accord with the values of the majority – against the cultural of Muslims; similar difficulties arise whenever the cultural assumptions of a minority group differ from those of the majority.

UK Home Office research shows that compared to other faith communities Muslims report the highest levels of unfair treatment in the area of **employment**.<sup>79</sup> Moreover, ethnic statistics show that lower rates of economic activity and employment and higher rates of unemployment are recorded among Pakistani and Bangladeshi Muslims than other ethnic minority groups.<sup>80</sup> Although no detailed statistics regarding discrimination against particular ethnic or religious groups is available in France, French temporary employment agencies report receiving specific requests from companies not to send Muslim workers, and in fact French Muslims report discrimination in hiring and at the workplace more frequently than in any other area, though few legal complaints are filed. There is no data to show that Muslims are particularly disadvantaged compared to other immigrants in Italy, most of whom work either in unskilled positions, seasonal occupations or illegal jobs, often with insufficient access to social protection.

The Employment Directive requires member States specifically and explicitly to prohibit direct and indirect religious discrimination in employment. It will thus require employers to monitor their employment decisions on the basis of religious affiliation in order to ensure that a policy, practice, provision or criterion does not have the unintended effect of disadvantaging Muslims or employees of any other faith. The Directive also requires measures to ensure effective implementation through dissemination of information, social dialogue, and dialogue with non-governmental organisations;<sup>81</sup> legislation will need to be complemented by practical guidelines to inform job-seekers, employers, and the broader public of their rights and responsibilities.

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<sup>78</sup> P. Weller, A. Feldman, K. Purdam, *Religious Discrimination in England and Wales: Home Office Research Study 220*, Home Office, London, 2001, pp. 23–36.

<sup>79</sup> P. Weller, A. Feldman, K. Purdam, *Religious Discrimination in England and Wales: Home Office Research Study 220*, Home Office, London, 2001, pp. 37–50.

<sup>80</sup> Performance and Innovation Unit, *Improving labour market achievements for ethnic minorities in British Society*, Cabinet Office, London, 2001, p. 40.

<sup>81</sup> EU Framework Employment Directive, Arts. 12–14.

Immigrants in general appear to experience widespread discrimination in access to both public and private **housing** as well as other goods and services. Statistics collected on the basis of ethnicity in the UK reveal that particular disadvantage is experienced by the Muslim Pakistani and Bangladeshi communities. Though there has been little research on the situation of Muslims in particular, a number of studies in France have revealed that racial or ethnic discrimination is common in the process of screening and selecting applicants for subsidised public housing in particular,<sup>82</sup> as well as in the private housing market. In both France and Italy, there have been reports of public housing officials routinely allocating public housing on the basis of discriminatory evaluations of applicants presumed to be of foreign origin.<sup>83</sup> In Italy, this practice has been successfully challenged in court in at least one case, but awareness of legal provisions remains low among immigrant communities, and statistics from recent research demonstrate that the availability of public housing available to immigrants is very low compared to Italian and EU citizens.<sup>84</sup> Moreover, the housing which is made available is often of inferior quality.<sup>85</sup>

The failure of public service providers to take their needs into account in service delivery is a common and key concern expressed by many Muslim community groups in the UK. The lack of information and statistics about the experience of Muslims presents a significant obstacle to developing policies and ensuring service delivery appropriate to British, French and Italian Muslim communities.

Little research is available on the specific treatment of Muslim patients in the French public **healthcare** system, including in public hospitals, though anecdotal evidence suggests that Muslims commonly experience lack of comprehension and appreciation for distinct cultural and religious practices and requirements when accessing health services. Documented inequalities in **health** outcomes between different minority groups suggest that health service providers fail to reach Muslim communities or to meet their needs;<sup>86</sup> three-quarters of Muslim organisations in a Home Office study

<sup>82</sup> Note published by GELD on social housing, *Note 3*, 10 May 2001, "Les discriminations raciales et ethniques dans l'accès au logement social" (Racial and ethnic discriminations in the access to social housing") under the direction of Patrick Simon (hereafter GELD, *Note 3*). See <<http://www.sos-racisme.org/presse/notegeld.htm>>, (accessed 25 September 2002).

<sup>83</sup> Trib. Milano, 20 March 2002, Dr.ssa Paola Gandolfi, in the case *El Houssein, El Mouden, Zerai v. the Comune di Milano*, unpublished. On file with EUMAP.

<sup>84</sup> See Rete d'urgenza contro il razzismo, *Annual Report 2000*, pp. 16–21, at <<http://www.unimondo.org/reteurg/ra00it.zip>>, (accessed 18 September 2002).

<sup>85</sup> See Rete d'urgenza contro il razzismo, *Annual Report 2000*, pp. 8–36, at <<http://www.unimondo.org/reteurg/ra00it.zip>>, (accessed 18 September 2002).

<sup>86</sup> Social Exclusion Unit, *Minority Ethnic Issues in Social Exclusion and Neighbourhood Renewal*, London: Cabinet Office, 2000, para. 2.39, which cites the example of sexual health services that do not meet the needs of minority communities.



reported unfair treatment from social services staff and from practices in social services departments.<sup>87</sup>

Given the tendency among member State populations to associate Muslims with “foreign” elements in their societies and to view Islam as monolithic (see above), the events of 11 September 2001 provoked an increased association of Islam with terrorism and fundamentalism. There was a surge in harassment and **violence** directed at Muslims and those perceived to be Muslim after 11 September 2001 in many EU countries, including Italy and the UK.<sup>88</sup> While the number of racist acts in France actually decreased overall in 2001,<sup>89</sup> many of those that did take place were linked with 11 September.

According to British and French Muslim leaders there is a growing perception in Muslim communities that they are being stopped, questioned, and searched not on the basis of evidence and reasonable suspicion but on the basis of “looking Muslim.” Studies of the **criminal justice system** in the UK also show differences in sentencing and imprisonment between black and white people.<sup>90</sup> There are also indications of inequalities in the justice system in France. For example, though systematic data has not been collected and it is impossible to isolate a religious motivation, there appears to be a pattern of discrimination in sentencing, with individuals whose ethnic origin (or supposed ethnic origin) is not French receiving longer sentences for similar crimes.<sup>91</sup> Law enforcement agencies should look to foster good relations with Muslim communities, as a way of decreasing mistrust and suspicion; doing so would also have the positive side-effect of providing police with assistance in fighting crime and gathering intelligence.

<sup>87</sup> P. Weller, A. Feldman, K. Purdam, *Religious Discrimination in England and Wales: Home Office Research Study 220*, Home Office, London, 2001, p. 72.

<sup>88</sup> C. Allen, J.S. Nielson, *Summary Report on Islamophobia in the EU after September 11 2001*, Vienna: European Centre on Racism and Xenophobia, May 2002, pp. 23, 28–29; Islamic Human Rights Commission, *UK Today: The Anti-Muslim Backlash in the Wake of 11<sup>th</sup> September 2001*, Islamic Human Rights Commission, London, 2001.

<sup>89</sup> Sixty-seven racist acts were recorded in 2001, compared to 146 in 2000. CNCDH Report 2001, published in March 2002.

<sup>90</sup> The Runnymede Trust Commission the Future of Multi-Ethnic Britain, *The Future of Multi-ethnic Britain – The Parekh Report*, Profile Books, London, 2000, p. 130.

<sup>91</sup> Discussion with Hanifa Chérifi, “Les musulmans victimes de discriminations. Une inégalité entre les religions” (Muslim victims of discrimination. Inequality between religions.) J-M. Blier, S. de Royer, *Discriminations raciales, pour en finir*, 2001, Paris, éditions Jacob-Duvernet, p. 62.

In response to post-September 11 violence, the UK has adopted legislation making religious motivation for some violent offences a separate offence,<sup>92</sup> and racial or religious motivation as an aggravating factor in sentencing for all offences.<sup>93</sup> In France and Italy, reports indicate that Arab, Muslim and immigrant communities appear to be subject to violence, it is difficult to isolate a religious motivation.<sup>94</sup> In France, however, racist violence clearly often has a religious dimension: places of worship (including both mosques and synagogues) are often the target of attacks, stone-throwing, and partial or total destruction. Training should be provided to law enforcement officials on policing issues arising from “religious” hate crimes, and monitoring of implementation and enforcement should be initiated in all member States.

### 3.3 Minority Rights

#### 3.3.1 Recognition

Many member States have adopted restrictive definitions of “minority,” creating a hierarchy of protection among different groups. In Italy, for example, a full range of minority rights is guaranteed to traditional national minority groups, such as the French, German and Slovenian minorities. Both Muslims and Roma – arguably two of the most vulnerable groups in the country – are excluded.<sup>95</sup> Roma/gitanos are not recognised as a *pueblo* (a constituent people of Spain), and therefore are treated less favourably than other minority groups in various spheres of economic, political and social life. In Germany, Sinti/Roma are a recognised minority group, along with Danes, Frisians, and Sorbs, but Muslims are not. In the UK, the Government has adopted an inclusive definition of national minority,<sup>96</sup> which however excludes Muslims and members of other faith communities from access to minority rights. The

<sup>92</sup> Crime and Disorder Act 1998, s. 28–32 as amended by the Anti-terrorism, Crime and Security Act 2001, s. 39.

<sup>93</sup> Powers of Criminal Courts (Sentencing) Act 2000, s. 153 as amended by the Anti-Terrorism, Crime and Security Act 2001, s. 39.

<sup>94</sup> See recent ECRI recommendation against attacks against Muslims in Europe after September 11 at [http://www.coe.int/T/E/Communication\\_and\\_Research/Press/Themes\\_files/Combating\\_racism/e\\_ECRI\\_Rec5.asp#TopOfPage](http://www.coe.int/T/E/Communication_and_Research/Press/Themes_files/Combating_racism/e_ECRI_Rec5.asp#TopOfPage), (accessed 18 September 2002).

<sup>95</sup> However, the almost complete lack of data in Italy makes it difficult to distinguish between disadvantages experienced by Muslims and disadvantages experienced by immigrants in general. See Section 3.2.1.

<sup>96</sup> See Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on the United Kingdom*, Strasbourg, 2001, para. 14.

concept of minority is not seen as relevant in France; the existence of minorities is seen as a threat to the Republican model, which aims to guarantee equal treatment for all. Though French Muslim representatives have not challenged this model, a consensus is emerging among them that they, as a group, are treated differently from other religious minorities.<sup>97</sup>

As a body which explicitly advances respect for and protection of minorities *vis-à-vis* third countries, and has set this as a requirement for new members, the demands of internal consistency require the EU to devote attention to working out a common definition of minority within the EU context and encouraging all member States to frame minority protection legislation and policies accordingly. This definition should be subject to regular review and evaluation, to account for and accommodate the emergence of new minority groups.

### 3.3.2 Citizenship issues

The majority of Muslims living in the UK are citizens, many of them second or third generation. By contrast, large numbers of Muslims living in France have become citizens only in the past decade or are non-citizens, and the majority of Muslims living in Italy have not obtained citizenship. Both “new minorities” and non-citizens have been excluded from minority rights regimes.

Non-citizens are particularly vulnerable in a number of important ways: they are prone to accept illegal work, without regulation or protection; they are often segregated in cheap, poor-quality housing districts and neighbourhoods; they face discrimination and violence; and with uncertain legal status and low awareness of their rights under the law, many fear rather than trust law enforcement authorities and other public officials. The rights and obligations of non-citizens generally fall under different legal regimes (i.e. outside of traditional regimes for minority protection), an in-depth examination of which falls beyond the scope of these reports.<sup>98</sup> However, it is generally acknowledged that basic human rights and protections must be accorded to all, regardless of citizenship status. Some States, such as Italy, have responded to the presence of large numbers of non-citizens by adopting special legislation to underline

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<sup>97</sup> OSI Roundtable Meeting, Paris, July 2002.

<sup>98</sup> Though EUMAP reports have focused on the rights of Roma citizens in Germany and Spain, it should be noted that there are also large numbers of Roma refugees and asylum-seekers in these and other EU member States.

that protection against discrimination and violence is included among these basic rights and protections.<sup>99</sup>

There is increasing recognition that Muslim immigrants (including “temporary workers,” asylum-seekers, and migrant workers) are in Europe to stay, and moreover that Europe’s economies are increasingly reliant upon immigrant labour. Their different cultural and religious backgrounds, languages and values are already transforming the appearance and character of many EU member States, such as Italy and Spain, which were relatively homogeneous until quite recently.

Most member States have acknowledged that citizenship is a key step in the integration process, and have taken steps to facilitate naturalisation for immigrant workers and their families. Large numbers of French Muslims have obtained citizenship in the past decade, and a similar surge in the number of Muslim citizens can be expected in Italy. As more and more Muslims become citizens, the demand for traditional minority rights related to education, language, media, and particularly political participation is likely to grow.

The transformation of EU member States into multi-cultural and multi-faith societies raises new challenges to the existing legal regime for minority protection. Integration must be a two-way process, requiring not only the adaptation of new groups to European cultural and social environments, but also a guarantee of equal treatment and protection against discrimination as well as of respect for their distinct identities. Increasing sophistication in integration policy would benefit other marginalised groups, such as Sinti and Roma, whose culture, language and history has been undervalued and left on the side for centuries.<sup>100</sup>

Although it is clearly within a State’s competence to determine which groups will receive recognition and when, the EU should encourage member States to adopt more expansive and inclusive definitions of “minority,” thus extending minority rights to non-traditional groups. It should also work to articulate a minimum standard of equal treatment to those groups which do not fit within the definitions adopted. Member

<sup>99</sup> *Decreto legislativo 25 luglio 1998, n. 286 Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero* (Law on Immigration and the Legal Status of Foreigners), Chapter IV (hereafter, “Law 286/1998”). However, Law 286/1998 was amended on 11 July 2002, introducing a number of significant and controversial changes, including a provision requiring all immigrants who apply for a residence permit to be finger-printed (which has now been extended to citizens as well); reducing the validity of residency permits from three to two-year periods, tightening regulations on family reunification so as to exclude children over 18 years of age, and loss of one’s job resulting in a loss one’s residency permit.

<sup>100</sup> For example, the legacy of past legislation (no longer in force) banning Roma/gitano customs, dress and language is that the Caló language has almost been lost.

States should also take steps to facilitate access to citizenship for non-citizen populations.

### 3.3.3 Minority rights issues for Roma

Romani communities in Germany and Spain have received very limited State support for the purpose of protecting and promoting their distinct cultural and linguistic identities; in some areas, State practice has actually discouraged the development of minority rights for Roma. Particularly when contrasted with generous treatment of certain other minority groups, less favourable treatment of Roma itself constitutes a form of discrimination.

For example, though the languages of numerous other minority groups are recognised and may be used extensively in the public sphere, Caló, the language of the Spanish Roma, is not legally recognised anywhere in Spain, nor is it recognised by the State as a protected language under the European Charter for Regional or Minority Languages (CRML).<sup>101</sup> Though very few Roma/gitanos speak Caló as a mother tongue, it plays an extraordinarily important role as a unifying ethnic symbol; in the political context, recognition of language is essential for recognition of minority identity, which is key to recognition of the political rights of a group.<sup>102</sup> Thus, the survival of Caló is of great importance to the Romani community, and Roma leaders have repeatedly requested Government assistance for promoting its study and use.<sup>103</sup> Especially in light of historical persecution of Romani communities for the use of Caló, *inter alia*,<sup>104</sup> it would seem appropriate for the State to acknowledge past injustice by supporting these requests.

As of August 2002, Hesse remains the only German state that has accepted all 35 points required for implementing Part III of the CRML, despite the fact that the Romani language “is spoken in most of the *Länder* of the Federal Republic of

<sup>101</sup> Council of Europe, *List of Declarations Made with Respect to Treaty no. 148, European Charter for Regional or Minority Languages*, Complete chronology on 18 May 2002. Spain recognised as regional or minority languages the official languages recognised as such in the Autonomy Statutes of the Basque Country, Catalonia, Balearic Islands, Galicia, Valencia and Navarra; other languages, which are protected by the Statutes of Autonomy in the territories where they are traditionally spoken, are also considered regional or minority languages.

<sup>102</sup> I. Álvarez Dorronsoro, “Interview with Teresa San Román: Change and Continuity of the Romani identity,” *Revista Hika* 111, <[http://www.hika.net/revista/zenb111/Ha\\_a\\_Teresa.html](http://www.hika.net/revista/zenb111/Ha_a_Teresa.html)>, (accessed 20 August 2002).

<sup>103</sup> “Manifesto for the Constitution of Platform for the Statute of the Roma Nation – Romipen,” Toledo, 12 February 2000, para. 14, see <<http://www.cenfor.com/romipen/manifiesto.htm>>, (accessed 20 August 2002).

<sup>104</sup> See A. G. Alfaro, *The Great Gypsy Roundup*, Editorial Presencia Gitana, 1995.

Germany.”<sup>105</sup> With regard to the right to use Romanes with public officials, the Government has asserted that since Sinti and Roma “grow up as bilingual speakers of Romany and German and, as a rule, have a command of both languages, no actual requirement for using Romany in relations with administrative authorities has been observed.”<sup>106</sup> Sinti and Roma leaders have expressed concern about the lack of protection afforded in practice to Romanes.<sup>107</sup>

In both Germany and Spain, the dominant approach to teaching Roma is compensatory or “promotional” education classes (see Section 3.1.2);<sup>108</sup> within this framework, Roma identity and culture is often perceived by teachers as a problem to be overcome rather than an advantage to be cultivated. Though Spanish teachers’ associations and Roma NGOs have repeatedly requested the inclusion of specialised courses on the history and culture of Spanish ethnic groups and intercultural communication and teaching into university curricula for teachers, psychologists, magistrates, and social workers, these recommendations have not been taken up. Some information of this nature has been published and distributed in a number of German states, but Sinti and Roma leaders maintain that school curricula do not as yet provide adequate information about their history and culture, or about their victimisation during the Holocaust.

Competence for most educational and cultural issues rests with individual German states. With the exception of Hamburg, no German state presently provides for instruction in Romanes within the public school system, on the grounds that such instruction is “not wanted by German Sinti parents.”<sup>109</sup> The Government has also asserted that the majority of Sinti and Roma<sup>110</sup> oppose the development of a written

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<sup>105</sup> Report submitted by the German Government to the Advisory Committee on Implementation of the Framework Convention on National Minorities, 1999, pp. 10–11 (hereafter, “German State FCNM Report”). Several other states have accepted Part II of the CRML.

<sup>106</sup> German State FCNM Report, p. 79.

<sup>107</sup> “Sorge um Sprache: Sinti und Roma fordern Schutz des ‘Romanes’” (“Concerns about the Language: Sinti and Roma Promote Protection of Romanes”), *Wiesbadener Tagblatt*, 28 July 2001.

<sup>108</sup> J. D. Santiago, intervention published in Working Documents 43, “Debate on Romani People,” p. 69.

<sup>109</sup> German State FCNM Report, p. 112.

<sup>110</sup> The German FCNM Report acknowledges that some Roma organisations take a different view, and “argue in favour of the inclusion of Romany in school education and wish to support measures, like those taken in European neighbouring countries, for the development of a written form of this language,” but indicates that the Government chooses to respect the will of the majority of Sinti, who reportedly insist on “cultivat(ing) their language exclusively within the family and family clans.” German State FCNM Report, p. 96.

form of Romanes, and object to outsiders learning and providing instruction in it.<sup>111</sup> However, this assertion is not based on a broad assessment of the opinions of Sinti and Roma communities throughout Germany, but on the views expressed by the organisation recognised by the Government as the official representative of the Sinti and Roma community.<sup>112</sup>

In both Germany and Spain, Roma are poorly represented both in public administration and in governmental bodies to protect or promote minority rights. In both countries, diverse Romani communities are represented officially by one or more organisations which receive most of their funding from the Government. Though this approach provides Governments with a ready interlocutor and reliable partner in implementing various projects, it does not tend to promote the development of independent Romani views and critiques, and has fuelled conflict rather than cooperation among different Romani organisations.<sup>113</sup> In Spain, it has meant that the State's principal national policy to improve the situation for Roma has taken on the character of a social assistance programme rather than a strategic plan to protect and promote the rights and identity of the Roma minority.

Governments should develop more inclusive mechanisms to ensure that Sinti and Roma are afforded equivalent opportunities with other recognised minority groups, including the right to cultivate and study their language. They should also develop more sophisticated mechanisms for ensuring them the opportunity to participate fully in public life, including through active participation in the development of policies and programmes to benefit them, and in leading implementation and evaluation of those policies and programmes.

### 3.3.4 Minority rights issues for Muslims

By definition, Muslims are largely excluded from consideration under existing minority protection regimes in France, Italy and the UK (see Section 3.3.1). Majority

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<sup>111</sup> German State FCNM Report, p. 86.

<sup>112</sup> The OSCE High Commissioner on National Minorities has noted, with regard to State-funded NGOs (in Spain), that NGO representatives "cannot be expected to dispense fully disinterested advice" when this is likely to affect their own funding. OSCE High Commissioner on National Minorities *Report on the Situation of Roma and Sinti in the OSCE Area*, 2001, p. 145.

<sup>113</sup> At the same time, the lack of unity among Romani organisations is often seen as a primary cause for the limited success of State efforts to improve their situation. See, e.g. "The State and the Gypsies," interim report on the policy research project of the European Migration Centre, Berlin, November 2001; on file with EUMAP.

institutions, even when they are formally neutral or secular, often implicitly (and sometimes explicitly) favour the culture and religion of the majority. For example, Christmas and Easter are recognised as public holidays; religious symbols and rituals are often used during official State ceremonies; and school curricula are informed by Christian traditions and history (even in schools with few, if any, Christians).<sup>114</sup> Still, all three Governments formally embrace the value of multiculturalism and diversity, and have made efforts to address the religious and cultural needs of Muslim communities within the context of existing legal and institutional frameworks.

There are significant differences in the relationship of all three States with different faiths. The Church of England is the Established Church in England<sup>115</sup> and a Concordat regulates relations between the State and the majority religion (Roman-Catholicism) in Italy.<sup>116</sup> Only religions represented by an officially-recognised church institution are legally entitled to certain benefits (such as tax exemptions on religious buildings) in France<sup>117</sup> and Italy, producing inequalities in treatment among different forms of worship;<sup>118</sup> in neither country have Muslims succeeded in concluding an agreement with the State, and thus their exercise of religious rights is limited in practice.

To address these inequalities, State authorities have encouraged Muslims in France and Italy to designate a single representative to facilitate the negotiation of a State agreement. However, the process has proven difficult. In Italy, for example, it seems likely that the designation of one organisation as “representative” might result in the alienation of others, and the State has concluded that it is too early for an agreement. In France, several Muslim associations have participated in a consultation process that has produced a draft agreement on a methodology for electing a representative body,

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<sup>114</sup> In both Italy and the UK, public schools must provide religious education for all registered pupils, including in daily collective Christian worship, although parents can choose to withdraw their children.

<sup>115</sup> The Church of Scotland is the national church of Scotland; there is no established church in Wales or Northern Ireland.

<sup>116</sup> The concordat was ratified by Law 121/ 25 of March 1985, Ratification and execution of the Accord, with additional protocol, signed in Rome, 18 February 1984, with modifications to the Lutheran Concordat of 11 February 1929 between the Republic of Italy and the Holy See.

<sup>117</sup> Lutheran and Reform Protestantism, Judaism and Catholicism are all legally recognised forms of worship under the Combes Law of 1905.

<sup>118</sup> In Italy, for example, groups that have not signed a State agreement cannot allocate a quote of the personal income tax to their community, deduct donations to the community from taxes, delegate teachers to public schools to provide religious instruction, legitimately abstain from work on religious holidays, *inter alia*.



but other groups did not participate, and some association leaders feel that they have been excluded.

Until such agreements are negotiated, Muslims living in France and Italy will not enjoy legally-guaranteed access to important religious rights. Though some local authorities have taken steps to accommodate the needs of Muslim communities, they do so on a discretionary basis, and sometimes run up against resistance from their electorate; in both France and Italy, local communities have often opposed the construction of Islamic places of worship.

In important ways, existing frameworks for dealing with minority religious communities are not well-suited to the realities and demands of large and diverse Muslim populations. This is not surprising, as they were originally developed under much different conditions than presently pertain, in response to the needs of indigenous religious communities. Some Muslims (and non-Muslims) have criticised the State's approach as "post-colonial," intended to control Muslim communities rather than facilitate their participation. States should re-examine frameworks for regulating religious community life to determine the extent to which they serve the needs and interests of religious minority groups; where appropriate, these frameworks should be amended to make them more responsive to present-day realities.

The diversity of the Muslim communities in France, Italy, and the UK means that they have no single "minority language." Therefore, requests for minority language use and education in a minority language are not relevant for the Muslim community as a whole, though they may be relevant for particular linguistic groups. Though Muslim communities in France and the UK in particular recognise the need to learn the majority language, they also place importance on learning Arabic and on the degree to which schools promote awareness of Islam and the contribution of Muslims on an equal footing with other faiths. British Muslims have emphasised the importance of providing public school teachers with basic knowledge of Islam to allow them to operate more effectively in a multi-faith environment. Recognising the Islamic dimension of Muslim students' identity and working with Muslim community bodies may be important in developing innovative policies that work to improve standards in schools.

At present, most Arabic-language teaching and religious education in Islam takes place either at home or in the mosque sector, after school hours. With limited time and resources at their disposal, mosques are often able to impart only basic knowledge of Arabic and Islam. The younger generations of Muslims therefore lack opportunities to engage fully with their religion and to acquire adequate knowledge of the history and traditions of Islam. Without adequate education and knowledge, young Muslims are ill-equipped to engage in debate and dialogue with organisations that offer differing and perhaps more radical interpretations of Islam.

Providing Arabic classes in the context of modern language classes in State schools would create an opportunity to develop the interests and skills of Muslim pupils and parents and a chance to integrate learning about Arabic-speaking communities and cultures into the curriculum. Where there is demand, schools should consider offering Arabic as a modern language option alongside modern European languages.

As noted above, public awareness of the traditions and history of Islam is extremely low and intolerance towards Muslims is a problem, which is exacerbated by reliance on oversimplified and stereotyped images of Islam in the mainstream media. Muslim response to media stereotyping appears to be limited; media regulatory bodies could usefully provide targeted public information about complaints mechanisms to Muslim communities. Governments and media bodies should also consider supporting projects to encourage more active participation of Muslims within media organisations; where some such projects have already posted notable successes, there should be a concerted effort to identify and promote examples of positive practice.

#### 4. THE IMPORTANCE OF MONITORING AND EVALUATION

*Although only a few may originate a policy, we are all able to judge it.*<sup>119</sup>

##### 4.1 Monitoring by International Organisations

It is well established as a principle in international law that certain fundamental human rights and freedoms are not derogable, and monitoring mechanisms have been established to ensure that signatories to international human rights treaties and conventions comply with those principles in practice. In the past decade the EU, too, has made respect for human rights a touchstone for its policies; the EU has included human rights clauses in its trade association agreements with other States and, of course, it has required candidate States to demonstrate respect for human and minority rights as a condition for membership.

At the same time, many EU member States have not been receptive to criticism or monitoring from international bodies, and some have fallen behind in reporting to international bodies on their own human rights records. Within its own sphere, the EU has not yet devoted sufficient attention to articulating clearly its human rights

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<sup>119</sup> Pericles of Athens, about 430 BC, cited in K.R. Popper, *The Open Society and its Enemies, Volume I*, London: Routledge, 1945, p. 7.

requirements, and has not set in place robust mechanisms for internal monitoring of member States' compliance with human rights norms.<sup>120</sup> Existing monitoring mechanisms are excessively dependent on member State cooperation, and should be supported and strengthened.<sup>121</sup>

Some member States have reacted defensively to the human rights critiques offered by international monitoring bodies. For example, Greece reacted to the 2000 report of the European Commission for Monitoring Racism and Intolerance (ECRI) by stating that:

Generalisations and conclusions abound in the text but in most cases no facts are adduced to support them. In other instances such conclusions are clearly based on isolated incidents, which are improperly (and unfairly) treated as the norm and not as the exception, indeed the aberration, that they actually are.<sup>122</sup>

The German government asserted that ECRI's conclusions regarding problems of racism were "much too sweeping and do not reflect the actual situation in Germany,"<sup>123</sup> and judged its critique that measures to promote integration had been insufficient as "inadmissible."<sup>124</sup> The French government expressed dissatisfaction with ECRI's apparent questioning of "the French Republican model...which stem[s] from a legal tradition dating back two hundred years," and ruled out "any 'reconsideration' of the egalitarian approach, on which our Republic is founded."<sup>125</sup>

The Danish Centre for Human Rights has noted that criticisms by international bodies regarding growing racism and xenophobia in Denmark "were rejected out of hand almost in unison by politicians and the press," and that:

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<sup>120</sup> For a comprehensive discussion of the lack of mechanisms for monitoring human rights performance within the EU, see P. Alston and J.H.H. Weiler, "An 'Ever Closer Union' in Need of a Human Rights Policy: The European Union and Human Rights," in Alston (eds.), *The EU and Human Rights*, Oxford University Press, 1999.

<sup>121</sup> The EU's European Monitoring Centre on Racism and Xenophobia was established in 1997 to monitor public and media attitudes towards racial and ethnic minorities in EU member States. It has produced useful reports on a wide range of topics. However, the organisations upon which the EUMC relies for information are often funded by member State Governments; member States must also approve the EUMC's annual reports prior to publication. These factors clearly undermine the EUMC's independence and capacity to publish criticisms.

<sup>122</sup> Observations provided by the authorities of Greece concerning ECRI's Report on Greece, 2001, p. 24.

<sup>123</sup> Observations provided by the German authorities concerning ECRI's Second Report on Germany, 2000, p. 27.

<sup>124</sup> ECRI Country by Country Approach: Second Report on Germany, 2000, p. 27.

<sup>125</sup> Observations provided by the French authorities concerning ECRI's Report on France, 2000, p. 24.

A great majority of politicians and the press never reflected on the message, but chose instead to shoot at the messengers – a group of foreign observers. Rather than discussing the contents, the criticism was rejected as being unscientific and sloppy. Thereby, they avoided having to relate critically to the question of whether the image drawn of Denmark's attitude to refugees and immigrants in the report reflects the reality of Danish society.<sup>126</sup>

EU candidate States have proven equally sensitive to external critique. Following the release of the EU's 2001 Regular Reports, former Hungarian Prime Minister Viktor Orbán stated that Hungary “must grit its teeth and suffer [as] other assess its performance in reports if it wants to join the EU. We do not write country reports and therefore it is not entirely clear to us why others have an insurmountable yearning to make reports on us.”<sup>127</sup> The EU should make it clear to aspiring members that assessment of basic human and minority rights will continue after accession; the best way to convey the seriousness of this message is to initiate genuine and thorough assessment of all member States.

International monitoring bodies – including the EU – should certainly strive to offer balanced and well-informed critiques, in which Governments could assist by collecting and providing comprehensive information on their efforts to comply with human rights obligations. However, defensive reactions to critique belie a lack of commitment to monitoring as a tool for self-improvement; they bespeak an unwillingness to acknowledge that compliance with human rights norms is not something that States achieve definitively, but something for which they must strive continuously. The fifteen current member States now vested with the authority to determine the future size and form of the European Union have a special responsibility to set an example by the way in which they accept and make constructive use of critique.

## 4.2 Governmental Monitoring

Appreciation for the role and importance of monitoring is also revealed by the extent to which Governments prove themselves willing to scrutinise their own performance. Monitoring provides information crucial to the provision of public goods and services in an effective manner. To the extent that it provides public officials with information about ways in which services are not reaching certain groups, monitoring may also be viewed as an important tool for conflict prevention.

With respect to minority protection in particular, monitoring is the best way for service providers to ensure that their policies do not indirectly discriminate and that they are

<sup>126</sup> The Danish Centre for Human Rights, “Human Rights in Denmark, Status 2001, p. 10.

<sup>127</sup> Radio Free Europe/Radio Liberty Newline, vol. 5, no. 217, part II, 15 November 2001.

providing an equal service to all. Without monitoring, it would be difficult to identify indirect, often unintended, ways in which policies disadvantage communities or to see whether policies aimed at reducing inequality are succeeding. To monitor effectively, Governments must identify the different communities that legislation is intended to protect, institutions serve, and public services reach.

Government can play a crucial role in supporting local and regional governmental structures that have fallen short in their efforts to reach minority communities, including through practical guidelines for improvement. The Beacon Council Scheme for monitoring service delivery in the UK may be a model that could be taken up in other member States as well as by EU structures. The scheme identifies centres of excellence in local government in different areas of service delivery; councils awarded Beacon status are given grants to support the dissemination of good practice to other local governments. This technique could be used to identify the extent to which different religious, linguistic, ethnic or other communities are benefiting from State policies in practice.

### 4.3 Civil Society

Naturally, however, the willingness and ability of Governments to critique themselves inevitably will be limited in important ways; it is to be expected that Governments will seek optimal evaluations of their own performance. Important critical input can be gained by soliciting the opinions of those to whom protections and benefits are supposed to be provided, taking steps to ensure that critical opinions are welcomed, and ensuring that negative consequences do not flow from having offered them.

Yet where civil society efforts to provide constructive critique are limited by lack of capacity, lack of funding, or an intolerant environment, governmental performance will tend to become more insular and less responsive to social needs. Thus, it is in society's interest not only to have a Government that welcomes critique, but one that supports the development of civil society organisations' capability to articulate and offer constructive analysis. This is perhaps particularly true for policy affecting minority groups, which are sometimes at a disadvantage in accessing opportunities for education and training.

Monitoring of governmental human and minority rights policies by civil society organisations also carries other benefits. First, it has the potential to increase awareness of governmental objectives and initiatives among a broader audience. This is important, as lack of public support is often a critical impediment to the success of many of the minority protection programmes that have been adopted (see Section 2). More broadly, however, monitoring encourages an active and engaged attitude on the

part of civil society – a “culture of critique,” which encourages members of society, including minorities, to become more involved in shaping and taking responsibility for the legislation, institutions and policies that are meant to benefit them. And the individual’s full enjoyment of the right to formulate and advance critiques – particularly of Government policy – is the hallmark of an open society.

## 5. RECOMMENDATIONS

Recommendations directed to individual States are included in the country reports. Here, only generally applicable recommendations and recommendations to the EU are noted.

### *To candidate and member States*

- Where such policies do not exist, consider the development and adoption of a special Government programme (or programmes) to address the situation of vulnerable minority populations.
- Undertake regular review of the content of existing minority protection or integration programmes, in cooperation with minority representatives, to ensure that they are comprehensive in their approach, and reflect the developing needs and interests of minority communities as fully as possible.
- Base programme reviews on comprehensive research on the situation of minorities. Where such information is lacking, develop appropriate mechanisms for compiling data, consistent with the legitimate requirements for the protection of personal data.
- Review legislation to ensure full compliance with the Race Equality and Employment Directives.
- To the fullest extent possible, provide in law for the creation of a positive duty for public authorities to eliminate unlawful discrimination on any grounds in relation to their function and to promote equality of opportunity and good relations between persons of different ethnicities, cultures, languages, and religious beliefs.
- Take steps to communicate the goals and objectives of minority protection or integration programmes to the broader public, emphasising the link to common EU values.

- Ensure that political support for minority protection programmes is clearly expressed by vesting central coordinating bodies with sufficient authority and human and financial resources to coordinate implementation effectively.
- Provide specialised training on programme objectives to local and regional public officials overseeing implementation of Government policy towards minorities; such training should emphasise public officials' positive duty to guarantee equal access to quality services.
- Re-examine frameworks for regulating religious communities to determine the extent to which they serve the needs and interests of religious minority groups; where appropriate, amend these frameworks to make them more responsive to present-day realities.
- Take steps to facilitate access to citizenship for non-citizen populations; promote understanding of integration as a two-way process.
- Develop and give preference to projects that involve minority representatives in an active, decision-making capacity rather than as the passive recipients of Government assistance.
- Support efforts to facilitate good relations between law enforcement agencies and minority communities, as a way of decreasing mutual mistrust and suspicion.
- Extend support for capacity-building activities to encourage the formulation of well-grounded, well-formulated, and constructive critiques of Government policy. Maintain an open attitude toward critique offered by inter-governmental bodies as well as by independent, non-governmental monitors, as an impulse toward improving governmental effectiveness and efficiency.

### *To the European Union*

- Emphasise that respect for and protection of minorities is a core value common to the Union and a continuing obligation of EU membership, including through the adoption of explicit legal provisions to this effect at the level of European institutions.
- Stress that a comprehensive approach to minority protection – incorporating both prevention of discrimination and advancement of minority rights – is an essential aspect of the continuing obligations of EU membership.
- Ensure full compliance by all member States with the Race Equality and Employment Directives; consider broadening the Race Equality Directive to account for discrimination against religious minorities and support the elaboration of new Directives as necessary to ensure that basic human rights are

ensured to groups which, for various reasons, have not been accorded recognition.

- Encourage dialogue among member States toward developing a common baseline understanding of terms such as “minority,” “minority protection” and “integration,” encouraging definitions which are as expansive and inclusive as possible; articulate minimum standards to guarantee equal treatment for groups that do not fit within the definitions adopted.
- Assist States in developing effective public policies based on a comprehensive approach to minority protection; create a positive duty to eliminate all forms of discrimination in the provision of services and to promote equality of opportunity and good relations among persons of different race, ethnicity and religious belief.
- Strengthen and support EU-level mechanisms for identifying and sharing good practice in the implementation of minority protection policies.
- Devote resources toward developing acceptable methodologies for the collection of data based on ethnic and religious affiliation, while ensuring respect for privacy and protection of personal data; encourage member States to utilise these methodologies to compile comprehensive research on the situation of vulnerable minority populations.
- Strengthen existing monitoring mechanisms, such as the European Centre for Monitoring Racism and Xenophobia (EUMC) and the emerging “Network of Human Rights Experts,” and develop new mechanisms to ensure that attention is maintained on efforts to ensure respect for the full range of human rights.
- Provide support for capacity-building in minority organisations, so that they will be able to play an active role in monitoring the effectiveness of policies designed to benefit them.
- Counter anti-minority sentiment by openly and vigorously condemning racist expressions by member State politicians and by developing mechanisms to encourage responsible public discourse, including by supporting programmes to improve levels of minority participation in media organisations.
- Review procedures for NGOs to apply for and administer Phare and other funding programmes, with a view toward maximising simplicity and transparency; provide in-country training and assistance to potential applicants.
- Improve the quantity and quality of information available to the public on the allocation and use of EU funding to support minority protection programmes.



# The Situation of Muslims in France

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## 1. EXECUTIVE SUMMARY

The concept of “minority” is not seen as relevant in the French context. The Constitution defines the Republic as one and indivisible, and there is an official policy to unify the population legally and socially; to ensure that the Nation coincides with the State. In this context, traditional minority rights such as religion and language are governed not by public law, but by the private exercise of public freedoms. The emergence of a large French Muslim community with different traditions and values and a will to participate fully in public life poses new challenges to the underlying assumptions of this system.

In fact, French law recognises minorities on a semi-official, *de facto* basis, and the implementation of the unitary principle is increasingly characterised by “firmness in principle, and flexibility in practice.”<sup>1</sup> Public authorities have made efforts to facilitate access to citizenship for minorities, and the Government is increasingly receptive to claims of particularism. Both politicians and the public are increasingly tolerant of the notion that individuals can express community belonging without being anti-Republican.

### *Discrimination*

Muslims in France – most of whom are French citizens – are often viewed with distrust and suspicion by the so-called *Français de souche* (French by extraction).<sup>2</sup> Public figures sometimes make discriminatory references to Muslims, relying on generalisations and stereotypes that concur with public expectations. Widespread discriminatory attitudes lead to discriminatory practices, particularly with regard to employment and access to public services. However, there is virtually no data available to document the frequency of discrimination on specifically religious grounds, and anecdotal evidence suggests that it is frequently difficult to separate religious discrimination from discrimination on other grounds such as ethnicity, race, or gender. However, there have been some proven cases of explicitly religious discrimination, particularly in obtaining access to citizenship.

<sup>1</sup> N. Rouland, “Les politiques juridiques de la France dans le domaine linguistique” (French legal policies in the linguistic domain), *Revue française de droit constitutionnel*, 1998, 35, pp. 517–562, p. 531.

<sup>2</sup> This use of the category of “French by extraction” is a clear expression of the general ethnicisation of public policy, by which people are identified on the basis of their (real or supposed) social origin or cultural belonging. See H. Le Bras, *Le Démon des origines: démographie et extrême-droite* (The devil of origin: demography and extreme-right), Paris, Ed. De l’Aube, 1998.

Anti-discrimination legislation has been under development since the 1970s, and provides fairly comprehensive protection; the adoption of a comprehensive anti-discrimination law in November 2001 brought French legislation closer to full compliance with the EU's Race Equality Directive.<sup>3</sup> French legislation recognises discrimination on religious grounds, but the common assumption is that religious discrimination is always associated with (and can be addressed along with) racial discrimination. However, without detailed research or statistics it is often difficult to establish the specific motivation for a discriminatory act.

Protection from discrimination is interpreted within the context of the concept of equality. Within this context, "discrimination" is understood as the result of arbitrary, unjustified differential treatment,<sup>4</sup> and the principle of anti-discrimination advances the idea that protection of the individual (equality before the law)<sup>5</sup> precludes the recognition of minorities (equal treatment under the law). Thus, efforts to develop legal and political mechanisms to fight discrimination are linked to efforts to promote equal protection for all citizens.

### *Minority rights*

References to "the Muslim minority" are highly problematic in the legal and political spheres, *inter alia*, and the notion of minority is always framed in relation to the constitutional principles of *laïcité* (secularism) and equality.<sup>6</sup> Rights are recognised *vis-à-vis* individuals only, not groups,<sup>7</sup> and claims regarding the rights of Muslims (or other religious minority groups) – even when framed by Muslim leaders themselves – are rarely defined in terms of minority rights.

France has signed but not ratified the European Charter for Regional or Minority Languages (ECRML), and it has refused to sign the Framework Convention for the Protection of National Minorities (FCNM). Muslims lack official national representation and are thus not eligible for the benefits and advantages accorded to

<sup>3</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, published in the *Official Journal of the European Communities*, 19 July 2000, L 180/22.

<sup>4</sup> D. Lochak in A. Fenet, G. Soulier, eds., *Les minorités et leurs droits depuis 1789* (Minorities and their rights since 1789), Paris, L'Harmattan, 1989, p. 114.

<sup>5</sup> As in the Declaration of the Rights of Man and the Citizen of 1789, the Preamble to the Constitution of 1946, and the Constitution of 1958.

<sup>6</sup> Haut Conseil à l'Intégration (HCI), *L'Islam dans la République* (Islam in the Republic), Paris, Documentation française, 2001, (hereafter, "HCI Report 2001").

<sup>7</sup> J. Poumarède, S. Pierré-Caps, N. Rouland, eds., *Droit des minorités et des peuples autochtones* (Right of minorities and native peoples), Paris, PUF, 1996, in particular, the chapter on France and minorities, pp. 307–345.

groups which have established such representation under the 1905 Combes Law. For example, they are not eligible for tax exemptions on religious buildings or State subsidies for chaplaincies in schools, hospitals and prisons.

In the absence of an agreement with the State, neither the legal system nor the State public administration has succeeded in formulating clear answers for a number of issues linked to the public management of Islam.<sup>8</sup> Particular problems have arisen with regard to access to social services for imams, the establishment of places of worship, Muslim plots in local cemeteries and ritual slaughter.

Underlying all these particular social and policy problems is the tension between an approach to *laïcité* that, while aiming to embody State neutrality, implicitly rests on assumptions of cultural Republicanism,<sup>9</sup> and the legitimate and permanent presence, on French territory, of groups that assume – and claim public recognition for – a religious component to their identity without contradiction to their political commitment as French citizens.

### *Representation*

State authorities have encouraged and sought to facilitate political representation for Muslims at a national level. However, there is often resistance to the idea of extending special recognition and rights to Islam, and *laïcité* is increasingly conceptualised and advanced in terms of Republican values rather than constitutional principles, politicising perceptions of Islam and Muslims.

The Government elected in June 2002 has decided to continue the “Consultation on Islam of France,” which is working to identify a single representative Council of French Muslim communities as a negotiating partner. Until now, the claims of Muslim communities have, for the most part, been resolved by delegating competence for religious issues to local public authorities. Some Muslims and other experts have questioned whether the Consultation is aimed at representing or controlling French Muslims, and whether central representation leaves sufficient space for the expression of diversity (particularly ethnic diversity) within the Muslim population.

### *European dimension*

Generally speaking, French Muslims have not looked to European minority protection legislation or mechanisms to satisfy their demands. However, unlike the EU’s Race Equality Directive, the Employment Directive<sup>10</sup> explicitly identifies religion as one of

<sup>8</sup> According to one Muslim leader, “Muslims lack mosques, cemeteries, places for teaching, an easier access to work and to housing.” Interview with the Director of *La Réussite*, 21 May 2002.

<sup>9</sup> In the sense of the individual citizen’s loyalty to Republican values.

<sup>10</sup> 2000/78/EC of 27 November 2000.

the grounds on which discrimination is prohibited. This explicit recognition of a religious dimension to possible acts of discrimination could be extended to sectors other than employment, leading to new opportunities to articulate and advance claims for the equal treatment for Muslims, individually and collectively, in France.

## 2. BACKGROUND

The Muslim population in France is extremely diverse. Although no accurate statistics are available,<sup>11</sup> according to recent estimates there are approximately 4,155,000 Muslims living in France,<sup>12</sup> out of a total population of 58,520,688. The great majority – about 2,900,000 – are from the Maghreb,<sup>13</sup> but there are large populations from other areas as well: 100,000 from the Middle East, 315,000 from Turkey, 250,000 from sub-Saharan Africa, 100,000 Asians, 100,000 of various other origins, and 40,000 converts. There are also approximately 350,000 asylum applicants and illegal workers who are Muslim.<sup>14</sup> An estimated three million are French citizens. Muslims are settled throughout the country, but there are concentrated communities in the Ile-de-France (35 percent), Provence-Alpes-Côte d'Azur (20 percent), Rhône-Alpes (15 percent), and the Nord-Pas-de-Calais (ten percent).<sup>15</sup>

Several waves of immigrant groups have arrived in France since the early 1960s. Prior to this, Islam had been linked closely to France's colonial history. In particular, 84,000 repatriates from Algeria arrived between 1962 and 1967, following Algerian independence. This group and their descendants, known as *harkis*, demand equal treatment as "normal French citizens," but also claim recognition as a special group:

<sup>11</sup> It is not permitted to collect statistics on the basis of religious affiliation, and the census does not ask questions regarding religion.

<sup>12</sup> These figures are based on a definition of Muslim as a "person of Muslim culture" (on the basis of the nationality of origin of the parents or grandparents). They do not reflect practices, which obviously vary. Thus, figures are hotly disputed, particularly in the media. One recent report suggested much higher numbers: "Thanks to the 11.09 shock, France, with surprise, discovered abruptly that it had become, in less than forty years, the greatest Muslim power in Europe: 5 million Muslims live here today." *Le Nouvel Observateur*, 21 February 2002, n. 1946.

<sup>13</sup> 1,550,000 of Algerian origin, 1,000,000 of Moroccan origin, and 350,000 of Tunisian origin.

<sup>14</sup> HCI Report 2001, pp. 37–38.

<sup>15</sup> For a map indicating the biggest mosques in France, see "Les musulmans de France peinent à s'organiser" (Muslims are having difficulties in getting organised), *Le Figaro*, 18 October 2001, p. 10.

“faithful Muslims” who made sacrifices for France and who wish to remain distinct from other Maghrebi immigrants (also referred to as *beurs*).<sup>16</sup>

At first, most immigrants were young males who came primarily in search of employment opportunities. However, the process of family reunification which took place after the official end to immigration in 1974<sup>17</sup> began to alter the demographics of the Muslim population and with it the public face of Islam. The establishment of places of worship in workers’ dormitories in the 1970s and the appearance of a new generation, born in France to Muslim parents, led to increasing requests for religious education in the 1980 and 1990s, and Islam gradually became a more visible part of French society.<sup>18</sup> Along with the growth in population, therefore, the profile of the Muslim communities has changed radically in the second half of the 20<sup>th</sup> century, with younger generations demonstrating different attitudes towards religious identity and citizenship.

### *Religious identity*

For successive generations of Muslims born in France, religious belonging and upbringing is part of their inherited culture.<sup>19</sup> Even as they increasingly assert the right to public and collective recognition of their religion, young Muslims today refer to Islam in different ways<sup>20</sup> – as a heritage, a tradition, and an origin. Even for non-

<sup>16</sup> The numerous associations of *harkis* have cultivated their image as a group that, as the target of a “genocide,” was particularly victimised by colonialism, and has demanded official acknowledgement and compensation on this basis. Although the official emphasis on equal treatment on the basis of a single French identity generally discourages recognition of ethnic and cultural differences, a law passed on 11 June 1994 recognises the moral debt of the French nation towards the *harkis* “which suffered directly from their engagement in the service of our country.” C.-R. Ageron, “Le ‘drame des Harkis’. Mémoire ou histoire ?” (“Harkis’ drama”. Memory or history?), *Vingtième siècle*, October–December 2000, pp. 3–15, p. 15.

<sup>17</sup> On 3 July 1974, in the context of the oil crisis, the French Government decided to stop recruiting migrant workers.

<sup>18</sup> G. Kepel, *Les banlieues de l’islam* (Islam suburbs), Paris, Seuil, 1987; R. Leveau, G. Kepel, eds., *Les Musulmans dans la société française* (Muslims in French Society), Paris, FNSP, 1988.

<sup>19</sup> C. Jocelyne, *Etre musulman en France aujourd’hui* (To be a Muslim in France today), Paris, Hachette, 1997.

<sup>20</sup> L. Babès, *L’islam positif. La religion des jeunes musulmans en France* (Positive Islam. The religion of young Muslims in France), Paris, éditions de l’Aube, 1997; and L. Babès, *L’Islam intérieur: passion et désenchantement* (Internal Islam: passion and disenchantment), Beirut, Al Bouraq, 2000.

practising Muslims, Islam often remains a strong element of their identity;<sup>21</sup> “it is ... the only cultural and symbolic good that they can specifically assert *vis-à-vis* the *Français de souche* (“French by extraction”) ... which enables them, at the same time, to transform exclusion into a voluntarily assumed difference.”<sup>22</sup> There is also a minority who adhere to more militant forms of Islam, some of whom have established a network of associations, either within mainstream associations or independently.

While certain specific features of Muslim immigrant groups, such as language, appear to have been lost over generations, the sense of religious belonging appears to have remained an important component of their identity. A survey carried out in September 2001 revealed that identification with Islam was stronger than it had been in 1994 or 1989.<sup>23</sup> According to the results of this survey, a higher percentage of Muslims engaged in daily prayers, visited the mosque regularly, or practiced other forms of religious observance in 2001. The survey also revealed that devout Muslims can be found at both ends of the social scale; among Muslims identified as upper middle class, practising families are more numerous than non-practising ones.<sup>24</sup>

### *Citizenship*

Unlike their parents’ generation, young Muslims are increasingly requesting nationality, signalling their intention to remain in France and participate fully in public life, culture and politics. As noted above, most of the Muslims living in France are French citizens, yet segments of the public continue to consider Maghrebi Muslims –

<sup>21</sup> A movement towards secularisation can be identified among young Jews and Catholics as well. See D. Vidal, “Ceux qui croient au ciel, ceux qui n’y croient plus. La France des ‘sans-religion’ (Those who believe in God, those who do not anymore. France and non-believers), *Le Monde diplomatique*, September 2001, pp. 22-23. On Jews, see M. Cohen, “Les Juifs de France. Modernité et identité” (Jews in France. Modernity and identity), *Vingtième Siècle. Revue d’histoire*, n. 66, April-June 2000, pp. 91–106.

<sup>22</sup> D. Hervieu-Léger, “Le miroir de l’islam en France” (Mirror of Islam in France), *Vingtième siècle*, April-June 2000, pp. 79–89, p. 80.

<sup>23</sup> 36 percent of those surveyed declared themselves “believing and practising” in 2001, compared with 27 percent in 1994. Survey *Le Monde*, *Le Point*, *Europe 1*, IFOP survey organisation. The survey is based on interviews with 548 Muslims living in France, and 940 non-Muslim French. *Le Monde*, 5 October 2001. For the complete results, see: <<http://www.ifop.com/europe/sondages/opinionf/islam.asp>>, (accessed on 23 September 2002).

<sup>24</sup> *Le Monde*, 5 October 2001.



unlike immigrants from other countries such as Italy, Spain and Portugal – to be “immigrants” even after four generations in France:<sup>25</sup>

Access to French nationality for Maghrebian youth ... involves Frenchmen granting to the children of the ex-colonised what was, formerly, the colonisers' exclusive privilege. Frenchmen returning to France from Algeria (*pièds-noirs*), Algerians who deliberately chose France (*harkis*) and a considerable number of other Frenchmen accept with difficulty [that] the offspring of the formerly colonised, who refused to belong to the French empire, now call for French nationality after their parents fought against colonial France. An unresolved historical argument, a feeling that immigrants' membership in the nation is fraudulent, the general feeling that young people with migrant origin reject French civilisation by their ostentatious adhesion to Islam – all this generates discomfort, which deepens insofar as it has never been clarified or publicly discussed. The claim that Islam is incompatible with *laïcité* is rooted, at least partly, in a historical debate which has not taken place among Frenchmen on colonisation, decolonisation and access to French nationality for the sons and daughters of Maghrebian migrants.<sup>26</sup>

In addition, general perceptions are complicated by the fact that a significant number of Muslims are in fact still foreigners (persons born abroad who have kept their foreign nationality).<sup>27</sup> The concepts of nationality and citizenship are not synonymous within the French context, even if they are intimately linked.<sup>28</sup> In theory, French nationality is supposed to open the way to full citizenship.

The French approach has been to promote the assumption of a single, national, public French identity for those immigrants who attain to citizenship – an ideal of national integration which is difficult to reconcile with cultural, linguistic or other affiliations

<sup>25</sup> The March 1999 census revealed that 7.4 percent of the French population (4,310,000 people) were “immigrants,” defined as “any person who is living in France and was born abroad and declaring himself of French or foreign nationality.” Of the immigrant population, only 1,560,000 had French nationality, although 550,000 foreigners took French citizenship between 1990 and 1999, decreasing the population of foreigners by nine percent. For more results of the March 1999 census, see: <<http://www.recensement.insee.fr>>, (accessed 20 September 2002).

<sup>26</sup> F. Khosrokhavar, *L'Islam des jeunes* (The Islam of the young), Paris, Flammarion, 1997, pp. 37–38.

<sup>27</sup> C. Wihtol de Wenden, “L’immigration: quel modèle français?” (Immigration: what French model?), *Revue politique et parlementaire*, March–April 2002, n. 1017–1018, pp. 50–59.

<sup>28</sup> In the French context, “citizenship” refers to a set of practices (access to civic rights, the right to participate in the political and social life of the national community, and access to political rights), while “nationality” refers to the legal tie binding an individual to a State. In the European context, it is becoming more and more clear that the notion of citizenship should be disassociated from a national basis. For a more detailed discussion of citizenship in France, see D. Lochak, “Qu’est-ce-qu’un citoyen?” (What is a citizen?), *La Raison présente*, n. 103, 1992.

which do not accord with those of the majority. Claims for special rights by any minority group are perceived as a threat to the Republic's citizenship structure in the long term.<sup>29</sup> As one expert has noted, in this way "the immigrant problem has been quickly transformed into a reflection on the development of French society and its capacity for integration."<sup>30</sup>

The cultural difference of Muslim French citizens is regarded particularly unfavourably, as adherence to Islam is considered to be at odds with Republican values, especially *laïcité* (see below). Resistance towards anything that is perceived as "foreign" or "not French" is apparent in application procedures for identity cards<sup>31</sup> and nationality papers.<sup>32</sup> Public officials seek to establish applicants' engagement with Republican values and to identify traces of "foreignness" – which can lead to arbitrary, intrusive and sometimes racist questions on personal habits.<sup>33</sup> Naturalisation procedures<sup>34</sup> are extremely long and not

<sup>29</sup> C. Audard, "Multiculturalisme et transformation de la citoyenneté" (Multiculturalism and the transformation of citizenship), *Archives de philosophie du droit*, 2001, 45, pp. 227–243.

<sup>30</sup> D. Schnapper, *La relation à l'autre. Au coeur de la pensée sociologique* (Relation to the other. At the heart of sociological thought), Paris, Gallimard, 1998, p. 410.

<sup>31</sup> Since 1993, individuals wishing to renew their identity cards must prove that they are French citizens – and thus may be required to show a certificate of nationality. According to French barrister Gerard Tcholakian, "some administrative bodies handling disputes are consciously or unconsciously determined to protect racial purity." Cited in M. Maschino, "Liberty, Equality, Identity: Are you sure you're French?" *Le Monde Diplomatique*, 8 June 2002, available at: <<http://MondeDiplo.com/2002/06/08france>>, (French version accessed 10 August 2002).

<sup>32</sup> See M. Maschino, "Liberty, Equality, Identity: Do you eat couscous at home?" *Le Monde diplomatique*, June 2002, available at: <<http://MondeDiplo.com/2002/06/09couscous>>, (French version accessed 10 August 2002).

<sup>33</sup> For example, applicants have been asked questions such as: "How many times a week do you eat couscous at home?"; "Do you often return to Morocco?"; "What language do you speak at home?" See Maschino, "Liberty, Equality, Identity."

<sup>34</sup> Naturalisation refers to the State decision to grant French nationality to foreigners upon their request; unlike in the acquisition of French nationality by birth or marriage, the State plays a central role in the process of granting naturalisation.

clearly defined.<sup>35</sup> Despite these problems, 78 percent of applications for French nationality are approved ultimately.

Although there has been growing official and public recognition of the need to fight discrimination, including in access to citizenship, the feeling that immigrants (or their descendants) need to change to become part of French society is still dominant; some have suggested that it is this attitude which needs to change:

The lack of integration should no longer be attributed only to “the immigrants,” a target population *par excellence* ... defined in terms of disabilities, shortcomings, deficits or other supposedly insurmountable difficulties. These specific needs justify the implementation of particular provisions which inevitably lead to a separate and durable social policy towards people who end up being stigmatised and accused of being responsible for their ... non-integration.<sup>36</sup>

### *Laïcité (Secularism)*<sup>37</sup>

*Laïcité* is considered one of the principal Republican values. State policies to exclude religious expression from public institutions such as schools and the regulation of the public rights and representation of certain recognised religious minorities date back to the beginning of the 19<sup>th</sup> century. The 1905 Combes Law created a legal framework,

<sup>35</sup> Applicants for a certificate of nationality are given a long list of official documents required, including their own birth certificate and one for each of their forebears going back three generations, an official document recording births and deaths in each family for themselves, their parents, in-laws and grandparents, corresponding bank certificates, and personal record of military service and work testimonials. However, the list is marked as “provisional,” and other documents may be requested after an initial review of the application. See Maschino, “Are you sure you’re French?” See also, P. Weil, *Qu’est-ce qu’un Français: histoire de la nationalité française depuis la Révolution*, (What is a Frenchman? History of French nationality since the revolution), Paris, Grasset, 2002, pp. 252–256.

<sup>36</sup> N. Boubaker, “Discriminations raciales. Un timide début de reconnaissance publique” (Racial discrimination. A timid debut of public recognition), *Savoirs et Formation*, March 2001, 51, pp. 21–29, p. 25.

<sup>37</sup> This report will use the French term *laïcité* in order to stress the specificity of the concept in the French context, as French experts assert that “institutional dissociation of religion and morals; the creation of secular morals, the transmission of which is ensured by educational institutions, make French *laïcité* something more than the simple separation of Church and State.” J. Baubérot, “La *laïcité* française et ses mutations,” (French *laïcité* and its variations), *Social Compass*, 45 (1), 1998, pp. 175–187, p. 180.

which has since been enshrined in the Constitution,<sup>38</sup> whereby freedom of conscience and free exercise of religion are guaranteed and protected through a system of separation between State and religious affairs. Within this system, the definition of religion is denominational; religions officially exist only in and through their institutions, and are publicly recognised primarily on the basis of the practices and rituals of their places of worship (see Section 3.3.1).

*Laïcité* is meant to provide a framework for the harmonisation of collective and individual interests. The President of the *Fonds d'action et de soutien à l'intégration et de lutte contre les discriminations* (FASILD) has emphasised that the process of integration should end neither with conversion, nor with renouncement of one's faith.<sup>39</sup> However, a rigid interpretation of *laïcité* makes it difficult to embrace multiculturalism, as culturally (and religiously) specific characteristics and differences are considered secondary to the concept of equality for all individuals:

In France, people confuse the defense of *laïcité* and the right of each person to live according to his own convictions. This country so much fears the loss of the benefits of *laïcité* that people cannot express their religious convictions freely anymore.<sup>40</sup>

### *Public attitudes*

Islam is widely perceived as contradicting Republican values, including the loyalty of the citizen to the Republican State and *laïcité*, as well as fundamental values of democracy, equality, and human rights.<sup>41</sup> France's colonial past has left a legacy of ambivalent attitudes toward Muslims among public authorities in particular, which

<sup>38</sup> First in the 1946 Constitution and then in the 1958 Constitution (4 October, adopted after a referendum on 28 September 1958). Art. 1 states that "La France est une République indivisible, laïque, démocratique et sociale. Elle assure l'égalité devant la loi de tous les citoyens sans distinction d'origine, de race ou de religion. Elle respecte toutes les croyances" (France is an indivisible, laic, democratic and social Republic. It ensures equality of all citizens before the law, without distinction of origin, race and religion. It respects all beliefs). For full texts of French Constitutions, see: <<http://www.legifrance.gouv.fr/html/constitution/constitution.htm>>, (accessed 2 October 2002).

<sup>39</sup> FAS, *Lettre* n. 55, July 2001, p. 9.

<sup>40</sup> Interview with the director of the association "Avicenne," 24 May 2002.

<sup>41</sup> The designation of people according to their place of birth, nationality, origin, religious affiliation, or colour of skin has helped determine the way discrimination is constructed and understood. Thus, the term "foreigner" refers to a juridical definition based on nationality, and identifying a person with his/her origin appears to aim to draw a connection between origin and specific attitudes, even going so far as to imply that the former has a cause and effect relationship with the latter.

feeds upon and reinforces a broader public contempt and mistrust toward Islam and hatred of Arabs in general, and North Africans in particular.

The National Advisory Commission on Human Rights (CNCDH) publishes annual reports which offer some insight into the prevalence of racist attitudes. From 1999-2001, in spite of a gradual decrease in attitudes of rejection towards foreigners, the CNCDH noted a “significant hardening of attitudes towards the issue of immigration,” with Arabs as the principal target: 63 percent of interviewees considered that there are “too many Arabs in France.”<sup>42</sup> The 2001 report (published in March 2002) refers in particular to a Louis Harris survey of March 2001: in that survey 70 percent of interviewees declared that they were “uncomfortable in the presence of persons originating from non-European countries,” with 63 percent stating that they felt “uncomfortable” in the presence of Arabs in particular. Seven out of ten respondents defined themselves as more-or-less racist, although a majority also believed that discrimination in employment and access to goods and services should be addressed.<sup>43</sup> Indeed, discrimination and racism are unacceptable under the Republican principle of equality, and thus the phenomenon of discrimination is widely understood as a major malfunctioning in the Republican system – and a legitimate target of public policy (see Section 3.1).<sup>44</sup>

The experiences recorded by the national anti-discrimination 114 hotline further attest to the existence of xenophobic and racist attitudes and to the fact that these attitudes lead to discriminatory practices, particularly with regard to employment and public services such as housing and access to the healthcare.<sup>45</sup> Following the attacks on the World Trade Center on 11 September 2001, the hotline recorded an upsurge in reported cases of discrimination

<sup>42</sup> *Le Monde*, 22 March 2001.

<sup>43</sup> 81 percent would consider a refusal to hire a foreigner who is qualified for a job as “serious;” 69 percent made the same evaluation regarding a refusal to rent a house to a foreigner and 62 percent regarding refusals to allow young people to enter a night club. Louis Harris survey, March 2001. The Louis Harris survey is conducted yearly by the same institute and is then incorporated into the National Advisory Commission on Human Rights’ annual report to the Prime Minister by the end of March. The value of the survey on “les attitudes des Français face au racism” (French attitudes towards racism) has been strongly criticised. See A. Morice, V. de Rudder, “A quoi sert le sondage annuel sur le racisme,” (What purpose does the annual survey on racism serve), *Hommes et migrations*, 2000, n. 1227, available at: <<http://www.bok.net/pajol/ouv/MoriceHM.html>>, (accessed 26 September 2002).

<sup>44</sup> See V. De Rudder, C. Poirer, F. Vourc’h, *L’inégalité raciste. L’universalité républicaine à l’épreuve* (Racist inequality. Putting Republican universality to the test), Paris, PUF (Pratiques théoriques), 2000, pp. 15–16 and pp. 189–190.

<sup>45</sup> For a presentation of the 114 hotline, see “La mise en oeuvre locale du 114” (Local implementation of the 114), *Migrations études*, May-June 2001, n. 99. See also the description of the 114 at: <<http://www.le114.com>>, (accessed 26 September 2002).

against Muslims. Some callers accused the hotline of helping “supporters of Bin Laden.”<sup>46</sup> Significantly, however, France did not experience a wave of aggression and attacks against Muslims and places of Muslim worship after 11 September,<sup>47</sup> and 67 percent of Muslims taking part in an IFOP-*Le Monde* survey in late September 2001 claimed that they had not noticed any change in attitudes towards Muslims since then.<sup>48</sup> On the other hand, attacks on mosques have increased since April 2002, with incidents (such as provocative graffiti, parcel bombs, and petrol bombs) recorded in Languedoc-Roussillon, Gironde, Ile-de-France, and Nord-Pas-de-Calais.<sup>49</sup>

Respondents in the IFOP-*Le Monde* survey were asked to choose three words which best corresponded to their conception of Islam. 22 percent answered “fanaticism,” 18 percent “obedience,” and 17 percent “the rejection of Western values.” However, it is significant to note that the percentage associating Islam with fanaticism has decreased considerably; in 1994, 37 percent identified Islam primarily with fanaticism. Moreover, the association of positive values with Islam is increasing, as is the trend to evaluate the presence of Islam in France more positively: 22 percent claimed that they were opposed to the establishment of places of worship and construction of mosques (compared to 38 percent in 1994).<sup>50</sup> Commenting on the results of this survey, one expert has noted that while individual Muslims are increasingly accepted, Islam is not: “I have the impression that Islam is still slightly problematic to the French. Integration is effective, but it is not accompanied by a positive vision of the Muslim religion. [Public] opinion accepts Islam in one’s neighbourhood ... as more real than an abstract Islam, which continues to inspire fear.”<sup>51</sup>

Acknowledging discrimination poses a deep conceptual dilemma, because it entails questioning Republican myths – probing the gap between formal and actual equality, between principles and practice. It means confronting the reality that a significant population of so-called *Français de papiers* (French by documents)<sup>52</sup> – who have

<sup>46</sup> Group for the Study of Discrimination (GELD), *Rapport d’activités 2001. GIP-GELD-114, Conseil d’orientation du 30 avril 2002* (2001 Report of Activities. GIP-GELD-114, Orientation Board of 30 April 2002) p. 26.

<sup>47</sup> *La Croix*, 22 March 2002.

<sup>48</sup> IFOP-*Le Monde* survey, September 2001. For complete results, see: <<http://www.ifop.com/europe/sondages/opinion/islam.asp>>, (accessed 26 September 2002).

<sup>49</sup> *Le Monde*, 4 May 2002.

<sup>50</sup> IFOP-*Le Monde* survey, September 2001.

<sup>51</sup> Interview with F. Fregosi, political scientist and specialist on Islam in France, CNRS/University Robert-Schuman of Strasbourg, in *Le Monde*, 5 October 2001.

<sup>52</sup> Referring to individuals who have obtained French nationality through naturalisation (i.e. by asking for it) or through marriage.

resolved to become French – are not considered or treated as such. The reality of discrimination constitutes a challenge to the national self-image.

### *Official discourse*

There has been growing official recognition of the problem of discrimination, including religious discrimination, starting in the 1990s and culminating with the declaration of the fight against discrimination as a “major national cause for 2002.”<sup>53</sup> Acknowledgement of discrimination has prompted recognition of the need to develop new approaches towards the integration of diversity and multiculturalism, prompting reflection and debate on political categories such as loyalty (i.e. the idea that all persons attaining French nationality should be required to demonstrate their engagement with central Republican values).

Some political leaders have made attempts to advance and support moderate opinions on Islam and to draw distinctions between Muslims in Europe and terrorism or fanaticism, particularly in the past year.

Moreover, on some occasions action has been taken against public officials who use racist language against Muslims. For example, after a town councillor in Colmar publicly declared that “Islam and its trail of intolerance and chauvinist behaviour must be eradicated,” he was convicted of incitement of racial and religious discrimination and sentenced to five years of ineligibility.<sup>54</sup>

National Front presidential candidate Jean-Marie Le Pen’s success in the first round of the 2002 presidential elections thrust extreme right-wing ideas onto the front pages of newspapers and into the forefront of national debate. Le Pen clearly gained votes by taking a firm position on security and the importance of traditional national values<sup>55</sup> – and by associating these positions with a strong and openly racist anti-immigration stance. Support for Le Pen’s ideas was estimated at 11 percent in Spring 1999; by the 2002 elections, it had reached 28 percent.<sup>56</sup>

Though positions vary among ministers and political actors, a series of initiatives under successive Governments since 1990 have reflected a common tendency to encourage a

<sup>53</sup> Decision of the Prime Minister on 23 November 2001, *Official Journal* 297, 22 December 2001.

<sup>54</sup> Tribunal correctionnel of Colmar, 4 October 2001.

<sup>55</sup> A recurring theme during Le Pen’s campaign was the threat to French identity posed by immigration and foreign influence; Le Pen repeatedly associated crime with immigration. See “Europe’s far right. Toxic but containable,” *The Economist*, 27 April 2002, pp. 29–30.

<sup>56</sup> Enquête Sofres-RTL-*Le Monde*, *Le Monde*, 28 May 2002.

“top-down” representation of Islam,<sup>57</sup> the identification of a single “negotiating partner” to represent French Muslim communities *vis-à-vis* the Government. In addition to reflecting a general public will to regulate relations between Muslims and the State under the same legislation that applies to other forms of worship, this approach also bears traces of the colonial legacy,<sup>58</sup> which “...in Algeria went as far as placing Islam under the regulatory authority of the French Government.”<sup>59</sup> The newly-elected Government has indicated its intention to continue the latest of these initiatives, the “Consultation on Islam of France,” which was launched under the previous Government in 1999 (see Section 4.1). Muslim leaders participating in the Consultation were required to sign a declaration of loyalty to Republican principles, including *laïcité*, freedom of conscience, and equality.

### *Media*

The media has both reflected and contributed to the trend to associate Islam with immigration, criminality, fanaticism and terrorism, thereby providing a justification for exclusion and religiously motivated discrimination.<sup>60</sup> One expert has referred to a “televsual racism” whereby media images and information provide a unifying link between racist attitudes and discriminatory practices in different sectors, such as employment and education,<sup>61</sup> and in different parts of the country.

Public figures and the media often refer to Muslims collectively in association with criminality inside France or with international conflicts. Euphemistic references to “the

<sup>57</sup> The management of religion in the public space is a top-down, national project conducted on a strictly denominational basis. J. Zylbenberg, “La régulation étatique de la religion: monisme et pluralisme,” (State regulation of religion: monism and pluralism), *Social Compass*, 1990, n. 37/1.

<sup>58</sup> See R. Leveau, C. Wihtol de Wenden, *La bourgeoisie. Les trois âges de la vie associative issue de l’immigration* (The Bourgeoisie: the three ages of associative life stemming from immigration), Paris, CNRS éditions, 2001, p. 123.

<sup>59</sup> F. Frégosi, “France: le culte musulman et la République, la régulation publique de l’islam dans un cadre laïque,” (France: Muslim Worship and the Republic. Public regulation of Islam in a secular framework), R. Leveau, K. Mohsen-Finan, C. Wihtol de Wenden, eds., *Islam en France et en Allemagne. Identité et citoyenneté* (Islam in France and Germany. Identity and Citizenship), Paris, Documentation française, 2001, pp. 63–80.

<sup>60</sup> See, e.g. A. Perotti, “Présence et représentation de l’immigration et des minorités ethniques à la télévision française” (Presence and representation of immigration and ethnic minorities in French Television), *Migrations Sociétés*, 1991, vol. 3, n. 18, pp. 39–55. For more recent data on Muslims, see I. Rigoni, “The Muslim media in search of Social and Political Inclusion: A comparison between Britain and France,” European workshop, “Minority Media in Europe: a Revolution from Below?” London, London School of Economics, 26–27 September 2002 (forthcoming).

<sup>61</sup> F. Khosrokhavar, *L’islam des jeunes*, Paris, Flammarion, 1997, p. 43.



neighbourhoods,” the “young people of the suburbs,” “young people of immigrant origin” and especially the attacks of 11 September all reinforce a collective representation of French Muslims (and of Islam at large) as a dangerous element in French society.<sup>62</sup> It is not uncommon for newspapers to report the national origin or religious affiliation of individuals alleged to have committed a crime, particularly when they are Muslims.<sup>63</sup>

Well-known writer Michel Houellebecq, during an interview in September 2001, spoke of Islam in highly insulting terms.<sup>64</sup> Different Muslim associations and mosques (Lyon, Paris) together with the *Ligue des droits de l'homme* (League of Human rights) filed a legal complaint, accusing the writer of “anti-Muslim racism.” The trial took place on 17 September 2002 in Paris, and a judgement is expected on 22 October. Some French NGO representatives have called for the prosecution of Italian writer Oriana Fallaci for incitement and provocation to racial hatred after the appearance of the French translation of the controversial publication *Rage and Pride*.<sup>65</sup>

The topic of Islam has attracted more intense media coverage since 11 September. However, the increased coverage has tended to reinforce stereotypes and to further polarise the French Muslim community. According to one Muslim organisation: “The media has used each incident ... to feed Islamophobia and demonstrate that Islam is incompatible with the Republic.”<sup>66</sup> Though Muslim leaders in France, as elsewhere in Europe, were unanimous in condemning the attacks, there was extensive media speculation about French Muslims’ propensity to support Bin Laden, mainly due to Al

<sup>62</sup> *Le Figaro*, 26 April 2002.

<sup>63</sup> See, e.g. *Le Monde*, 11 June 2000.

<sup>64</sup> Asked to give his opinion on religion and the different forms of monotheism, he stated that: “La religion la plus con, c’est quand même l’islam” (The most stupid religion is Islam) and added that Islam is “a dangerous religion.” M. Houellebecq, entretien avec D. Sénécal, *Lire*, September 2001. For the complete interview, see: <<http://www.lire.fr/entretien.asp/idC=37437/idTC=4/idR=201/idG>>, (accessed 27 September 2002).

<sup>65</sup> According to “Licra” (International Alliance against Racism and Anti-Semitism), “Her writing is ... an incitement to hatred against a community and therefore a violation of public order.” According to a representative of the Movement against Racism and for Friendship among Peoples, “the contents of the book gravely offend a group of persons, Muslims, because of their religion: this is a punishable violation under our legal system.” G. Martinotti, *La Repubblica*, 21 June 2002. Interestingly, Muslim associations did not take part in this action.

<sup>66</sup> Interview with the director of *Institut Formation Avenir*, 17 May 2002.

Qaida's apparent connections with European networks.<sup>67</sup> The daily *Le Figaro* wrote of "a community torn between emotion and convictions," pointing out that while Muslim leaders denied any connection between Islam and terrorism, they also made strong anti-American remarks.<sup>68</sup>

Several leaders of Muslim associations have decried the tendency among TV and newspaper reporters to spotlight the views of radical individuals who are not representative of the Muslim population, further distorting the image of Islam in the public eye. Indeed, despite the fact that the network of Muslim associations is extremely dynamic and diverse, the same persons tend to be presented as representatives of Muslims on TV or in the press. Thus, the diversity of French Muslim communities and of their activities at the local and community level is generally not known to either the public authorities or the broader public.

### 3. MINORITY PROTECTION: LAW AND PRACTICE

France has ratified the major international agreements guaranteeing protection against discrimination.<sup>69</sup> However, it has consistently entered reservations on articles relating to the rights of individuals belonging to ethnic, religious or linguistic minorities,<sup>70</sup> and so far has refused to ratify either the Framework Convention for the Protection of National Minorities (FCNM) or the European Charter for Regional or Minority Languages (CRML).

<sup>67</sup> One of the persons who took part in the attack, Mr. Atta, had lived in Hamburg for some time before moving to the United States. After some cases of French persons who had converted to Islam and engaged with Al Qaida had been made public, the press reported on the socialisation process in French mosques in Strasbourg, Paris and other big cities to illustrate the potential risk posed by Islam in France. V. Amiraux, "The Perception of Political Islam in Europe after September 11: Changing Paradigm or Changing actors?" in A. Karam, ed., *Transnational Political Islam*, Pluto Books, 2002 (forthcoming).

<sup>68</sup> *Le Figaro*, 21 September 2001.

<sup>69</sup> France voted for the Universal Declaration of Human Rights and has ratified, *inter alia*, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Convention on the Elimination of all Forms of Racial Discrimination, and the International Convention on the Elimination of all Forms of Discrimination Against Women.

<sup>70</sup> Including on Art. 27 of the UN International Covenant on Civil and Political Rights (ICCPR) and on Art. 30 of the Convention on the Rights of the Child (CRC).

International conventions take precedence over domestic legislation,<sup>71</sup> and European Community Law prevails over domestic law. Courts and the Council of State increasingly give consideration to the rulings of international bodies, especially as more and more plaintiffs refer to these rulings in their complaints.<sup>72</sup> Moreover, in some areas, such as the system of proof and the concept of harassment,<sup>73</sup> European directives had a perceptible impact on the rulings and practice of French courts even before the adoption of the 2001 anti-discrimination law.<sup>74</sup>

### 3.1 Protection against Discrimination<sup>75</sup>

Since the 1970s, a series of laws have been adopted to facilitate the fight against discrimination, culminating with the adoption of comprehensive anti-discrimination legislation in November 2001.<sup>76</sup> In the face of growing evidence of discrimination

<sup>71</sup> 1958 Constitution, Art. 55.

<sup>72</sup> For example, the Council of State referred to the clause of Article 9 of the ECHR stipulating that freedom of religion is subordinated to public security issues in its ruling that veils could not be worn in identity card photos, in the interest of protecting the authenticity of identity documents. Council of State, 27 July 2001, n. 216903.

<sup>73</sup> The plan of legal reform discussed by Parliament at the end of 2001 foresaw the integration into labour regulations and the Penal Code of provisions to sanction moral harassment which, according to the terms of the European directives, constitutes one of the possible forms of discrimination. GELD *Activities Report 2001*, p. 14.

<sup>74</sup> See D. Borillo, "Les instruments juridiques français et européens dans la mise en place du principe d'égalité et de non-discrimination" (French and European legal tools in the implementation of the principle of equality and non-discrimination), *RFAS*, n. 1, 2002, pp. 113–129.

<sup>75</sup> For a review of the French approach towards protection against racial discrimination, see Z. Aboudahab, "La protection des personnes contre les discriminations 'raciales.' Evolution du droit français et exigences du droit européen" (Protection of persons against racial discrimination. Evolution of French law and European law requirements), *Ecarts d'identité*, n. 99, at: <[http://ecid.online.fr/french/numero/article/art\\_99.html](http://ecid.online.fr/french/numero/article/art_99.html)>, (accessed 26 September 2002).

<sup>76</sup> Law 2001-1066 of 16 November 2001 (*Official Journal*, n. 267, 17 November 2001, p. 18311). For the full text of the law, see: <<http://www.france.qrd.org/texts/discrimination/loi2001-1066.html>>, (accessed 26 September 2002). For all official texts concerning the fight against discrimination (including preparatory documents before 2000), see: AEQUALITAS, at: <<http://www.mapage.noos.fr/marika.demangeon/france/francetextes.htm>>; for a bibliography of anti-discrimination initiatives, see: <<http://www.mapage.noos.fr/marika.demangeon/france/francedocuments.htm>>, (both accessed 23 September 2002).

against minority groups, including Muslims, there has been increasing recognition from officials and the public that there is a need for State-supported action to ensure that these laws are respected in practice. However, the need for anti-discrimination policies and programmes is always balanced against and placed within the framework of the Republican principle of equality.<sup>77</sup>

Racial, ethnic, national or religious discrimination was first prohibited in relation to provision of goods and services and employment (hiring and firing) in 1972.<sup>78</sup> Discrimination on the basis of gender and family circumstances was prohibited in 1975,<sup>79</sup> customs in 1985,<sup>80</sup> and disabilities and health status in 1989.<sup>81</sup> The 1992 Penal Code prohibits discrimination on grounds of “real or supposed membership or non-membership of an ethnicity, nation, race or religion,”<sup>82</sup> *inter alia*, and sanctions direct discrimination by public authorities on these grounds.<sup>83</sup>

Anti-discrimination legislation adopted in November 2001 establishes a general framework for fighting discrimination.<sup>84</sup> Its principal innovations include introduction of the concept of indirect discrimination and provisions stipulating reversal of the burden of proof for those bringing discrimination claims. Several articles of the Law on

<sup>77</sup> See V. De Rudder, C. Poirret, F. Vourc’h, *L’inégalité raciste. L’universalité républicaine à l’épreuve* (Racist inequality. Putting Republican universality to the test), Paris, PUF (Pratiques théoriques), 2000.

<sup>78</sup> Law 72-546 of 1 July 1972. Sanctions were outlined in the Penal Code, Art. 415 (amended as Art. 225-1).

<sup>79</sup> Law 85-772 (1975).

<sup>80</sup> Law 89-18 (January 1989).

<sup>81</sup> Law 90-602 (July 1990).

<sup>82</sup> Penal Code of 22 July 1992, amended 1 March 1994, Art. 225-1 through 225-4.

<sup>83</sup> Penal Code of 22 July 1992, amended 1 March 1994, Art. 432-7: “Discrimination as defined in Article 225-1 against a natural or legal person by a representative of the official authority or in charge of a public service function, in the exercise or on the occasion of the performance of his duties, is punished by three years of imprisonment and a €45,000 penalty when it consists of: 1. refusing the benefit of a right granted by law; 2. blocking the normal exercise of any type of economic activity.”

<sup>84</sup> See D. Borillo, “Les instruments juridiques français et européens dans la mise en place du principe d’égalité et de non-discrimination” (French and European juridical instruments in implementing the principle of equality and non-discrimination), in particular the last section of the article, pp. 124–129.

Social Modernisation further extend the application of the November legislation (for instance, to cover discrimination in rental of accommodations).<sup>85</sup>

### *Lack of data*

There is virtually no data available to document the frequency of discrimination on specifically religious grounds, though anecdotal evidence suggests that it is frequently difficult to separate religious discrimination from discrimination based on ethnicity, race, gender or other grounds.<sup>86</sup> For example, the national 114 hotline does not often receive complaints of religious discrimination, although implicit insults or pejorative references to the religious origin of complainants are not uncommon. According to some experts, assumptions about religious values subtly colour perceptions and actions in ways which are difficult to substantiate:

Because of their origin, individuals are associated with values held to be irreconcilable with those supposed to guarantee 'national identity.' This ideological construct – more subtle than the expression of violent racism, justifies ambiguous practices which are increasingly difficult for victims to identify or prove.<sup>87</sup>

Despite the existence of a fairly comprehensive legal framework, few complaints of discrimination make it to court.<sup>88</sup> Victims allegedly have difficulty preparing legal claims and often do not follow up on complaints submitted to public bodies in general, whether through the police, the 114 or by other means. Moreover, there is little monitoring of case files, and therefore little information on how complaints are resolved. Courts rarely apply existing legislation sanctioning discrimination;<sup>89</sup> there has

<sup>85</sup> Law on Social Modernisation (also known as the Aubry's Law, after the then Minister of Social Affairs), adopted in December 2001, Art. 49, 50 and 51. See: <<http://www.mapage.noos.fr/marika.demangeon/france/francetextes.htm>>, (accessed 27 September 2001).

<sup>86</sup> According to the director of *La Réussite*, for example, "Racism is not strong. I prefer to say that there are misunderstandings owing to poor information." Interview with the director of *La Réussite*, 21 May 2002.

<sup>87</sup> *Etude sur les services de téléphonie à caractère social* (Study on telephone services with a social dimension), CREDOC, December 2001, p. 34.

<sup>88</sup> For example, of 60 allegations of discrimination transmitted to the specialised Subcommittees for Access to Citizenship (CODAC), and then to the Office of the Public Prosecutor in 2000, by the end of 2000, 70 percent were, in the process of police investigation, 11 percent had been classified as without repercussions, and 19 percent had given rise to legal proceedings. Rapport Igas, *Bilan du fonctionnement des Codac*, December 2000.

<sup>89</sup> According to Art. 225-2 of the Penal Code, discriminatory practices on racial, ethnic, religious or sexual grounds in employment and in access to goods and services, *inter alia*, are punishable by up to two years' imprisonment or a fine of up to €30,000.

been an average of 80 convictions of discrimination annually since 1995.<sup>90</sup> Proving allegations of discrimination is difficult; until recently there was no provision to shift the burden of proof, and there is still insufficient awareness of the existence and use of this provision. The imposition of prison sentences is rare and the level of fines for discriminatory behaviour has stabilised at approximately €1,500. The possibility to initiate legal and penal proceedings against legal entities or to sue for civil liability is not often utilised.<sup>91</sup>

There have been some proven cases of explicitly religious discrimination, particularly in obtaining access to citizenship (See Section 3.3.5). Again, discrimination against Muslims rarely takes place on solely religious grounds; more usually, there appears to be a complex mixture of racial, ethnic, religious and other motivations. However, in the absence of ethnically or religiously coded data, it is difficult to develop a more nuanced picture.

### *Policy initiatives*

There have been a number of important anti-discrimination policy initiatives in recent years. Notably, a 1998 HCI report documenting the extent of racial discrimination<sup>92</sup> prompted a series of important governmental decisions which have changed radically the framework for anti-discrimination debate and action.<sup>93</sup>

The 1999 Belorgey report represented the first programmatic expression of this change in policy.<sup>94</sup> At a difference to earlier assessments, this report assessed society's preparedness for the integration of diversity rather than the individual's preparedness to integrate. The report proposed a set of strategies to combat racial, ethnic and religious discrimination, and the fight against racial discrimination was taken up as an official objective of the Socialist Government on 18 March 2000, at *les Assises de la citoyenneté* (Meeting on citizenship). The Belorgey report also provided key impetus for the development and adoption of the Law on Social Modernisation and the anti-discrimination legislation of 16 November 2001.

<sup>90</sup> E. Serverin, quoted in GELD, *Activities Report 2001*, p. 44.

<sup>91</sup> The GELD mentioned only one case of religious discrimination in its 2001 report, p. 50.

<sup>92</sup> Haut Conseil à l'Intégration, *Lutte contre les discriminations: faire respecter le principe d'égalité* (The fight against discrimination: Having the equality principle respected), Presented to the Prime Minister on 20 October 1998, Paris, La Documentation française, 1998.

<sup>93</sup> Such as special Subcommittees for Access to Citizenship (CODAC) in 1999, the Group for Research and the Fight against Discrimination (GELD), the 114 hotline; and a number of important documentation and research projects. See Section 4.1.

<sup>94</sup> J.-M. Belorgey, *Lutter contre les discriminations. Rapport à Madame la Ministre de l'emploi et de la solidarité* (Fighting against Discrimination. Report presented to the Minister of employment and solidarity), April 1999.

The 2001 legislation represents another significant step forward in the fight against discrimination. Reversal of the burden of proof should facilitate attempts to prove discrimination in court. However, as of yet there is no provision for the creation of a dedicated central anti-discrimination authority, as required by the EU Race Equality Directive. Moreover, though the concept of indirect discrimination was introduced, it has not yet been precisely defined. According to one expert, this is because compliance with EU Directives on this point “would imply referring to [special] categories of the population (which is prohibited by the French Constitution).”<sup>95</sup> Institutionalisation of the concept of indirect discrimination is believed to run counter to the constitutional principle of the unity of the Republic.

Public authorities have made some efforts to encourage more effective implementation of anti-discrimination legislation. For example, the Minister of Justice issued a circular on 16 July 1998 urging prosecutors “to show a strengthened vigilance in researching and recording of this type of infringement.”<sup>96</sup> In a decision of 12 September 2000, the Court of Cassation recognised the legitimacy of proof generated through testing in cases of racial discrimination,<sup>97</sup> and the validity of this ruling was upheld by the Court of Cassation on 11 June 2002.<sup>98</sup>

### 3.1.1 Education

Equal access to free public education is guaranteed for all, and all children (including foreigners) of school age are under an obligation to attend school.<sup>99</sup> The sphere of education is framed and regulated by the principle of *laïcité* and by the 1989 Law on

<sup>95</sup> See D. Borillo, “Les instruments juridiques français et européens dans la mise en place du principe d’égalité et de non-discrimination” (“French and European legal tools in the implementation of the principle of equality and non-discrimination”), note 3, p. 126.

<sup>96</sup> Quoted in GELD, *2001 Report of activities*, p. 44.

<sup>97</sup> *Le Monde*, 26 October 2000. The technique of testing has been systematised by SOS-Racisme. Initially, testing was organised particularly at nightclubs refusing to let people in without justification, apparently because of their migrant origin.

<sup>98</sup> Court of Cassation, n. W 01-85.560 F.-D. J.-P. Duhamel, one of the lawyers defending SOS Racisme’s proposal that testing should be accepted as proof of discrimination argued that testing could be a useful tool beyond night clubs; testing could serve the fight against discrimination in other areas, such as employment. See: <[http://www.le114.com/actualites/fiche.php?Id\\_Actualite=68](http://www.le114.com/actualites/fiche.php?Id_Actualite=68)>, (accessed 26 September 2002).

<sup>99</sup> Education Code, Art. L131-1-12 For complete text, see: <<http://www.legifrance.gouv.fr>>, (accessed 26 September 2002).

Orientation in Education,<sup>100</sup> which affirm the individual right to freedom of conscience. In practice, these two principles have come into conflict, particularly with regard to students belonging to religious minorities, including Muslims.

It is a central objective and responsibility of French public schools to train students in Republican values<sup>101</sup> including *laïcité*,<sup>102</sup> and to ensure both equal treatment of individual pupils and respect for pluralism. As such, local officials have the competence to regulate the public expression of religious belonging in schools, *inter alia*. The so-called “veil affairs” illustrate the tension between public space and private choices; the difficulties inherent in balancing the requirements of *laïcité* against the needs of Muslim students.<sup>103</sup>

The first chapter in the “veil affairs” opened on 27 November 1989, when the Council of State ruled on the question of whether Muslim girls should be permitted to wear

<sup>100</sup> Law on Orientation in Education, 10 July 1989. See J.-M. De Queiroz, “Les remaniements de la ‘séparation scolaire’” (Changes in the ‘school separation’), *Revue Française de Pédagogie*, n. 133, October–December 2000, pp. 37–48.

<sup>101</sup> Public schools are established and maintained by the State, and private schools are governed by associations, religious groups, or other private groups, and may or may not be under contract with the State. In parallel with the process of secularisation of education, several laws have contributed to the development of a private school sector (primary, secondary, and university). Officially, private schools cannot benefit from public financial support of more than one tenth of their annual expenses. For many years, private schools were sponsored exclusively by private sponsors, though several forms of indirect assistance were available, such as allocation of rooms, State social grants for pupils (children attending private schools are eligible for these grants since 1951). The Debré Law of 1959 introduced two possibilities for a private school to receive State funding: the simple contract (*contrat simple*) and the contract of association (*contrat d’association*). Under a simple contract, staff expenses are covered by the State for teachers and State-accredited professors; though private schools with a simple contract have autonomy in determining the content of their curricula, they retain the obligation to prepare students for official degrees, and must use authorised books and organise the teaching programme in line with the programmes and schedule of public schools. The contract of association allows for more significant financial support: the State pays for staff expenses and also for material expenses on the basis of costs in the public sector. It also allows more freedom in defining the content of the teaching programme. For more on this issue, see G. Bedouelle, J.-P. Costa, *Les laïcités à la française* (Secularism French style), Paris, PUF (Politique d’aujourd’hui), 1998.

<sup>102</sup> See J.-M. De Queiroz, “Les remaniements de la séparation scolaire” (Changes in school separation), *Revue Française de Pédagogie*, n. 133, October–December 2000, pp. 40–41.

<sup>103</sup> Avis n. 346.893 sur le port de signes d’appartenance à une communauté religieuse dans les établissements scolaires, *L’actualité juridique. Droit administratif* (Opinion on wearing signs of belonging to a religious community at school in *Legal news. Administrative law*), 1990, pp. 39–45. See also W. Jean-Paul, “Le Conseil d’Etat et la laïcité: propos sur l’avis du 27 novembre 1990” (The Council of State and *laïcité*: discussion on the opinion given on 27 November 1990), *Revue française de science politique*, 1991, pp. 28–44.



veils in public schools. The ruling weighed the principle of non-discrimination at school (i.e. recognition of the individual student's right to freedom of conscience), against the general principle of *laïcité* – the political and religious neutrality of public services. The Council of State concluded that the practice of wearing veils at school can not be systematically prohibited,<sup>104</sup> but rather that each case should be judged individually to determine if a student's choice to wear the veil is incompatible with *laïcité*. The opinion suggested that the decision could be conditioned by considerations such as the “ostentatiousness” of the veil; whether wearing a veil would harm the smooth operation of the school; and whether wearing the veil can be associated with proselytism.<sup>105</sup>

The Council of State's opinion is quite vague, providing only broad guidelines for a pragmatic approach to the resolution of individual cases rather than a binding rule; there is no indication of how to determine “ostentatiousness,” or of how to determine incompatibility with the principle of *laïcité*.

Teachers and other local authorities did not universally agree with this approach. In October 1993, an MP and former headmaster of a college highlighted to the National Assembly that school officials were experiencing great difficulties in compelling compliance with decisions on individual students' right to wear the veil. The Bayrou circular of 20 September 1994 sought to affirm headmasters' competence to take such decisions as part of their responsibility to instil and maintain school discipline, of which ensuring *laïcité* is a part. Overall, interpretations of the circular have led to a hardening of headmasters' policy; the internal regulations of colleges and high schools clearly have become more hostile to the practice of wearing a veil.

Despite the vagueness of the Council of State's opinion, it did break with a traditionally more dogmatic and restrictive vision of *laïcité* by recognising the right to publicly and individually express one's belonging to a religious community. This principle has been applied in a majority of the 49 cases which reached the Council of State between 1992 and 1999; in 41 of these cases, a school administration's decision to restrict the right to wear the veil was overruled. Although it has permitted the

<sup>104</sup> This position was affirmed by the Jospin circular of 12 December 1989, which assigns the responsibility for deciding whether young girls who insist on wearing a veil should be expelled or not to educational authorities, and specifies that such decisions should be made on a case by case basis.

<sup>105</sup> Council of State, Opinion of 27 November 1989. See full text at: [http://www.cidem.org/cidem/themes/education/edu\\_infos/textes\\_references/edu\\_t009.pdf](http://www.cidem.org/cidem/themes/education/edu_infos/textes_references/edu_t009.pdf), (accessed 4 October 2002).

adoption of certain restrictions for reasons of safety, health, hygiene, or security,<sup>106</sup> the Council of State has affirmed repeatedly that religious belonging and *laïcité* should be considered compatible, and case-law since 1989 has tended to favour the plaintiffs (i.e. the girls wishing to wear the veil).<sup>107</sup> By contrast, a series of legislative proposals have proposed more restrictive readings of *laïcité* rather than increased recognition for cultural diversity.<sup>108</sup>

Schools have also been the scene of a number of other controversies relating to religious expression, such as parental requests that religious dietary requirements be respected in school cafeterias or that their children be excused for religious holidays or from certain courses.<sup>109</sup> There is no law and little guidance to assist public authorities in deciding these cases, and few cases have been taken before courts.

For example, since 2001 the parents of three Jewish children being educated in a public primary school in the suburbs of Paris have been protesting a municipal decision to exclude their children from the school cafeteria. The decision was taken after the parents had refused to sign a protocol committing themselves to prepare their children's meals every day – a practice that is normally adopted for children with allergies. The Movement against Racism and for Friendship between People (MRAP) has assisted the families in filing a case before the ECHR claiming violation of their right to freedom of religion. The case is pending.

<sup>106</sup> Decision of the Council of State of 10 March 1995, cited in A. Epoux, *L'actualité juridique. Droit administratif*, 1995, p. 332. Exceptional restrictions have been ruled permissible in certain school classes, particularly sports and technical education (industrial arts and crafts). Arrêt n. 181486, October 1999. The European Court of Human Rights also appears to support some restrictions on freedom of expression, as it has interpreted Article 9 of the ECHR as “not guaranteeing the absolute right to express religious opinions in a public educational establishment.” See S. Dubourg-Lavroff, “L'expression des croyances religieuses à l'école” (Expression of religious belief at school), *Revue française de droit constitutionnel*, 1997, n. 30, pp. 269–292, p. 287.

<sup>107</sup> Since 1989, case-law has tended to favour the plaintiffs, whether in the decisions given by the Council of State (décisions Yilmaz, 14 March 1994, Ali, 20 May 1996) or by administrative courts (arrêt Aksirin, Tribunal administratif de Strasbourg, 3 May 1995).

<sup>108</sup> Since 1989, ten proposals for laws stipulating a more restrictive reading of *laïcité* have been tabled. See G. Koubi, “Des propositions de lois relatives à la laïcité dans les établissements publics scolaires...” in *Revue de la recherche juridique. Droit prospectif*, 1998, (73), 2, pp. 577–585, footnote 7, p. 578.

<sup>109</sup> The problem has arisen particularly with regard to requests for excused absence for Shabbat. The Council of State made a statement on 31 March 1995, deciding that an authorisation of absence could be granted by school administrations subject to certain conditions; here, too, such issues are resolved on a case by case basis.

ECRI has expressed concern about the “disproportionate representation of foreign children or children of immigrant background” in certain schools, and that language deficiencies may result in the overrepresentation of these children in specialised education courses. On the basis of these concerns, ECRI has encouraged priority to be given to proposals such as that made by the High Council for Integration: that a special body responsible for addressing questions of integration in schools should be established in the Ministry of Education.<sup>110</sup>

### 3.1.2 Employment

French law offers greater protection against discrimination in employment than in any other area,<sup>111</sup> and the evolution of legislation in this area is clearly linked to advances in European legislation.<sup>112</sup> The Labour Laws and the Code on Public Service prohibit discrimination in recruitment on the basis of religious belief, *inter alia*.<sup>113</sup> Job applicants may not be asked to reveal their religious affiliation, and religious convictions cannot be a ground for discrimination in the workplace,<sup>114</sup> or for dismissal; the same applies for public agents.<sup>115</sup> At the same time, it is in this area and in the area of housing that reports of discrimination are most frequent,<sup>116</sup> though few legal complaints are filed.

The rate of unemployment among non-European foreign residents is three times higher (27.7 percent) than among *Français de souche* (9.4 percent).<sup>117</sup> Moreover, ECRI has noted that “possession of French nationality does not seem to prevent discriminatory practices, as unemployment appears to strike the French population of immigrant origin in a way that

<sup>110</sup> See European Commission against Racism and Intolerance, Second report on France, adopted on 10 December 1999 and made public on 27 June 2000, paras, 21–22; 44 (hereafter, “ECRI Report 1999”).

<sup>111</sup> Discrimination is prohibited under the Law on Employment, Art. L 123-1, L 140-2 to 4, Art. L 152-1 to 3 and Art. L 154-1.

<sup>112</sup> Such as, for example, the introduction of provisions allowing reversal of the burden of proof.

<sup>113</sup> Labour Law, Art. 122-45 (see the text as included in the Law on Discrimination of 16 November 2001, at: <<http://www.social.gouv.fr/htm/pointsur/discrimination/presentloi.htm>>, (accessed 27 September 2002).

<sup>114</sup> Labour Law, Art. L 122-35.

<sup>115</sup> See, e.g. Council of State, 8 December 1948, Demoiselle Pasteau.

<sup>116</sup> See, e.g., ECRI Report 1999, para. 36. However, discrimination appears to be stronger in some sectors than in others. See results of survey conducted among 600 young French people, *L'Express*, 5 July 2000, pp. 106–107.

<sup>117</sup> Source Insee-Dares-2000, *Le Monde* (Cahier Emploi), 4 September 2001.

is comparable to foreign residents.”<sup>118</sup> Nor can this discrepancy be explained by differences in levels of education and training; it does not diminish when the same comparison is made between non-European and French residents with the same degree.<sup>119</sup>

Although no detailed statistics regarding discrimination against particular ethnic or religious groups is available, Muslim leaders claim that discrimination is pervasive in hiring and in the workplace. According to one Muslim association leader, “the Muslim community experiences employment discrimination linked with national origin (North-African, African) or religious membership (having a beard or wearing a veil) – attributes which have no bearing on their ability to exercise a profession.”<sup>120</sup> Anecdotal evidence suggests that discrimination against young people from Arab neighbourhoods is particularly strong.<sup>121</sup> Muslims have claimed that they are frequently discriminated against on the basis of their name in access to certain professional positions, and several associations have used the testing technique to demonstrate how access to employment can be affected by perceptions about the first name or family name of candidates.<sup>122</sup> According to the spokesperson of the Union of Muslim Associations of Seine Saint Denis (UAM 93), the sense of community among different groups of French Muslims – which is not otherwise very strong – is greatly strengthened by the daily discrimination they experience.<sup>123</sup>

<sup>118</sup> See ECRI Report 1999, para. 36. According to ECRI (para. 43), the unemployment rate for young men both of whose parents were born in Algeria is estimated to be almost four times higher than that of people of the same age but of French origin.

<sup>119</sup> *L'insertion professionnelle des étrangers*, (Professional integration of foreigners), Notes et documents, February 2001.

<sup>120</sup> Interview with the Director of *Institut Formation Avenir* (Muslim association), 17 May 2002.

<sup>121</sup> P. Bataille, *Libération*, 30 June 2000. See also P. Bataille, *Le racisme au travail (Racism at work)*, La Découverte, 1997. Also, Comments at OSI Roundtable Meeting, 28 June 2002. *Explanatory note: OSI held a roundtable meeting in Paris in June 2002 to invite critique of the present report in draft form. Experts present included representatives of academia, civil society organisations, Muslim leaders, lawyers, and journalists.*

<sup>122</sup> In 1999, the *Mouvement contre le racisme et pour l'amitié entre les peuples* (MRAP, Movement against Racism and for Friendship between Peoples) filed 35 legal complaints for discrimination on the basis of the complainant's name to various courts; 24 have not yet received an answer. See N. Negrouche, “Changer de prénom pour trouver un emploi. Discrimination raciale à la française” (Changing name to find a job. Racial discrimination French style), *Le Monde diplomatique*, March 2000, p. 7, available at: <<http://www.monde-diplomatique.fr/2000/03/NEGROUCHE/13405>>, (accessed 26 September 2002). The new anti-discrimination legislation can be expected to facilitate the processing of these claims.

<sup>123</sup> Interview with the spokesperson of the UAM 93, 21 May 2002.

The 114 hotline has recorded numerous complaints of discrimination in employment, some explicitly motivated by the victim's religious affiliation. For example, a hotline employee addressing a complaint to a temporary employment agency by telephone on 11 January 2002 was told, "You should understand me, you send me *Zoubidas*<sup>124</sup> and I have a middle-class clientele which does not want such employees in their homes." On 25 March 2002, another caller claimed that "[the temporary employment agencies] do not manage to find you a job because of your name, and it has become more difficult since the events of 11 September."<sup>125</sup>

The "veil issue" has also had an impact in the field of employment. In May 2000, after several regional education administrations decided that Muslim women should not wear veils while teaching, the Council of State ruled that respect for *laïcité* precludes the public expression of religious belief by employees of institutions of public education, regardless of their function. However, the Council again delegated to the administrative authorities the competence to take veil-related decisions on a case by case basis.

Recently, the HCI asserted that wearing a veil may result in discrimination against Muslim girls and women during job interviews or in gaining access to public service jobs, and on this basis expressed reservations about the practice of wearing the veil at school and in other circumstances:

it must be ... clearly stated [to the school-going public] that the veil constitutes an obstacle on the way to integration. In the first place, it is important to stress that the implicit gender inequality implied by the veil is in complete opposition with the social standard in our country. It is not the duty of the school institution to involve itself in the private relations between men and women, but it is its responsibility to explain to students the discriminatory situation that such attitudes, which are at variance with the context in which they live, can generate for them... One can also point out the difficulties of professional integration to which veiled young girls expose themselves.<sup>126</sup>

Temporary employment agencies often receive specific requests from companies not to send Muslim workers. Though they are at risk of losing clients if they insist upon sending Muslim workers, they are also at risk of prosecution if they honour such requests, as they, rather than the firms which are their clients, are considered the employer.<sup>127</sup> Some NGOs have filed legal complaints against agencies on behalf of

<sup>124</sup> A typical Muslim name, used as a reductive and pejorative term for designating women from Arab (probably Maghrebi) origin.

<sup>125</sup> GELD, *2001 Activities Report*.

<sup>126</sup> HCI Report 2001, pp. 98–99.

<sup>127</sup> See e.g. Étude du Cabinet Copas (FAS-Adecco) sur les techniques d'élaboration des annonces et des profils des emplois (...) (Study on the techniques of elaboration of advertisements and profile of employment).

Muslim complainants. For example, SOS Racisme recently brought a case against *Adecco*, after having discovered that the agency had recorded an applicant's foreign background in his file;<sup>128</sup> moreover, the agency was accused of having accepted employers' requests explicitly to exclude people of colour or "non-BBR" (bleu, blanc, rouge – the colours of the French flag, meaning that the applicant should be neither black nor Arab).<sup>129</sup> *Adecco* has now signed an agreement to desist from such discriminatory practices.<sup>130</sup>

As in the sphere of education, the right to freedom of expression is upheld in the workplace. The case-law of the Cassation Court (which rules on labour regulations) has affirmed that the right to privacy encompasses religious modes of dress, such as wearing a hat,<sup>131</sup> *inter alia*. However, in the case of conflict between the right to privacy and freedom of expression and *laïcité*, employers can intervene in a similar manner to school headmasters. For example, employers must respect the right to expression of religious belief, but may introduce restrictions on this right if required by public order, security, hygiene, health or other considerations.<sup>132</sup> In practice, certain religious practices are commonly tolerated. For example, employers are officially encouraged to excuse Muslim employees from work on important religious holidays, though this decision remains at the discretion of the head of department.<sup>133</sup>

Trade unions have often taken an active role in fighting discrimination, particularly with regard to equal treatment of workers with regard to their enjoyment of social and trade union rights.<sup>134</sup> For many years, trade unions represented the only mechanism

<sup>128</sup> See: <<http://www.sos-racisme.org/presse/lemonde6200.htm>>, (accessed 28 September 2002).

<sup>129</sup> "BBR" is a term that has been used in particular and extensively by the extreme-right party of the National Front of J.-M. Le Pen.

<sup>130</sup> See J. de Linares, "Quand une entreprise s'engage contre la discrimination" (When a firm gets engaged in fighting against discrimination), *Le Nouvel Observateur*, week of 9 Thursday May 2002, n. 1957, available at: <<http://www.nouvelobs.com/articles/p1957/a17323.html>>, (accessed 28 September 2002).

<sup>131</sup> Cass. 22 January 1992.

<sup>132</sup> Thus, according to one court decision, there is no violation of the right to freedom of expression in requesting a Muslim butcher to handle pork. See Cass. soc, 24 March 1998, AZAD c/M'ZE.

<sup>133</sup> Government circular of 23 September 1967. Each year, the State publishes the list of religious holidays for which authorised absence can be granted. For Muslims, this involves *Aïd al Seghir*, *Aïd el Kebir*, and *Mawlid*. A Muslim absent from work for *Aïd el Kebir* cannot be fired, Cass. Soc., 16 December 1981, *Bull. Civ.*, V, n. 968, p. 719.

<sup>134</sup> See *Hommes et Migrations*, n. 1187, May 1995, pp. 12–31.

available to immigrants, who did not have the right of association until 1981.<sup>135</sup> Unions receive and process complaints of discrimination, and also provide mediation services and other forms of assistance to their members. Although they have always opposed the formation of separate community-based unions (i.e. unions of Muslim workers), union representatives have successfully negotiated agreements on behalf of Muslim union members, such as the right to take Muslim holidays, or respect for dietary requirements in workers' cafeterias. Different companies have taken different approaches to satisfying union demands that special provision should be made for religious observances such as prayer and fasting.<sup>136</sup>

### *Government response*

The Ministry for Employment and Solidarity organised a roundtable in May 1999, gathering social partners and Government officials to discuss the problem of racial discrimination in the workplace. The roundtable produced the "Grenelle Declaration," which contained a series of proposals for fighting discrimination in employment:

- conduct research on the extent and nature of discrimination in the workplace;
- provide support and training to all public and private actors (including trade-unions) in the fight against discrimination;
- promote employment counselling and mentoring for young people;
- issue public statements supporting the fight against discrimination;
- consider necessary modifications to legislation to facilitate the fight against racial discrimination, including the right for trade unions to lodge complaints on behalf of victims, reversal of the burden of proof, and the establishment of a warning right (*droit d'alerte*).

### *Treatment of non-French nationals*

Employment laws require equal treatment and prohibit discrimination without distinction between nationals and foreigners. However, several recent reports have drawn attention to discriminatory practices against non-French nationals in the employment sector, and the director of one Muslim association asserts that there is "a racism in French public opinion which touches upon the integration even of

<sup>135</sup> M. de Rudder Véronique, F. Vourc'h, "Les syndicats face aux nouvelles discriminations" (Trade unions agents face new discrimination) *Hommes et Migrations*, n. 1187, May 1995, pp. 12–22.

<sup>136</sup> C. Wihtol de Wenden, J. Barou, M. Diop, N. Kerschen, E. de Saint-Blanquat, T. Subhi, *Analyse des conflits récents survenus aux usines Renault de Billancourt depuis 1981 au sein de la population immigrée*, (Analysis of recent conflicts in Renault Billancourt's factories since 1981 among immigrants), *Contrat de connaissance* CNRS/RNUR, January 1986.

doctors.”<sup>137</sup> Though the principle of non-discrimination among workers is enshrined in the Constitution as well as in the ECHR, one 1999 report revealed that as many as 615,000 private sector jobs are closed to non-French nationals and an additional 625,000 private sector jobs are closed to persons who do not possess a French degree.<sup>138</sup> French nationality is a requirement for some jobs in the public sector, effectively barring non-French nationals from access to as many as seven million jobs – 30 percent of the total number of jobs available.<sup>139</sup>

There have been a number of official efforts to address this situation, which have been inspired to some extent by developments at the European level.<sup>140</sup> For example, following a lobbying effort by various associations, including the *Groupe d'information et de soutien aux travailleurs immigrés* (Group of information and support to immigrant workers, “GISTI”), a 2001 circular removed the nationality requirement for jobs in the social security administration.<sup>141</sup> However, many restrictions remain in place, and many non-nationals are relegated to working illegal, often dangerous jobs, without sufficient social protection.

### 3.1.3 Housing and other goods and services

A number of laws have been established to facilitate the fight against discrimination (particularly racial discrimination) in housing. For example, the right to decent housing

<sup>137</sup> Interview with the director of the Muslim association Avicenne, 24 May 2002.

<sup>138</sup> Non-French nationals are barred from working in 50 mostly private professions including pharmacists, surgeons, dentists, and lawyers as well as from some jobs in the communications sector. A French diploma is required for about 30 professions, including in health, law, architecture, hairdressing, and real estate and travel agencies. In addition, the status of “civil servant” is closed to non-EU citizens. See Report by Brunet Consultants, *Les emplois du secteur privé fermés aux étrangers* (Employment in the private sector closed to foreigners), November 1999, unpublished.

<sup>139</sup> Restrictions apply with regard to jobs in State, hospital and territorial administration (5.2 million jobs), and to jobs at the Post Office, Air France, GDF-EDF (the electricity company) and industrial and commercial public entities (one million jobs). For a detailed description of the jobs which are closed to foreigners, see GIP-GELD, “Une forme méconnue de discrimination: les emplois fermés aux étrangers (secteur privé, entreprises publiques, fonctions publiques)” (A little-known form of discrimination: jobs closed to foreigners, such as private sector, public firms, public functions), note 1, March 2000.

<sup>140</sup> See GELD, note 1, p. 10.

<sup>141</sup> Circulaire DSS/4 B n. 2001-514, 22 October 2001, NOR MESS0130701C, *Bulletin Officiel du Ministère des affaires sociales*, n. 2001-44 (29 October to 4 November 2001). For full text see: <<http://www.gisti.org/doc/textes/2001/dss4b2001.html>>, (accessed 27 September 2002).



is a constitutional right since the decision of the Constitutional Council in 1995.<sup>142</sup> Most recently, the Law on Social Modernisation, adopted on 17 January 2002, explicitly prohibits discrimination in housing.<sup>143</sup> However, unequal access to subsidised housing, poor housing conditions and patterns of segregation affect those perceived to be foreigners in general (not only Muslims).<sup>144</sup>

Though there is little available research, economic and social differences between *Français de souche* and the population of foreign origin (both immigrants and French citizens of foreign origin) are reflected in both the private and public housing markets. A number of studies have revealed that these differences are underpinned and exacerbated by discriminatory practices in the screening and selection of applicants for subsidised public housing in particular.<sup>145</sup> There is also some evidence of discrimination in the private market,<sup>146</sup> particularly in renting or buying private flats and houses. Social housing in the public sector has reflected the same trend, leading to greater segregation, despite a declared intention to fight against patterns produced under the purely economic rationale which prevails in the private sector.<sup>147</sup>

There were approximately four million subsidised housing units as of 1998, representing 17 percent of all real estate and more than 45 percent of rented houses. Some selection among applicants for subsidised housing is necessary, as the number of requests exceeds the number of available units. Discrimination during the process of screening and selection is a complex and cumulative phenomenon. Applications are evaluated at the local level according to a number of criteria, and it is difficult to determine whether discrimination occurs on ethnic, national, religious, or social and

<sup>142</sup> Conseil Constitutionnel, 19 January 1995. Decision n. 94-359 DC. Law on Housing Diversity (*loi relative à la diversité de l'habitat*).

<sup>143</sup> Law on Social Modernisation, Art. 159, 160, 161, 162.

<sup>144</sup> One recent study of discrimination in social housing revealed that officials in charge of allocations, though they had been issued with guidelines specifying that interviewees were all families coming from sub-Saharan Africa, adopted a “global discourse” referring to “Africans,” “blacks,” and “those people.” In other words, instead of using the category indicating specific geographical origin, officials placed interviewees in broader categories. See V. De Rudder, C. Poirer, F. Vourc’h, *L'inégalité raciste. L'universalité républicaine à l'épreuve* (Racist inequality. Putting Republican universality to the test), Paris, PUF (Pratiques théoriques), 2000, p. 100–102.

<sup>145</sup> Note published by GELD on social housing, note 3, 10 May 2001, “Les discriminations raciales et ethniques dans l'accès au logement social” (Racial and ethnic discrimination in the access to social housing) under the direction of Patrick Simon (hereafter “GELD, note 3”). See GELD webpage or: <<http://www.sos-racisme.org/presse/notegeld.htm>>, (accessed 25 September 2002).

<sup>146</sup> See GELD, note 3.

<sup>147</sup> See GELD, note 3.

economic grounds – or some combination of these; again, religion is rarely the determining factor. However, it is clear that the public perception of “sociological risk” posed by an individual’s presumed national or ethnic group in particular has become a central consideration.<sup>148</sup> Thus, despite the fact that group identification is officially discouraged, collective perceptions colour official policies for evaluating “good” and “bad” candidates, and families of foreign origin are disproportionately assigned to housing in peripheral, poorer neighbourhoods.<sup>149</sup> Although no research is available to quantify discriminatory practices during the process of establishing and building the files of individual applicants, it is well known that such practices are widespread.<sup>150</sup>

Complex and lengthy bureaucratic procedures and the high level of discretion granted to local housing authorities create ample opportunity for unequal treatment of applicants.<sup>151</sup> Yet because numerous officials are involved in the management and screening of any one individual’s file, it is difficult to determine individual responsibility for discriminatory handling of any one particular case. Individuals of foreign origin claim that they often

<sup>148</sup> J.-C. Toubon, “L’attribution des logements sociaux,” *Migrations-Société*, 1998, vol. 10, n. 60, pp. 65–82.

<sup>149</sup> See V. De Rudder, M. Guillon, *Autochtones et immigrés en quartier populaire* (Autochthonous people and immigrants in popular neighborhoods), Paris, CIEMI-l’Harmattan, 1987; see also A. Tanter, J.-C. Toubon, “20 ans de politique française du logement social” (20 years of French Social Housing Policy), *Regards sur l’actualité*, 1995, n. 214, pp. 30–50. More recently, several studies have shown that the residential mobility of populations who were placed in housing in peripheries is very low and plays a central role in the process of segregation of and therefore discrimination against the population living in these areas. GIP-GELD-114, *Rapport d’activités 2001. Conseil d’orientation du mardi 30 avril 2002*, p. 14.

<sup>150</sup> As indicated in GELD, note 3, on discrimination in the housing sector, the main difficulty lies in the near impossibility of determining the source of a discriminatory act in this sector, partly because of the numerous different actors taking part in the process of establishing and processing the application.

<sup>151</sup> The practice of indicating individual applicants’ nationality in HLM files was introduced in October 1984. The *Commission Nationale Informatique et Libertés* (CNIL, National Commission for Information and Freedom), a public agency in charge of ensuring that information regarding the racial or ethnic origin, political, philosophical or religious opinion, trade-union affiliation, etc. is not recorded in a person’s file, stated in 2002 that nationality should not be used in a discriminatory manner in the allocation of social housing; though nationality can be recorded in HLM applications, information on date of arrival, place of birth and nationality of the applicant’s parents cannot be used as criteria for deciding on HLM applications. Moreover, information on nationality can be included only under “civil status;” it cannot be indicated anywhere else in the file. Offices and agencies in charge of the administration of the social housing filing system are not authorised to give this information to other officials who might ask for it. See Deliberation n.01-061, 20 December 2001 of the CNIL, giving recommendations on filing in the sector of social housing (version I-14012002), <<http://www.cnil.fr>>, (accessed 26 September 2002).

have to wait longer than *Français de souche* to receive a housing assignment, and indeed 28 percent of immigrant families have been waiting for housing for at least three years.<sup>152</sup> At the same time, it is precisely these populations which are most dependent on social assistance, due to their economic vulnerability.

The prevalence of discriminatory practices in the allocation of public social housing has been highlighted by several recent cases. For example, SOS-Racisme revealed in 2001 that the Public Office of Development and Construction (OPAC) of Metz, which manages the distribution of public housing for the local *Habitations à loyers modérés* (low-rent housing, hereafter “HLM”) was recording the ethnic origin of applicants on its housing forms, in a manner that clearly violated privacy laws.<sup>153</sup> The software used in Metz was also being used by other public offices responsible for allocating subsidised housing, suggesting that the practice is widespread. Moreover, the practice appears to reinforce patterns of segregation: in Metz, 70 percent of the inhabitants of the HLM’s in outlying districts are non-Europeans, compared to only 2.5 percent in the city centre.<sup>154</sup> GELD has called for the removal of illegal references to national or ethnic origin in individual computer files.<sup>155</sup>

In April 1998, the newspaper *Sud Ouest* reported on the illegal practice of “scoring” which was practised in a district of La Rochelle (Charentes), by which housing applicants were screened and given a score depending on their social profile, with points allotted for such attributes as place of birth, possession of a new car, and length of term of present employment. Preferred applicants were those receiving the lowest score – those who were white, had a French name, were of French origin, etc.

### *Government response*

The Government has attempted systematically to implement a policy of “social integration” or “mixing” (*mixité sociale*) in the areas where this was considered necessary.<sup>156</sup> The so-called “Anti-ghettos Law” of 1991 created a public obligation to

<sup>152</sup> GELD, note 3, on discrimination in the housing sector.

<sup>153</sup> More specifically, OPAC was using the information for other purposes than in relation to civil status. CNIL, Deliberation, 21 January 1997. See: <<http://www.cnil.fr>>, (accessed 26 September 2002).

<sup>154</sup> *L’Humanité*, 1 July 2001.

<sup>155</sup> GELD, note 3, on discrimination in the housing sector.

<sup>156</sup> This policy of “mixing” different categories of population was initiated first through a decree (19 March 1986) and then through two laws, the Besson Law of 1990 and the Orientation Law on the City of 1991.

promote mixed populations in every district.<sup>157</sup> This directive may have had the unintended result of encouraging the discriminatory practices enumerated above;<sup>158</sup> it is hard to see how housing authorities can ensure mixed populations in public housing units without systematically taking nationality into account.

In 1999, the Secretary of State for Housing initiated several measures to strengthen monitoring of and sanctions against discriminatory behaviour by public housing agencies.<sup>159</sup> For example, monitoring of the practical implementation of allocation procedures was initiated to guarantee that allocations would produce ethnically and socially mixed neighbourhoods, and that the number of documents required from the individual or entity renting out a house or flat would be reduced in order to facilitate the allocation process.

Procedures for regulating allocations of subsidised housing were modified in 1998.<sup>160</sup> Under the law and accompanying guidelines, those renting out flats or agencies (*bailleurs*) are required to communicate information concerning allocation procedures, and to provide written notification and explanation for refusing an application. The prefect is assigned a central role in ensuring that these legal provisions are respected, and in mediating between the different actors (HLM, applicants, and the departmental administration). The new law also provides for recourse to complaint proceedings through mediation subcommittees and commissions. In accordance with the 1991 law, the State and the HLM jointly introduced the positive step of assigning a single departmental number to protect the privacy of individual applicants and to facilitate the implementation of a housing policy which is truly colour-blind.<sup>161</sup>

Several organisations are engaged in assisting persons confronted with discrimination in access to housing. The National Association for Information on Housing (ANIL) and the Departmental Association for Information on Housing (ADIL), offer advice and consultation free of charge to persons looking to buy or rent a flat. A number of Muslim associations have also established groups to facilitate access to housing.

<sup>157</sup> For more on the specific case of groups originating from the Maghreb, see N. Boumaza, "Territorialisation des Maghrébins: regroupement contraint et désir de dispersion," in L. Haumont, *La ville: agrégation et ségrégation sociale*, (Territorialisation of Maghrebis: forced grouping and desire for dispersion, in *The City: Social Aggregation and Segregation*), Paris, L'Harmattan, pp. 31–53.

<sup>158</sup> See V. De Rudder, C. Poiret, F. Vourc'h, *L'inégalité raciste*, p. 79.

<sup>159</sup> Such as the Inter-ministerial mission for inspection of social housing and the Permanent Secretary of the service for city-planning, construction, and architecture (PUCA).

<sup>160</sup> Law of 29 July 1998 and decree of implementation guidelines 99-836 of 22 September 1999.

<sup>161</sup> Decree of application published in *Official Journal*, 8 November 2000. The single number system was implemented at the departmental level before 31 May 2001.

### 3.1.4 Healthcare and other forms of social protection

There are no indications that Muslim citizens are discriminated against with regard to social protection. However, increasing restrictions have been placed on access to social protection for Muslim and other non-citizen residents in recent years. Moreover, in the absence of official recognition of Islam, Muslim religious leaders do not enjoy access to social protection on an equal footing with the representatives of other recognised religions. There have been some reports of religious discrimination in the healthcare system.

On 13 August 1993, the Constitutional Council specified that foreigners are eligible for social protection upon establishing continuous legal and permanent residence. This paved the way for the adoption of the 1993 Pasqua Law, which aimed to control immigration by imposing stricter restrictions on foreigners' access to social security and other forms of social welfare.<sup>162</sup> The law linked the right to social protection to continuous residence and employment on French territory. Numerous associations and members of Parliament have criticised the law, claiming that it has had a negative impact on the situation of those foreigners who either do not have legal documentation or have not been living in France for a sufficient period of time.<sup>163</sup> Some observers have pointed out that the law has had a particularly negative impact on minors, whose parents sometimes are not able to produce the necessary documentation to prove their right to reside in France, and therefore cannot receive child support.<sup>164</sup> The law also appears to have a discriminatory impact on individuals who have worked legally in France but choose to retire in their country of origin; those who worked and contributed to the social security regime receive a card allowing them to circulate between their place of residence and France. This card gives them access to social protection, but restricts the possibility for other family members to benefit from these rights; there are also some limitations on access to long-term healthcare.

The fact that Islam has no representative institution and is not accorded the same status as other forms of worship has also produced some inequalities in access to social protection. Perhaps the best example of this is the situation of imams, who, unlike Catholic priests, for example, do not enjoy guaranteed access to social protection, though there appears to

<sup>162</sup> *Actualités sociales hebdomadaires*, n. 1850, 22 October 1993.

<sup>163</sup> The main critiques came from NGOs fighting for the rights of foreigners and immigrants; the core critique related to the law's negation of the principle of equality of treatment between French citizens and foreigners, which had been the policy since the end of the Second World War. See D. Fassin et al, *Un traitement inégal. Les discriminations dans l'accès aux soins, Rapport d'études du CRESP n. 5* (Unequal Treatment. Discrimination in access to healthcare), September 2001, available at: <<http://www.inserm.fr/cresp/cresp.nsf/Titre/les+rapports+du+CRESP>>, (accessed 26 September 2002).

<sup>164</sup> GISTI, "La protection sociale des étrangers après la loi Pasqua" (Social protection for foreigners after the Pasqua Law), 1995.

be no legitimate reason for this distinction. Approximately 500 imams are active in France, working under very different conditions, according to their personal circumstances.<sup>165</sup> Some work on a volunteer basis and have another job which guarantees them access to social rights. Others are employed by associations which should cover their social security costs, but are not always in a position to do so. Some imams are therefore excluded from any form of social protection. Since 1978, established forms of worship may use two specific health insurance offices. However, only 50 of the 500 imams benefit from this system; there are no Muslim representatives associated with these offices; and no representative of Islam serves on the office boards, though this is not precluded by their regulations.

Without an official representative and an ecclesiastical hierarchy, there is no mechanism for selecting State-supported Muslim chaplains, who could provide religious services to believers unable to go to places of worship, such as prisoners, hospital patients, and soldiers.<sup>166</sup> As a result, there are relatively few Muslim chaplains<sup>167</sup> and most work either part-time or as volunteers. As of 2001, there were 44 Muslim chaplains, compared to 460 Catholic chaplains, to serve a prison population of 45,000, 50–60 percent of whom were Muslim. Of those 44, only four were working full-time.<sup>168</sup> The problem is particularly acute with regard to the performance of funeral rites.

### *Healthcare*

The social security system (created in 1945) is based on residence rather than nationality. The Pasqua Law of 1993 restricted access to this system to permanent residents (as opposed to those who reside in France irregularly or for short periods). In 1999, the Government created the *Couverture maladie universelle* (Universal illness protection, “CMU”) for persons who are unable to prove their residence status.<sup>169</sup> A system has also been established to provide State Medical Assistance to persons without documents (*les sans papiers*). However, many affected persons are not aware of this healthcare option, and

<sup>165</sup> HCI Report 2001, p. 55.

<sup>166</sup> The HCI has pointed out that without a regulatory framework, there would be an issue of which organisation or individual could legitimately appoint Muslim chaplains. See HCI Report 2001, p. 56.

<sup>167</sup> Discussion with Hanifa Chérifi, “Les musulmans victimes de discriminations. Une inégalité entre les religions” (Muslim victims of discrimination. Inequality between religions), J.-M. Blier, S. de Royer, *Discriminations raciales, pour en finir* (To put end to racial discrimination), 2001, Paris, éditions Jacob-Duvernet, pp. 52–53.

<sup>168</sup> 16 were working part-time and 20 as volunteers. *Le Monde*, 31 October 2001.

<sup>169</sup> Law of 27 July 1999. The CMU began to be applied in January 2000.

the decentralisation process has resulted in the development of different levels of protection in practice between different localities.<sup>170</sup>

Little research is available on the specific treatment of Muslim patients in the public healthcare system, including in public hospitals. However, anecdotal evidence suggests that the cultural and religious background of Muslims sometimes brings them into conflict with healthcare officials.

The medical association Avicenne focuses on providing mediation services for Muslim patients, and its experiences confirm that such services are necessary: “The Muslim patient has to pray when in hospital, and we, as an association, explain to the nurse that she can organise the care around the prayer schedule... Very often, the Muslim patient is not able to explain himself, due to problems related to language, culture, or the unfamiliar hospital environment. He is in a way also a victim of negligence by the medical team. There is a real communication problem, often connected with prejudice.”<sup>171</sup> One Avicenne leader gave an example to illustrate communications problems between nurses and Muslim women:

...all of a sudden a nurse came in screaming that a patient did not want to remove her veil, which is prohibited because it is [something] external to the operating room, and that in addition the patient did not speak French. I went with her to see the patient ... [in fact] the patient was French and spoke French very well; she was a convert to Islam. I then said to the nurse that, first of all, children are allowed to enter the operating room with personal articles, which are external; secondly that she spoke French, which demonstrated that the nurse did not speak to her directly; and thirdly that the problem could have been solved very simply insofar as entering into the operating room, the patient would have worn a head covering. It would have been much simpler to take the time to explain to her the internal rules of the hospital.<sup>172</sup>

Certain Muslim associations have sought to draw attention to the need for State authorities to devote more attention to illnesses such as AIDS among immigrant populations. One association in particular (“Immigrants against AIDS”) has challenged the national public health network to improve its efforts to provide information about AIDS within the immigrant community, within which the issue is still taboo.

Public health services in Paris have taken some steps to address the religious needs of Muslim patients. For example, an internal document for the staff working in Paris hospitals (nurses, assistant, doctors, etc.) provides guidance regarding possible requests

<sup>170</sup> See N. Drouot, N. Simonnot, *Rapport 2001 de l'Observatoire de l'accès aux soins de la mission France de Médecins du monde* (2001 Report of the Observatory of access to healthcare by the France mission of World Doctors), June 2002.

<sup>171</sup> Interview with the director of Avicenne (AMAF), 24 May 2002.

<sup>172</sup> Interview with the director of Avicenne (AMAF), 24 May 2002.

related to diet, body care, and death rituals. However, local hospitals have the discretion to decide whether they wish to address a particular issue or not.

### 3.1.5 Access to justice

French citizens and those who have established legal permanent and continuous residence in France are eligible for State legal aid<sup>173</sup> to ensure equal access to and equal treatment within the justice system.

Two forms of State legal aid are available.<sup>174</sup> First, the State will cover (either fully or partially) the legal fees of *auxiliaires de justice* (justice auxiliaries) for persons who do not have sufficient resources to exercise their legal rights under the justice system.<sup>175</sup> State legal aid is also available for consultation (obtaining legal information, advice or assistance) and assistance during non-judicial procedures. Applicants for legal aid must demonstrate lack of sufficient resources and that their case has not been considered inadmissible or unfounded. Individuals may also appeal decisions by legal aid offices to refuse assistance.

There are some indications of inequalities in the justice system. For example, there appears to be a pattern of discrimination in sentencing, with individuals whose ethnic origin (or supposed ethnic origin) is not French receiving longer sentences for similar crimes. One study found that for the crime of burglary or breaking and entering, 52 percent of foreigners were sentenced to imprisonment without remission (*sursis*), compared to 37 percent of French persons. For possession and acquisition of drugs, 44 percent of foreigners were sentenced to imprisonment without *sursis* compared to 31 percent of French persons.<sup>176</sup> The International Helsinki Federation has also expressed concern over, *inter alia*, the protracted length of pre-trial detention and judicial proceedings<sup>177</sup> and has reported on misconduct by law enforcement officials,

<sup>173</sup> With some exceptions, such as for procedures related to the cancellation of a prefect's decision to return an individual to the border on a ruling of expulsion from French territory, *inter alia*.

<sup>174</sup> Law of 10 July 1991, *Official Journal* of 13 July 1991. Modified by Law 98-1163 of 18 December 1998 creating the Departmental Councils of Access to Law (*les Conseils départementaux de l'accès au droit*).

<sup>175</sup> See *Fiche juridique et pratique*, "Informations Inter-Migrants" (Juridical and practical form, Inter-Migrants Information), n. 25, 15 February 1993.

<sup>176</sup> J.-M. Blier, S. de Royer, *Discriminations raciales, pour en finir*, p. 62.

<sup>177</sup> In July 2001, the ECHR held unanimously that the criminal proceedings against Dris Zannouti, which lasted five years, ten months and ten days, violated Article 6.1 of the ECHR. See Report on France of the International Helsinki Federation, 2002 (hereafter "IHF Report 2002"), p. 129, available at: <<http://www.ihf.org>>, (accessed 1 October 2002).



particularly with regard to non-French nationals.<sup>178</sup> Again, as in other cases, systematic data has not been collected on the causes of apparent discrimination in sentencing, and it is impossible to isolate a religious motivation from ethnic or racial motivations.

As part of a broader process of facilitating access to information about State activities and resources, and improving citizens' awareness of their rights, the Houses of Justice and Law (*les maisons de la justice et du droit*) employ mediators to address disputes and conflicts at the communal level.<sup>179</sup> ECRI noted favourably the development of initiatives to improve representation of persons of immigrant background in the police, as "assistant security officers," and called for an extension of such initiatives to bring about further improvements.<sup>180</sup>

### 3.2 Protection against Racially and Religiously Motivated Violence

Incitement to racial hatred is punishable by law,<sup>181</sup> with enhanced sentencing if it leads to concrete consequences or violence. Incitement as such does not legally constitute discrimination, though racism is a punishable crime.<sup>182</sup> However, legal protection for victims and the stipulation of sanctions in case of violations appears to play only a marginal role in dissuading such crimes and, according to ECRI, it is "generally acknowledged that the number of cases of this type brought before the courts do not reflect the real extent of the phenomena of discrimination and racist expression in society."<sup>183</sup>

Several international organisations have expressed concern over the incidence of violence by public actors, and the lack of sufficiently rigorous investigation of complaints of ill-treatment of detainees and prisoners, particularly immigrants and

<sup>178</sup> See IHF Report 2002, p. 129. See also ECRI Report 1999, para. 30.

<sup>179</sup> Law 98-1163 of 18 December 1998 (Art. 21) and decree n. 2001-1009 of 29 October 2001. For more information on these Houses, see: <<http://www.justice.gouv.fr/justorg/mjd.htm>>, (accessed 26 September 2002).

<sup>180</sup> ECRI Report 1999, para. 32.

<sup>181</sup> Penal Code 1881, Art. 24 and Art. R 625-7.

<sup>182</sup> Pleven Law of 1 July 1972 on penal sanctions against racial discrimination (Law 72-546), available at: <<http://www.antisemitisme.info/lois/plevn.htm>>, (accessed 27 September 2002); stricter sentencing for racism was introduced in 1990. Gayssot Law 90-615 of 13 July 1990, *Official Journal*, 14 July 1990, p. 8333 (NOR: JUSX9010223L). See: <<http://www.jura.uni-sb.de/france/Law-France/190-615.htm>>, (accessed 27 September 2002).

<sup>183</sup> ECRI Report 1999, para. 5.

persons of North African or African origin.<sup>184</sup> According to a report recently released by Amnesty International, “delays and obstacles to trial of some police officers [have] contributed to a climate of impunity.”<sup>185</sup>

The frequency of racially or religiously motivated violence by private actors increased between 1999 and 2000. In 1999, 40 serious incidents (attacks, physical aggression, or destruction of property) were recorded, compared with 146 in 2000.<sup>186</sup> 149 instances of threats or intimidation were recorded in 1999, compared with 772 in 2000.<sup>187</sup> The rise in the frequency of such attacks is clearly linked to international events. For example, the beginning of the second *intifada* in Israel in September 2000 was followed by a sharp increase in racist violence. Similarly, the events of 11 September provoked increased association of Islam with terrorism and fundamentalism, and while the overall number of racist acts actually decreased in 2001,<sup>188</sup> many of those that did take place were linked with 11 September. The CNCDH report for 2001 (published in March 2002) explains that more than 68 percent of racist<sup>189</sup> and xenophobic violence and 63 percent of the threats recorded during 2001 occurred between September and December. These figures do not include anti-Semitic violence; according to CNCDH, more religious violence against Jews was recorded in 2001 than in any other year in the past decade.<sup>190</sup>

Of 163 racially motivated acts of intimidation or violence committed in 2001, 115 targeted North-Africans; though such violence also targets Arab and Muslim communities in general (not only North Africans), it is difficult to isolate a religious motivation. However, racist violence clearly often has a religious dimension, most usually connected to anti-Semitism or anti-Arabism.<sup>191</sup> Places of worship (including both mosques and synagogues) are often the target of attacks, stone-throwing, and partial or total destruction.

<sup>184</sup> ECRI Report 1999, paras. 29–30; IHF 2002, pp. 129–130.

<sup>185</sup> Amnesty International Index: POL 10 January 2002.

<sup>186</sup> 80 percent of the total number of racist actions recorded (or 116 serious acts) were recorded against Jews in 2000 (nine cases in 1999). See CNCDH Report 2001 (published in March 2002), at: <<http://www.commission-droits-homme.fr>>, (accessed 27 September 2002).

<sup>187</sup> See CNCDH Report 2001.

<sup>188</sup> 67 racist acts were recorded in 2001, compared to 146 in 2000. CNCDH Report 2001.

<sup>189</sup> Until the report published in 2002, the registration of racist acts did not include aggression resulting in an eight-day suspension (or less) from work. Beginning with the 2002 report, all grave acts against property or persons will be recorded, regardless of the length of the suspension.

<sup>190</sup> *Le Monde*, 22 March 2002; *La Croix*, 22 March 2002.

<sup>191</sup> L. Harris survey on French attitudes towards racism, March 2001.

Leila Babès, a professor of sociology of religion at the Catholic University of Lille, remarked, following 11 September, that she feared the psychological impact on French Muslim communities: “when one speaks of terrorist groups, the word “Islam” always comes up... this focus is alarming. We fear a resurgence of everyday hostility and a change in the way others will look at us.”<sup>192</sup> A recent survey revealed that the great majority of both French and Muslim interviewees believed that France’s participation in a military action against an Islamic State could provoke serious incidents among the various communities on French territory.<sup>193</sup>

### 3.3 Minority Rights

France has signed but not ratified the European Charter for Regional or Minority Languages (ECRML), and it has refused to sign the Framework Convention for the Protection of National Minorities (FCNM). In an opinion issued in July 1995 at the request of the Prime Minister, the Council of State gave its interpretation of the concept of minority in the French context:

The fundamental principles of the French law, such as they are registered in the Constitution, prohibit any distinction between citizens according to their origin, race or religion. The existence of rights exerted collectively, based on such considerations, would not therefore be recognised in France, where respect for every group’s characteristics – religious, cultural, linguistic or other – is guaranteed by the protection of the individual members of these groups.<sup>194</sup>

There were strong reactions to the signature by the French Government (under Prime Minister Lionel Jospin) of the European Charter on 7 May 1999,<sup>195</sup> and the issue was

<sup>192</sup> Interview with Leila Babès, professor of sociology of religion at the Catholic University of Lille, in *Témoignage chrétien*, 27 September 2001.

<sup>193</sup> 78 percent of Muslims and 84 percent of French interviewees answered that they believed an international conflict would lead to an increase in inter-ethnic conflict in France. *Le Point*, 5 October 2001, n. 1516, p. 75.

<sup>194</sup> Avis du Council of State, n. 357,466, *Rapport annuel*, p. 397.

<sup>195</sup> Regionalist groups immediately protested France’s declaration of reservations at the time the Charter was signed in 1999. There are numerous and contradictory positions on the matter within the French political elite. For example, former Minister of the Interior J.P. Chevènement denounced the “balkanisation” which would ensue if France were to ratify the Charter, while Lionel Jospin and Jacques Chirac tended to support the position of regionalist representatives. On the different positions, see O. Cohen, “Of Linguistic Jacobinism and Cultural Balkanisation,” *French Politics, Culture and Society*, vol. 18, n. 2, Summer 2000, pp. 21–48, in particular pp. 21–27.

referred by the President of the Republic to the Constitutional Council for an opinion on 15 June 1999.<sup>196</sup> The Council's decision stated that the Charter contains clauses which are contrary to the Constitution,<sup>197</sup> "the fundamental principles (of which) are opposed to the recognition of collective rights to any group of whatever type, which is defined by a community of origin, of culture, of language or of belief" and "that private individuals cannot take advantage of a right to use a language other than French, nor to be forced to do it."<sup>198</sup> The Charter's recognition of an "inalienable right" to speak regional or minority languages in public and private life was identified by the Constitutional Council as an attack on the constitutional principles of the indivisibility of the Republic, of equality before the law, and of the unity of the French people.

Claims regarding the rights of Muslims – even when framed by Muslim leaders themselves – are not defined in terms of "minority rights."

The label of minority does not fit in the French context, although there is more and more media pressure to use it. In France, nobody speaks about minorities, even if one uses [the term] on the European level. To a newly-arrived people, one has to give the means of expression which are in the European spirit, in the spirit of *laïcité*, and in the Republican spirit. I can identify myself in the logic of citizenship, and I do not consider myself a [member of a] minority.<sup>199</sup>

### 3.3.1 Religion

Freedom of religion and protection against religious discrimination are legally guaranteed.<sup>200</sup> National legislation further provides for the separation of Church and

<sup>196</sup> Text of the Declaration by President J. Chirac, Prime Minister L. Jospin and Minister of Foreign Affairs H. Védrine, on the interpretation by the French Government of the European Charter in view of an eventual ratification of the Charter. Décision n. 99-412 DC, 15 June 1999. See: <<http://www.conseil-constitutionnel.fr/decision/1999/99412/decl.htm>>, (accessed 26 September 2002).

<sup>197</sup> Decision n. 99-412 DC. European Charter for Regional or Minority languages (NOR: CSCX9903612 S). A similar decision had already been issued by the Council of State in September 1996. For more on the role of the Council in this debate, see L. Pinto, "Les excès du Conseil constitutionnel" (Over-zealous Constitutional Council), *Le Monde*, 24 January 2001.

<sup>198</sup> *L'actualité juridique. Droit administratif*, 20 July – 20 August 1999, p. 628.

<sup>199</sup> Interview with the director of *La Medina*, Saint-Denis, 14 May 2002.

<sup>200</sup> Declaration of the Rights of Man and the Citizen of 1789, Art. 10; Combes Law of 1905, Art. 1; Law on Religious Associations of 1901 and 1907; Preamble of the Constitution of 1946 and Labour Laws; ECHR, Art. 9; the 1958 Constitution, Art. 2.

State, *laïcité* (State neutrality towards religion) and respect for freedom of conscience.<sup>201</sup> Although legislation provides a regulatory framework for religions, there is no statutory regulation of forms of worship.

The Combes Law and the Law for Alsace-Moselle are the two principal pillars of the legislation regulating religion. The Combes Law provides for freedom of conscience and freedom of religion, and mandates State neutrality: the Republic does not recognise, fund or subsidise any particular religion (with the exception of State subsidies provided for chaplaincies in schools, hospitals and prisons).<sup>202</sup> The Law organised the transfer of goods owned by institutions of public worship at that time to “cult associations” (*associations cultuelles*), which represent each religious group *vis-à-vis* the Government, and stipulated free use of publicly-owned buildings used for worship (such as churches and synagogues) for these associations. It also prohibited the placement of religious signs in public buildings and religious education in public schools. The provisions of the Combes Law continue to underpin the concept and practice of *laïcité* today; under its terms, the State can organise the legal framework for religions, but it may not interfere with their internal affairs. At the same time, the Alsace-Moselle Law sets forth an exceptional legal regime within which different forms of worship are recognised,<sup>203</sup> attesting to a degree of legal pluralism in this area.

Following the adoption of the Combes Law, the different religions present in France at that time were reorganised to adapt their legal status to its the requirements.<sup>204</sup> Religions

<sup>201</sup> J. Robert, “La liberté religieuse” (Religious Freedom), *Revue internationale de droit comparé*, 1994, 2, pp. 629–644.

<sup>202</sup> The Combes Law is also called the Law on Separation between Church and State. It was adopted on 9 December 1905, published in the *Official Journal* on 11 December 1905, and came into force on 16 March 1906 (*Journal Officiel*, 17 March 1906). See G. Bedouelle, J.-P. Costa, *Les laïcités à la française* (Laïcité French style), Paris, PUF (Politique d’aujourd’hui), 1998, p. 51.

<sup>203</sup> Alsace-Moselle has three departments (Bas-Rhin, Haut-Rhin and Moselle); these are the only departments in which *laïcité* is not applied, and in which religion and worships are managed according to the pre-Combes Law regime, meaning the Concordat (*Convention entre le gouvernement français et Sa Sainteté Pie VII, Agreement between the French Government and His Holiness Pie VII*), which was signed on 15 July 1801 between the French Government (Bonaparte) and the Holy See. On the history of the specific management of religion in Alsace-Moselle, see G. Bedouelle, J.-P. Costa, *Les laïcités à la française*, particularly pp. 143–150. The situations in overseas departments and territories also differ from the basic separation system.

<sup>204</sup> Thus, Lutheran and Reform Protestantism and Judaism became legally recognised forms of worship. This process of separation introduced by the Combes Law was also the result of negotiations between the State and Catholic institutions, and led to a series of agreements which have accompanied the establishment and consolidation of *laïcité* throughout the 20<sup>th</sup> century.

organised in this manner enjoy certain benefits, such as tax exemptions on religious buildings, that other religious groups (such as Muslims) do not enjoy, as they are represented not by an officially-recognised church institution but mostly by common associations (Law of 1901, amended and opened to foreigners in 1981):

...owing to history, the Catholic dioceses and to a lesser extent the Protestant Churches and Jewish [synagogues], benefited from all the advantages and support in the continuity between two systems (recognised religions, from 1801-1905) and separation (1905-...). For other religions, access to one [or more] components of the system ... is subject to as many "acknowledgement" procedures as there are types of support. The acquisition of the statute of a religious organisation, in line with the 1905 law, seems however to constitute a first and forced step towards State "recognition."<sup>205</sup>

The HCI has acknowledged that the Combes Law has produced inequalities in treatment among different forms of worship.<sup>206</sup> For example, unlike Catholics,<sup>207</sup> Protestants and Jews accepted the 1905 law and were thus immediately able to establish religious organisations and to maintain ownership of their buildings. The special legal regime which applies in the three eastern regions (*departments*) represents a clear exception to the concept of equality of religions before the law, and case-law reflects a growing recognition of religious rights for minority groups.<sup>208</sup> Muslims have been officially encouraged to designate a single representative to facilitate negotiations between the religious community and the State (see Section 4.1). However, there is often resistance to the idea of extending special recognition and rights to Islam at the local level,<sup>209</sup> and *laïcité* is increasingly conceptualised and advanced in terms of Republican values rather than constitutional principles, politicising perceptions of Islam and Muslims.

On the whole, *laïcité* is perceived *a priori* by Muslims and particularly by the leaders of Muslim associations as favourable to the expression of religious pluralism and personal religious freedom.<sup>210</sup> However, some question whether the framework functions in

<sup>205</sup> F. Messner, "Relations between municipalities and religions" in F. Frégosi, J.-P. Willaime, eds., *Le religieux dans la commune* (The sacred in the city), 2001, Genève, Labor et Fides, p. 45.

<sup>206</sup> "While (it) was supposed to create a single statute for all religions on the territory, its implementation historically has resulted in legal and factual differences between the different forms of worship." HCI 2001, p. 23.

<sup>207</sup> The Catholic Church did not accept the 1905 legal framework for cult associations until 1924.

<sup>208</sup> There is a sufficient body of court interpretation of the concept of *laïcité* to allow for discussion of a plurality of legal orders.

<sup>209</sup> Messner, p. 93.

<sup>210</sup> 82 percent of Muslims surveyed agreed with the following statement: "One should be able to live in France and comply with all the rules of Islam." IFOP-*Le Monde* survey September 2001.

practice. In the words of one leader, “Muslims have all their rights but the problem emerges when it comes to practice.”<sup>211</sup> Indeed, neither the legal system nor the State public administration has succeeded in formulating clear answers for a number of issues linked to the public management of Islam.<sup>212</sup> Particular problems have arisen with regard to access to social services for Muslim authorities (see Section 3.1.4), the construction of places of worship, Muslim plots in local cemeteries and ritual slaughter.

Underlying all these particular social and policy problems is the tension between an approach to *laïcité* that, while aiming to embody State neutrality, implicitly rests on assumptions of cultural Republicanism,<sup>213</sup> and the legitimate and permanent presence, on French territory, of groups that assume – and claim public recognition for – a religious component to their identity without contradiction to their political commitment as French citizens.

### *The construction of places of worship*

Muslim communities’ requests for the right to construct places of worship represent a constant source of controversy at the local and national levels. Financial support for mosque construction is often provided by immigrants’ countries of origin or by other Muslim countries,<sup>214</sup> making the issue relevant to national debates on foreign policy; for Muslims, the issue symbolises their unfulfilled claim for greater public recognition and visibility.

There are 1,550 registered Islamic “places of worship” throughout France.<sup>215</sup> Most places of worship are prayer rooms of varying size and condition; two-thirds are very small, with a capacity of less than 150 persons. Many are not in conformity with public health and security standards. However, the situation regarding Muslim places of worship has improved somewhat since the beginning of the 1980s. Though sites are not always appropriate, many places of worship are in decent condition.

<sup>211</sup> Interview with the Director of the school *La Réussite*, 21 May 2002.

<sup>212</sup> According to one Muslim leader, “Muslims lack mosques, cemeteries, places for teaching, and easier access to work and to housing.” Interview with the Director of *La Réussite*, 21 May 2002.

<sup>213</sup> In the sense of the individual citizen’s loyalty to Republican values.

<sup>214</sup> For example, Saudi Arabia provided up to 90 percent of the budget for the construction of the central mosque in Lyon.

<sup>215</sup> Muslim communities are entitled to open legally-recognised places of worship under the 1901 Association Law. If they wish to construct a proper mosque (i.e. with the external attributes of a mosque), they are required to negotiate with the local public administration in order to obtain permission. However, these places are not considered religious buildings under French law because Islam is not one of the worships recognised by the Combes Law.

In large cities, the alternative is often between supporting places of worship in neighbourhoods where Muslims live (so-called “district mosques”) and the promotion of a central place (so-called “cathedral-mosques,” with reference to the mosque’s dual community and symbolic function).<sup>216</sup> For example, the municipality of Strasbourg voted on the construction of one central mosque in 1999, and two proposals were submitted by two competing mosques. In September 2002, the mayor of Strasbourg gave official permission to begin construction of the central mosque.<sup>217</sup>

Case-law reflects a growing tendency towards *de facto* recognition of minority religions through the adoption of pragmatic provisions at the local level. However, in the absence of official recognition, local public administrations are not compelled to do so, and not all public authorities have proven willing to make efforts to compensate for inequalities in the treatment of Islam. One Muslim leader describes the difficulties his association encountered in negotiating for the construction of a mosque:

The mayor refused to grant us a building permit and it was only after six years of legal battles ... that ... we were given justice. Since then, the mayor has presented his apologies to the association and considers himself our friend but he still has not permitted us to build our mosque.<sup>218</sup>

Municipalities are prohibited from providing financial support to any form of worship and therefore cannot contribute directly to the construction of a mosque.<sup>219</sup> However, there are no constraints other than town planning regulations on opening places of worship, and municipalities are free to grant a long-term lease or sell a plot of land for this purpose.

Conflicts often arise as a result of resistance from local residents, whose support is a necessary condition for the construction of a mosque.<sup>220</sup> Moreover, the director of *La Medina* (a quarterly magazine of French-speaking Muslims) recently suggested that present arrangements are far from sufficient:

We have not received anything. The leaders of this country ... and [those] who can give subsidies are sometimes Muslim [or] Arab but they are in reality secularists (*laïcards*). Thus, to them any [form of] religious expression

<sup>216</sup> Disagreements have arisen over how to indicate such buildings on city maps.

<sup>217</sup> See J. Fortier, “Feu vert pour la construction d’une mosquée à Strasbourg” (Green light for the construction of a mosque in Strasbourg), *Le Monde*, 6 September 2002, see: <<http://www.lemonde.fr/article/0,5987,3226-289357-00.html>>, (accessed 28 September 2002).

<sup>218</sup> Interview with the director of *La Réussite*, 21 May 2002.

<sup>219</sup> Activities not directly linked with the church, such as charity work, music, etc., can be financed by municipalities.

<sup>220</sup> Locally, several actors are involved: the prefecture, the region, the municipalities, the departments, but also political parties and social groups.



should be rejected and they block any will to help Muslims. Ninety percent of the Muslim associations today do not receive any subsidy although they carry out cultural work (such as support for schools).<sup>221</sup>

The Mediator in the Ministry of Education, Hanifa Chérifi, confirmed this estimation in her comments on the HCI 2001 report:

The HCI stressed the quantitative and qualitative weakness of the places of Muslim worship. It is not uncommon that certain Muslims have to pray in buildings which were not organised for welcoming an audience, in garages, for example. We stressed that some local elected politicians refused to grant building permits in order to avoid the establishment of a mosque in their municipality, while nothing in the law of 1905, which affirms the neutrality of the State in relation to religion, permits such refusals.<sup>222</sup>

The Consultation on Islam, which seeks to resolve the lack of representation of Islam, would establish the right to construct and obtain legal recognition for mosques as religious buildings as defined in Section V of the Combes Law. This would transform the religious landscape, as it would bring Islam out of the cellars, garages, private apartments, and other inappropriate venues in which it is currently practised, and set it within the existing Republic framework.

### *Cemeteries*

With the exception of the Rhine and Moselle region, cemeteries are officially secular,<sup>223</sup> and the provision of separate plots or spaces for the proponents of different religions is prohibited. The Muslim burial practice requiring that the body be placed in the earth without a coffin or tomb, on its right side, with the heart pointing towards Mecca, is considered acceptable under the terms of the Combes Law.<sup>224</sup> However, the practice raised public health concerns, which were addressed by the adoption of a Government circular in

<sup>221</sup> Interview with the director of *La Medina*, 14 May 2002.

<sup>222</sup> Discussion with Hanifa Chérifi, "Les musulmans victimes de discriminations. Une inégalité entre les religions" (Muslim victims of discrimination. Inequality between religions), J.-M. Blier, S. de Royer, *Discriminations raciales, pour en finir*, 2001, Paris, éditions Jacob-Duvernet, pp. 52–53.

<sup>223</sup> Law of 15 November 1881. Law on the Neutrality of Cemeteries, *Bulletin des lois de la république française*, 1981, p. 957.

<sup>224</sup> The Combes Law permits the display of religious signs or symbols on tombstones. See Combes Law, Art. 28.

1975 permitting the creation of special cemetery plots for Muslims (*carrés musulmans*).<sup>225</sup> The issue is also addressed in the text adopted on 28 January 2000 in the framework of the Consultation on Islam (See Section 4.2).<sup>226</sup>

In 1991 the competence to establish separate plots for Muslims was granted to local mayors.<sup>227</sup> However, mayors do not always exercise their discretion in this area to the benefit of Muslim citizens. For example, the mayor of Toulon refused to grant a cemetery concession to a North African woman for the reason “that she was an Arab, and should be a Christian.”<sup>228</sup>

The principal outstanding problem concerns exhumations and the removal of bones to an ossuary once a cemetery concession is to be closed; cemetery concessions are always granted for a certain period of time due to lack of space. If a concession is granted to a family free of charge by the municipality for a funeral, then it is possible to use the same space for another burial after having removed the bones. It is also possible to rent a concession for a longer period or forever, according to local prices decided by the municipality. Beyond the financial difficulty of renting such a space (while in the country of origin it would often be free), in Islam, once a person is buried, exhumation is forbidden. Therefore, Muslims object to this practice, and either make arrangements to be buried in their country of origin (which is very expensive), or municipalities make arrangements to accommodate them if space is available. No solution has been found for this issue, which is likely to grow in importance in coming years, as demand for space increases.<sup>229</sup>

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<sup>225</sup> Government circular, 28 November 1975. However, the measure amounts to an accommodation to the Muslim community which, strictly speaking, is illegal, as Art. 97-4 of the Communal Law (now Art. 2213-9 of the General Code of Territorial Collectivities) states that the mayor is not authorised to make distinctions or particular provisions related to the faith or belief of the deceased. HCI Report 2001, pp. 57–59.

<sup>226</sup> For complete text, see:  
<[http://interieur.gouv.fr/information/publications/istichara/mars\\_1.htm](http://interieur.gouv.fr/information/publications/istichara/mars_1.htm)>, (accessed 14 December 2001).

<sup>227</sup> Circular of the Minister of Interior, 14 February 1991.

<sup>228</sup> F. Frégosi, citing article in *Libération* of 21 October 1998, p. 20.

<sup>229</sup> There is one Muslim cemetery in France in Bobigny (on the periphery of Paris). It was created in 1931 because of the proximity of the French-Muslim Hospital. Even in this case, some problems arose when the displacement of some tombs became necessary.

*Ritual slaughter*

The State regulates the practice of ritual slaughter to ensure compliance with regulations regarding hygiene, public order and public health. Increasingly, ritual slaughter is managed locally, in accordance with European regulations,<sup>230</sup> with intervention of the prefect where necessary. However, the number and distribution of slaughterhouses remains insufficient to meet the needs of the Muslim community. This has sometimes resulted in unregulated slaughter, which has attracted considerable media attention during such holidays as *Aïd el Kebir*.

Municipalities and other State partners are in charge of regulating the annual slaughter. They have developed local solutions, such as establishing provisional sites, reopening old slaughterhouses for the occasion, and publishing official lists of places for slaughter in the area. The central problem remains that of the number and location of these sites. Six official slaughterhouses are listed (four in the Seine et Marne, one in the Yvelines, and one in the Val d'Oise), but there are none in the departments in which Muslims are in fact more numerous (Val de Marne, Seine Saint Denis, Hauts de Seine, and Essonne).

The Ministers of Agriculture and Interior made an attempt to deal with the problem by issuing a circular on 1 March 2001 permitting slaughterhouses to be established by dispensation of the local authorities. However, this ran counter to the European Commission regulation prohibiting ritual slaughter outside of official slaughterhouses, and an outbreak of typhus fever in 2001 added impetus to demands for stricter regulation.<sup>231</sup> In October 2001, by order of the Council of State, administrative judges cancelled the March circular, and the Government, in agreement with Brussels, plans to close all dispensation sites by 2004.

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<sup>230</sup> The protection of animals at the time of the slaughter is regulated by Decree 97-903 of 1 October 1997, transposing Directive 93/119/EC. The decree of 16 April 1964 relates to the protection of certain domestic animals and to the conditions of slaughter. The order of 28 November 1970 grants to the intercommunity rabbinical subcommittee of ritual slaughter the competence for designating the person in charge of the sacrifice.

<sup>231</sup> *Le Monde*, 22 February 2002.

### 3.3.2 Language

The Constitution states that French is the sole official language of the French Republic.<sup>232</sup> Moreover, the French language is perceived as the symbolic receptacle of national consciousness<sup>233</sup> and the medium through which national culture, history and traditions are transmitted.<sup>234</sup> From this perspective, proposals to recognise regional or minority languages<sup>235</sup> have been rejected as contradictory to the Constitution and to Republican values.

The European Charter for Regional or Minority Languages (ECRML) expressly protects languages without giving individual rights to those who speak them. However, this has not allayed fears that recognising the right to use a minority language would be tantamount to recognising the existence of a linguistic minority.<sup>236</sup> Indeed, Part II of the Charter explicitly associates regional or minority languages with the territory in which they are spoken, raising additional risks of community claims. Commentators on the Charter have noted that the Charter's use of the term "group" (rather than "minority") refers in French only to the individuals who constitute a group rather than

<sup>232</sup> The first sentence of Article 2 of the Constitution reads: "The language of the Republic is French." See the entire text of the Constitution and its history at: <<http://www.assemblee-nat.fr/connaissance/constitution.asp>>, (accessed 26 September 2002). The Constitution was amended in 1992 to make modifications necessary after the ratification of the Maastricht Treaty. At the same time, Article 2 was amended to affirm French as the only official language. Constitutional Law 92-554 of 25 June 1992. See: <[http://www.legisnet.com/france/constitutions/v\\_republique\\_les\\_revisions.html](http://www.legisnet.com/france/constitutions/v_republique_les_revisions.html)>, (accessed 26 September 2002). France (together with Spain) is the only EU country to make this explicit constitutional reference to an exclusive official language. Some EU candidate States, such as Romania and Bulgaria, also have the same practice. N. Rouland, "Les politiques juridiques de la France dans le domaine linguistique" (French legal policies in the linguistic domain), *Revue française de droit constitutionnel*, 1998, 35, pp. 517–562, p. 549, note 128.

<sup>233</sup> F. Rohmer-Benoît, "Les langues officieuses de la France," (The Unofficial Languages of France), *Revue Française de Droit Comparé*, 2001, May, pp. 3–29.

<sup>234</sup> French has been the only language used in official documents since the Villers-Cotterêt prescription in 1539.

<sup>235</sup> 75 regional languages are spoken in France (most in Overseas departments and territories). Rapport Cerquiglini, *Les Langues de la France, rapport au Ministre de l'éducation nationale, de la recherche et de la technologie* (The Languages of France. Report to the Ministry of National Education), April 1999. See also *Langues et cultures régionales* (Regional languages and cultures), La Documentation française, 1998.

<sup>236</sup> "Commentaires des décisions du Conseil constitutionnel" (Comments on the Constitutional Council's Decisions), *L'actualité juridique. Droit administratif*, 20 July – 20 August 1999, p. 577.

to the group itself.<sup>237</sup> However, the principal objection to implementation of the Charter centres around arguments that its implied recognition of collective rights, including linguistic rights, would undermine the unity of the French people and the indivisibility of the Republic, and Governments have consistently opposed the obligations foreseen by certain articles of the CRML providing for the use of minority languages with public authorities and in the justice system, including in courts.

Part III of the Charter, which relates to the teaching of regional or minority languages, is less problematic.<sup>238</sup> Teaching in languages other than French is already permitted in primary and secondary schools, provided such classes are not mandatory, and do not interfere with the common rights and obligations of all students, including the obligation to study French.<sup>239</sup> Nonetheless, some politicians have expressed the belief that the Charter's provisions for the dissemination of educational materials in regional languages, support for cultural activities, and libraries, *inter alia*, are excessive. For example, the mayor of the 11<sup>th</sup> district of Paris expressed his fears that the Charter would give new opportunities for teaching in languages such as Arabic, "taking France far from its Republican ideal."<sup>240</sup>

The State has taken a number of initiatives to support the teaching of immigrant languages, often in collaboration with immigrants' States of origin, beginning in the 1970s. The ELCO ("Teaching of Languages and Cultures of Origin") programme dates back to 1973.<sup>241</sup> ELCO aimed to promote the integration of schoolchildren while preserving the possibility for them to return to their countries of origin.<sup>242</sup> ELCO programmes offered classes in a variety of languages, starting with Portuguese in 1973, and gradually adding other languages: Italian and Tunisian Arabic in 1974; Spanish and Moroccan Arabic in 1975; Serbo-Croatian in 1977; Turkish in 1978, and Algerian

<sup>237</sup> "Commentaires des décisions du Conseil constitutionnel" (Comments on the Constitutionnal Council's Decisions), *L'actualité juridique. Droit administratif*, 20 July – 20 August 1999, p. 574.

<sup>238</sup> The State has shown increasing support for teaching in regional languages. The Deixonne Law on Schools (11 January 1951) permitted the use of local and regional dialects in primary schools. On 30 December 1983, Government circular 83-547 laid the foundations for bilingual courses in some public schools. The Law of Orientation on Education of 10 July 1989 and the Bayrou circular of 7 April 1995 (95-086) restated official State commitment to the teaching of regional languages.

<sup>239</sup> Déc. N. 96-373 of 9 April 1996, cons. 92.

<sup>240</sup> See *Le Monde*, 19 June 1999.

<sup>241</sup> CEFISEM have been created in 1975, as Centres for study, training and information for the schooling of the children of migrants, to help the teachers to integrate non French-speaking pupils at schools.

<sup>242</sup> HCI, *Liens culturels et intégration* (Cultural Ties and Integration), La Documentation française, June 1995.

Arabic in 1981. The courses are offered in public schools to children whose parents choose for them to attend. Countries of origin cover almost the entire cost of the classes; the French public administration contributes by providing the classroom.

ELCO attendance has been decreasing in recent years, particularly for Portuguese and Italian. In 1993-94, only 99,184 children attended ELCO lessons, mainly in primary schools. Demand for Arabic instruction, however, has increased substantially. State officials advance the argument that teaching foreign languages in a controlled, State-supported environment allows for quality-control as well as for monitoring of course content; some have expressed concern that children following language courses organised by Muslim associations could be exposed to anti-Republican values.

Teaching religion within the context of the ELCO programme has been a subject of heated debate.<sup>243</sup> Some critics have contended that discussion of Islam in ELCO classes has consisted principally of violent denouncement of French *laïcité* by teachers, who act more in the interest of the countries of origin rather than in the interest of the pupils. It seems clear that offering Arabic as a foreign language in public schools would open opportunities for students to learn about Islam in a more controlled setting, which would be preferable to the more *ad hoc* ELCO formula.

The language issue is central to the process of individual integration, as knowledge of French is a criterion of evaluation for citizenship applicants.<sup>244</sup> There are signs of increasing proficiency in French among Muslim citizen and immigrant communities. Increasingly, events taking place in mosques or at public meetings of Muslims (such as the annual meeting of French Muslims at Le Bourget Exhibition Centre) take place in two languages: French and Arabic. Even for theological and religious questions, French is more and more commonly used.

### 3.3.3 Education

Muslims identify two issues of particular importance to their communities in the area of education. First, they seek adequate religious instruction for their children and improved education on the history, culture, and contributions of Islam for all public school pupils. Second, they are concerned to ensure adequate training for teachers, religious instructors and imams.

<sup>243</sup> F. Lorcerie, "L'Islam dans les cours de langue et culture d'origine: le procès" (Islam in the Teaching of Languages and Cultures of Origin Courses: the Trial), *Revue européenne des migrations internationales*, 1994, vol. 10, n. 2, pp. 5-43.

<sup>244</sup> Officials which interview citizenship applicants have to specify level of command of the French language in their review of the application.

In one recent survey, 85.7 percent of Muslim pupils (both practising and non-practising) stated that their religious convictions were “important” or “very important” to them.<sup>245</sup> Confronted with this reality, some observers have suggested that religious history (including the history of Islam) should be reintroduced as part of the curriculum of public schools.<sup>246</sup> At present, the religious education of young Muslims is provided either by the family at home or by associations and mosques in the framework of Koranic courses, independently and outside of regular school hours.

The lack of qualified teaching staff and the need to provide training to imams have become increasingly important issues since the beginning of the 1990s. Several attempts have been made by Muslim associations to develop appropriate training institutions for imams. For example, in 1992, the private European Institute of Social Sciences opened an Islamic theological training institute in Saint-Léger-de Fougeret, near Château-Chinon (Nièvre) for imams and religious educators. The institute aims “to give Islam stable structures responding to the needs of Muslims while taking into account the specificity of their surroundings.”<sup>247</sup> The Institute has 160 students from France and other European countries. Its buildings and grounds belong to the Union of Islamic Organisations of France (UOIF), and financial support is provided by the States of the Arab peninsula. Complete training lasts six years (eight years for converted Muslims, who need more time to learn Arabic) and costs approximately €2000 per year.<sup>248</sup> It is also possible to attend the Institute for shorter training courses, particularly for classes in Arabic. In January 2000, the Institute opened a branch near Paris (in Saint-Denis). There have also been discussions in Strasbourg regarding the establishment of a Muslim faculty of theology just as there are Protestant or Catholic faculties of theology.<sup>249</sup>

However, these attempts have not received sufficient levels of support and have failed to satisfy either the Muslim community or the public authorities, and the Consultation

<sup>245</sup> 494 schoolboys and girls and secondary school students (42 percent of whom were Muslims) were interviewed between 2000 and 2001, V. Geisser, K. Mohsen-Finan, *L’islam à l’école. Une analyse sociologique des pratiques et des représentations du fait islamique dans la population scolaire de Marseille, Montbéliard et Lille* (Islam at school. A Sociological Analysis of Practices and Representations of Islam among school population in Marseille, Montbéliard and Lille), Rapport de l’IEHSI, 2001.

<sup>246</sup> For example, ECRI has “encourage[d] the French authorities to ensure that education in tolerance and respect for difference play a primordial role ... in addition, ECRI considers that it would be extremely beneficial to develop, within the current history programme, a section devoted to the input brought by the immigrant population to France.” ECRI Report 1999, para. 20.

<sup>247</sup> For the text of presentation see: <<http://www.iesh.org>>, (accessed 20 September 2002).

<sup>248</sup> *Le Monde*, 7 February 2002.

<sup>249</sup> There is space for such discussions in Strasbourg due to the specificity of the region of Alsace and Moselle. See Section 3.3.1.

plans to elaborate a concept to ensure improvements in training opportunities. Such initiatives would facilitate the emergence of a group of imams who are not only well-versed in Islam, but sensitive to the French context. This would also encourage greater knowledge and understanding of Islam in France more generally. Recently, the Minister of Interior declared himself in favour of the establishment of a university institute of Muslim theology, to be financed partly from public resources, in order to train Muslim religious authorities.<sup>250</sup>

There is one private Islamic school, the *medersa Taalim oul Islam* of Saint Denis of the Réunion, which has been under contract with the State since 1990,<sup>251</sup> and several projects to support the establishment of private Islamic schools, including one operated by *La Réussite*, an association based in the Parisian suburbs.<sup>252</sup> Since September 2001, the organisation has been operating a single experimental class (*sixième*),<sup>253</sup> according to a curriculum approved by the Minister of Education, together with an additional hour of non-obligatory religious instruction. *La Réussite* is currently undergoing a three-year observation period, after which time it may be able to conclude a State association contract, which would solve the financial difficulties with which it has struggled to date.

### 3.3.4 Media

There are no State-funded media outlets for Muslims, although a number of private radio stations and newspapers target Muslim audiences. The use of other languages in the media is not restricted,<sup>254</sup> although a law passed in 1994 (also known as the Toubon Law, after the then Minister of Culture and Francophonie) does specify that the use of French in the commercial sphere must be at least as prominent as any other language and also prohibited the use of foreign terms in certain areas to protect French from becoming Anglicised).<sup>255</sup>

There is an official category of “private radios” – category A. Among the 600 private radio stations of this category (as of January 2002), there were some community radio

<sup>250</sup> *Le Monde*, 17 September 2002. See: <<http://www.lemonde.fr>>, (accessed 20 September 2002).

<sup>251</sup> See Section 3.1.1.

<sup>252</sup> There are two other projects of Muslim schools: the school *Avenir* in La Courneuve and *La Maison des enfants* in Villepinte.

<sup>253</sup> Interview with the director, Aubervilliers, 21 May 2002.

<sup>254</sup> Moreover, since the law of 29 July 1982, the choice of medium of media expression is also free.

<sup>255</sup> Loi Toubon sur la défense de la langue française (Toubon Law concerning the defense of French language), Loi n. 94-88 (1 February 1994), *Official Journal*, 2 February 1994, p. 1800.



stations as well.<sup>256</sup> *Beur FM*, a secular and independent radio station, defines itself as the “radio station of North-Africans in France.” The station does not aspire to make Islam one of its central topics, but aims to reach a general public,<sup>257</sup> and particularly “all minorities in France.” The president of *Beur FM*, Nacer Kettane, in February 1999 launched the “Professional Union of thematic radios (UPRAT),” which gathers some of the private radio stations of 11 different communities (including several Jewish radios, *Beur FM*, African radio, and several Maghrebian stations. Another radio station reaching a Muslim audience is *Radio Orient*, which targets the middle-class, educated, Arabic-speaking community.

Public radio and TV stations transmit religious programmes of the various religions represented in France every Sunday morning.<sup>258</sup> Since 1983, there has been a programme on Islam called *Connaître l’Islam* (Knowing Islam), consisting mainly of commentary on the Koran and discussions of the interpretation of certain texts.

More recently, it seems that magazines are becoming the most dynamic type of media utilised by Muslims. Published in French, *La Medina* (monthly) and *Islam* (quarterly) are both edited by Hakim El Ghissassi. Since 1999, *La Medina* has been presented as a magazine of cultures and societies. It deals with various issues related to the situation of Muslims in France or to international events. *Islam* is rather a journal of Muslim history and theology, which was created in 2002. Here again, beyond purely religious discussions, topics relevant to Muslims in Europe, such as regulations and legal frameworks, are very often central topics of the publication. The publication *Hawwa* is a journal edited by a group of Muslim women, established in 1999.

### 3.3.5 Participation in public life

The Republican framework recognises no specific political rights for any minority group.

Access to citizenship is officially available to all individuals who choose to integrate into the French nation. However, there are many reports of problems in gaining access to citizenship, and it appears that naturalisation officials sometimes interpret adherence to Islam as a sign of unwillingness to integrate into the French nation – and reject citizenship applications from Muslims on these grounds. For example, one young woman’s application was refused on the grounds that she insisted on wearing a veil; the

<sup>256</sup> See: <[http://www.ddm.gouv.fr/radio/dossiers\\_thematiques/panoradios.html](http://www.ddm.gouv.fr/radio/dossiers_thematiques/panoradios.html)>, (accessed 25 September 2002).

<sup>257</sup> See: <<http://www.beurfm.net>>, (accessed 17 August 2002).

<sup>258</sup> G. Bedouelle, J.-P. Costa, *Les laïcités à la française* (Secularism French style), Paris, PUF (Politique d’aujourd’hui), 1998, pp. 71–74.

decision was overruled on appeal.<sup>259</sup> In another case, dating from 1994, the Council of State annulled a decision to refuse French nationality to a young woman on similar grounds<sup>260</sup> (see also Section 2).

There are some signs of the growing strength of the Muslim electorate. For example, Nicolas Sarkozy, the newly-appointed Minister of the Interior, publicly committed himself during the 2002 legislative electoral campaign to continue the work of the Consultation on Islam initiated by the previous Government “in an electoral climate where every vote counts.”<sup>261</sup> Especially given widespread disillusionment among Muslims with the perceived lack of results in addressing issues of concern to them by the left-wing Socialist Government, some right-wing political parties and candidates have made efforts to appeal to Muslim voters. For example, all of the right-wing candidates in the 2002 presidential elections tried to attract the North African electorate, particularly through their stance on the situation in the Middle East.<sup>262</sup> Right-wing parties presented an increasing number of candidates of North African

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<sup>259</sup> “Considering that, to refuse the naturalisation application presented by Mrs. A., of Moroccan nationality, the minister has based his decision on the fact that her behaviour, in particular with regard to dress... reflected a refusal to be integrated into the French community; [that he has]... founded his evaluation on only one element, which is that Mrs. A. wears the Islamic veil known as *hejab* everyday, which covers her hair entirely as well as her neck and shoulders, and that the minister considers this to reveal a system of thought which is opposed to the values of the French Republic; considering that he claims that Mrs. A.’s wearing the *hejab* represents a symbol of the submission of women and therefore negates one of the basic principles of *laïcité* and constitutes a sign of allegiance to the religious policy declarations of Islamist movements and reflects a rejection of the central values of a country defending the respect of democratic values and gender equality; that, however, the elements of the file do not clearly establish that the fact of wearing the Islamic veil is likely to be a refusal by Mrs. A. to adhere to the values of the French Republic and therefore a refusal of integration; that thus, the decision which is challenged is spoilt by an error in assessment; that it has to be cancelled, without the necessity of ruling on other elements of the request...” Administrative court of Nantes, Request n. 98.80.

<sup>260</sup> “Considering that if Mrs. B., of Moroccan nationality, claims to be a Muslim woman of strict observance and wears the Islamic veil, nothing shows that either of these facts and circumstances, or any other facts invoked by the administration and relating to the behaviour of the plaintiff are likely to reveal a problem with her assimilation into French society; thus the Government could not legally be opposed on the basis of these reasons to Mrs. B.’s acquisition of French nationality; that, consequently, Mrs. B. has the basis to require the cancellation of the decree ... refusing her the acquisition of French nationality.” Conseil d’Etat statuant au contentieux, n. 161251, session of 25 November 1998 (reading of 3 February 1999).

<sup>261</sup> See *Libération*, 30 May 2002 and *Le Monde*, 6 June 2002.

<sup>262</sup> Declaration made by N. Djennar, in charge of the programmes on elections on *Beur FM*, cited in *Libération*, 29 January 2002.

origin on their electoral lists. Still, Muslim communities do not appear to have exercised a decisive impact during the 2002 elections.

Several mainstream political parties as well as a number of trade unions and civic organisations have expressed a growing interest in the challenges raised by Muslim communities to traditional notions of *laïcité* and the Republican framework, as well as in the problem of discrimination and unequal treatment among religions. Several civic associations have established working groups on *laïcité*, explicitly questioning the place of religion in the public sphere, particularly in education.

There are very few Muslims in positions of political power or responsibility. However, there are signs that the recent emergence of a new middle class of French Muslims is already effecting changes in the spheres of business and higher education, through the institution of strong community networks (see Section 4.2). This new middle class has defined its interests primarily in economic terms, rather than in terms of defence of the interests of the Muslim community, although there has been some level of political mobilisation around issues of racism and discrimination, particularly in the sphere of employment.

There is also a growing movement to ensure representation of the interests of Muslims in local political structures, including trade unions and political parties. In many cases, however, these associations promote pluralism or diversity rather than the interests of the Muslim community *per se*. For example, the Muslim Students of France won seven percent of the votes during the last elections to the CROUS (Regional Councils for University Welfare), but emphasises its aim to represent the interests of students in general.<sup>263</sup> Similarly, the Party for a Pluralistic France, led by Tawfik Mathlouthi, is presented as a Republican party, for “ensuring that the diversity of cultures as well as the unity and integrity of our fatherland are respected.”

The State-sponsored “Consultation on Islam of France” offers a channel for participation in public life for some Muslim leaders. However, some observers have noted that the top-down organisation of the Consultation has raised suspicions that the intent is to control and direct Muslim communities rather than to create a mechanism for facilitating their input and participation (see Section 4.1).

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<sup>263</sup> The association was established in 1989 and does not define itself as an attempt to ensure representation of the Muslim community for Muslim students, but as an association with a general vocation.

## 4. INSTITUTIONS FOR MINORITY PROTECTION

There is no national body to ensure protection against discrimination and provide independent assistance to victims of discrimination, as required by the EU Race Equality Directive.<sup>264</sup> However, there are several institutions more-or-less exclusively devoted to the fight against discrimination, such as the Action and Support Fund for Integration and the Fight against Discrimination (FASILD) and the Directorate of Population and Immigration (DPM).

However, this institutional framework addresses discrimination in general; there is no special body to address issues faced by the Muslim population in particular. The process of Consultation, in which a large number of Muslim representatives are participating, is the clearest official attempt to provide a framework for exchange and discussion on the question of how best to ensure representation of the interests of Muslims.

### 4.1 Official Bodies

#### 4.1.1 The Mediator of the French Republic (ombudsman)

The Mediator of the French Republic (ombudsman) was established in 1973.<sup>265</sup> The Mediator is an independent authority which may receive complaints concerning the operation of Government offices, local authorities, public establishments and any other public service bodies in respect of their dealings with the public. The Mediator is appointed for six years by the Council of Ministers, and appoints and manages a network of district-level delegates. The Office may make recommendations as deemed necessary to resolve complaints or issues referred to it, and if it appears that the application of the appropriate legislation or regulations would result in an injustice, it may make recommendations to bring about an equitable outcome to a complainant's case.

In 2000, 53,706 complaints were sent to the Mediator's office, a 4.7 percent increase compared with 1999.<sup>266</sup> In 2000, the Parliament passed a law conferring new powers

<sup>264</sup> Council Directive 2000/43/EC, Art. 13, requires member States to designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin, capable of providing independent assistance to victims of discrimination, conducting independent surveys concerning discrimination, publishing reports and making recommendations on any issue related to such discrimination.

<sup>265</sup> Law 73-6, 3 January 1973.

<sup>266</sup> 5,278 were directed to the Mediator's office (Parisian headquarters) and 48,428 to district delegates. *Le Médiateur de la République. Rapport annuel 2000*, La Documentation française, Paris, 2001.

on the Mediator. In particular, it extended the Mediator's competence to refer to the recommendations and practices of foreign counterparts and to the European ombudsman.

Generally speaking, the Mediator works to improve and enhance respect for the rights of citizens in various sectors, and to settle disputes between citizens and public bodies. The Office conducts investigations in five sectors: general administration, public service/pensions, taxation/finance, justice/town-planning and social services. The rights of foreigners and issues related to religion and Islam fall under the general administrative sector.<sup>267</sup>

Since November 1994, Hanifa Cherifi has been working as project leader and Mediator within the Ministry of National Education. She has been in charge of mediating in the veil cases, of which there have been several hundred since she took office. The national Mediator for National Education is assisted by academic mediators and departmental correspondents; mediators (who are also officers of the Ministry of Education), may intervene in conflicts related to public education services among parents, pupils, students or staff.

#### 4.1.2 Anti-discrimination bodies

The Belorgey report recommended the establishment of a number of official bodies to facilitate the fight against discrimination. The *Groupe d'intérêt public – Groupe d'études des discriminations* (Public Interest Group – Group for the Study of Discrimination, GIP-GELD) and the Sub-committees on access to citizenship (CODAC) were both created in 1999, immediately following the publication of the report.

##### *Sub-committees on Access to Citizenship (CODAC)*

CODAC subcommittees are departmental agencies which have the objective of promoting equal access to citizenship at the regional and departmental levels. They coordinate the activities of the different public services involved in anti-discrimination work, provide employment counselling and give expert consultation and assistance on specific cases of discrimination.<sup>268</sup>

<sup>267</sup> Which also includes: Foreign Affairs, Agriculture, Local Authorities, Commerce and Trade, Culture, Education, Industry, Domestic Affairs, Youth and Sport, Post and Telecommunications, State-owned Enterprises, and Transportation.

<sup>268</sup> For more information on the CODAC and an evaluation of their activity, see: <[http://www.social.gouv.fr/htm/pointsur/discrimination/01\\_526ta1.pdf](http://www.social.gouv.fr/htm/pointsur/discrimination/01_526ta1.pdf)>, (accessed 28 September 2002).

CODAC also provides legal translations for calls to the 114 hotline,<sup>269</sup> which offers victims of discrimination a forum for discussion, and the service of relaying requests for information and advice to the appropriate authority, free of charge. However, it can transmit complaints to the prefecture only for those callers who agree to give their personal information and who consent to the CODAC setting up a file on the complaint. Files are then handled by referees named by the departmental prefect. Referees are either public officials or association representatives.

In practice, many callers are unwilling to reveal their personal information, and the 114 hotline has instead become an official forum for open, anonymous discussions. From 16 May 2000 to 31 December 2001, 71,473 calls relating directly to discrimination were made to the hotline.<sup>270</sup> The most frequent complaints of discrimination were recorded with regard to employment and access to goods and services.<sup>271</sup> On the basis of hotline calls, women and men appear to face different forms of discrimination, in different sectors.

At the same time, surveys reveal that the hotline is not widely known among the Muslim community; only 13 percent of those surveyed in 2001 knew of its existence of the hotline.<sup>272</sup> The majority (55 percent) of the 9,920 cases brought before the CODAC for which files were opened<sup>273</sup> claimed their “real or supposed origin,” as the source of the discriminatory act they were reporting. Ten percent reported discrimination because of the colour of their skin, two percent because of their name, and more than 20 percent because of both skin colour and origin. Just over two percent

<sup>269</sup> The 114 hotline operates on the basis of Art. 9 of the Law on the Fight against Discrimination of 16 November 2001. It was managed by the Directorate of Population and Immigration (DPM) in collaboration with the Minister of Interior until 1 January 2001, when its management was taken over by the GELD.

<sup>270</sup> 62 percent came from men; two-thirds were from French citizens. Approximately 14 percent were witnesses to rather than direct victims of discrimination, and 20 percent of the calls were made by someone other than the victim. More than 67 percent of the calls were made by adults between 26 and 59 years of age, and 21 percent by people of less than 25 years.

<sup>271</sup> From 16 May 2000 to 31 December 2001, an average of 30 complaints daily were transmitted by the 114 staff to the CODAC, with significant regional differences; 34 percent of all calls originated from the area around Paris. By far the largest number of complaints – 37 percent – were related to employment, professional life, or training. 13 percent concerned access to public goods and services, 11 percent were related to housing or social situation, six percent to education, and two percent to health.

<sup>272</sup> By comparison, surveys indicate that 73 percent of the population are aware of the hotline for child abuse and 63 percent of the friendship hotline (SOS Amitié) for people who are depressed, feel alone, etc. *Etude sur les services de téléphonie à caractère social*, CREDOC, December 2001.

<sup>273</sup> Of a total of 71,473 callers between 16 May 2000 and 31 December 2001.

mention other causes for discrimination, such as cultural membership (real or supposed), and 9.3 percent claimed a combination of reasons (origin, name, colour of the skin and other causes).<sup>274</sup>

### *The Group for the Study of Discrimination (GELD)*

Since October 1999, GELD has functioned as both a national observatory and a mechanism for taking action against discrimination, facilitating coordination, information, support, training and communications work in the area of anti-discrimination. As noted in Section 3.1, a number of GELD recommendations have been incorporated into the comprehensive anti-discrimination legislation adopted in 2001, including: changes to the system of proof, witness protection and protection of complainants against retaliation; enlargement of the powers of inquiry by inspection services on cases related to discrimination, and harassment.

The GELD has proposed setting up a prevention policy which would combine the efforts of the State, social partners (including NGOs, trade unions, and employers' associations), and various associations.<sup>275</sup> There have been some suggestions that the GELD Steering Committee should review and evaluate religious discrimination, but these have never been taken up.

### *Agency for the Development of Intercultural Relations (ADRI)*

The Agency for the Development of Intercultural Relations (ADRI) was transformed into a *Groupe d'intérêt public* (GIP) in November 1998. The GIP-ADRI is a national resource centre<sup>276</sup> promoting official recognition of racial discrimination and aiming to facilitate the development of a dynamic public anti-discrimination policy. Its Steering Committee includes representatives of the State administration, social partners (including NGOs), and migrant associations. It also contracts external experts to prepare studies on special topics such as access to healthcare and social welfare, or access to positions in the civil service for youth with an immigrant background.

### *Action and Support Funds for Integration and the Fight against Discrimination (FASILD)*

The Action and Support Funds for Integration and the Fight against Discrimination<sup>277</sup> have shifted from an exclusive focus on integration towards anti-discrimination activities,<sup>278</sup>

<sup>274</sup> GELD, *2001 Activity Report*, pp. 23–24.

<sup>275</sup> *Rapport d'activités, 2001*, p. 6.

<sup>276</sup> See: <<http://www.adri.fr>>, (accessed 26 September 2002).

<sup>277</sup> Formerly the Social Action Fund for immigrant workers and their families (FAS). Law 2001-1066 of 16 November 2001 modified both the name and the mission of the FAS. Note du Fas (Minutes), March 2002,

challenging the traditional assimilationist notion that integration on the Republican model compels the renunciation of ethnic, national, cultural or religious specificity. Instead, FASILD promotes a two-way integration process; an “integration *à la française* ... conceived of as an effective process of reciprocity which compels French society to go on, to move, to open up and become mixed, in order to prepare for a common future.”<sup>279</sup>

Within this framework, Regional Commissions for the Integration of Immigrants (CRIPI) have been created to represent FASILD at the regional level. CRIPI offices aim to address both victims and perpetrators of discrimination and also to raise awareness of the negative effects of exclusion, stereotyping of immigrants and discrimination among the broader public.<sup>280</sup> FASILD/CRIPI activities include efforts to improve conditions for newly-arrived immigrants; active support for the integration of individuals; taking action against segregation processes; and conducting a broad public awareness campaign. FASILD takes the approach that policies to promote integration must be complemented by actions to fight discrimination.

### *Other bodies*

The High Council for Integration (HCI) was created by ministerial decree in 1989.<sup>281</sup> It is in charge of making proposals for integration upon request of the Prime Minister or of the inter-ministerial Council.<sup>282</sup> It acts as an adviser to the Prime Minister on a number of “sensitive” topics, including Islam. The National Consultative Commission of Human Rights, which was created in 1984, publishes annual reports on racism, xenophobia and discrimination. It is primarily a forum for exchange, where representatives of NGOs and union confederations, experts, and MPs are invited to talk. The Commission publishes yearly reports.

### 4.1.3 The consultation on Islam of France

The Minister of Interior has competence for religious questions and issues. Since 1990, there has been a series of ministry-led governmental initiatives to establish official

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<sup>278</sup> Décret n. 2002-302, 28 February 2002.

<sup>279</sup> Note du FAS, 25 March 2002.

<sup>280</sup> “Campagne 2002,” *La lettre du FAS*, n. 56, August 2001, p. 1.

<sup>281</sup> Decree of the Prime Minister, 19 December 1989 (89–912).

<sup>282</sup> Completed by a decree on 30 January 1984.



representation for Islam.<sup>283</sup> Though representing different political positions, these initiatives have shared a common policy objective: to organise a centralised, hierarchical representation of Islam.

Public policies in religious matters always implicitly refer to the model of the Roman Catholic Church, which serves as a reference point for the State when it comes to the question of organising Islam:

... the religious institutional infrastructure of the Roman Catholic Church constitutes an implicit reference to the religious institutional construction of the Republic itself ... But in order to make this system work beyond Catholicism, it is necessary for religious institutions to fit into this denominational framework. It is in particular necessary that religious institutions could send qualified representatives to talk with the public authorities, but also [who are likely to] be recognised by the believers as legitimate persons to speak on their behalf.<sup>284</sup>

Indeed, the Muslim community has been criticised regularly by public officials for having failed to produce a single, common representative according to this model, on the grounds that this has prevented the institutionalisation of Islam and impeded dialogue. The Consultation is intended to encourage what State officials see as the necessary process of “standardising” the relationship between the State and Islam.

In 1999, Minister Chevènement launched the latest of these initiatives, the “Consultation on Islam of France” (also referred to as the *Istichara*), which will be taken forward by the newly-elected Government, under the leadership of the present Minister of Interior, Nicolas Sarkozy. Minister Chevènement concluded, at the close of the Consultation’s preliminary review phase, that “...the legal texts which govern the different forms of worship and organise *laïcité* in our country can also be appropriate for Islam and must therefore help its integration as well as the organisation of the Muslim religion in France.”

The Consultation initially included five organisations: the Union of the Islamic Organisations of France (UOIF), the Muslim Institute of the Paris Mosque, the National Federation of Muslims of France (FNMF), the *Tabligh* (a movement of Pakistani origin) and the *Diyanet* (Office of Religious Affairs representing the Turkish

<sup>283</sup> A succession of Ministers of the Interior have sought to promote the identification of an official negotiating partner. First, in 1989, Minister P. Joxe sought to establish a Council of Reflection on Islam in France (CORIF), followed Minister Charles Pasqua, who created a Council of Representation of French Islam and oversaw the preparation of a Charter for Muslim worship. Minister J.P. Chevènement in October 1999 set up a Consultation of the Muslims of France, with the participation of elected representatives of the Muslim community.

<sup>284</sup> D. Hervieu-Léger, “Le miroir de l’islam en France” (The Mirror of Islam in France), *Vingtième siècle*, April–June 2000, pp. 79–82., at p. 82.

State). Participants in the Consultation were divided into two colleges. The first college involves representatives from the principal national federations; the second gathers six large and independent regional mosques. Six significant personalities have been associated with the project to advise the two colleges and the Minister. All participants were requested formally to recognise Republican laws so “it is publicly stated that there is no conflict of principles between the tradition of Muslim worship and the legal organisation of religion in France.”<sup>285</sup>

The objective of the Minister was to finalise a text which would provide guidelines to prefects in meeting the needs of local Muslim communities. In addition, Consultation participants enumerated the principal issues for which they see an urgent need for a concrete solution:

- the creation of denominational organisations as foreseen by Title IV of the Combes Law of 1905;
- the creation of new places of worship;
- a statute for regulating the rights and needs of Muslim religious staff.

The Consultation produced a draft agreement on a methodology for electing an authority to represent the Muslim community.<sup>286</sup> On the basis of this agreement, on which the participants of the Consultation (but not all Muslims, nor all leaders) have agreed, elections will be organised in registered Muslim places of worship and buildings owned by Muslim associations,<sup>287</sup> with the number of delegates determined by their surface area rather than their attendance.<sup>288</sup> This methodology has been criticised by some Muslim leaders, as it is not based on representation and actual attendance by believers, but rather on recognition of financial capacity to rent big spaces, which

<sup>285</sup> *Signature des principes et fondements juridiques régissant les rapports entre les pouvoirs publics et le culte musulman en France* (Signature of the principles and legal basis managing the relations between public authorities and Muslim worship).

<sup>286</sup> Framework Agreement of 3 July 2001 between the members of the Consultation and the Minister of Interior, representing the State. For a summary of the different steps of the Consultation and related statements by the newly appointed Minister of Interior, N. Sarkozy, see: <[http://www.interieur.gouv.fr/rubriques/c/c1\\_le\\_ministre/c13\\_discours/comor](http://www.interieur.gouv.fr/rubriques/c/c1_le_ministre/c13_discours/comor)>, (accessed 4 October 2002).

<sup>287</sup> The election was initially scheduled for 26 May 2002 but, due to the electoral timetable, elections have been postponed indefinitely.

<sup>288</sup> Electoral regional committees (CORELEC) have gathered the representatives of the large Islamic Federation and have helped determine the number of delegates from the different associations. Places of worship of less than 100m<sup>2</sup> will have one delegate. The Paris Mosque, the biggest in France, will have 18.

smaller associations (with small-scale capacity) do not have. For example, the Paris mosque, though it is the largest mosque in Paris, is not the most frequented by Muslims living in Paris and its suburbs.

The Consultation has opened real opportunities for dialogue and exchange to facilitate the resolution of certain problematic issues. The President of the Association Avicenne has described the Consultation as a “balanced initiative.”<sup>289</sup> On the other hand, many important issues are not addressed,<sup>290</sup> and it does not integrate all communities settled in France; some association leaders feel that they have been excluded from the process. Moreover, it has been very difficult to motivate Muslims to actively participate in the initiative, and public interest has also been quite low, despite extensive media coverage.

The Consultation has not won unanimous support from Muslim communities. Many Muslim leaders report that they are participating out of fear of being excluded rather than out of genuine support for the project. Several leaders (both participants in the Consultation and those not participating) have criticised the participation of persons or groups who do not represent a moderate interpretation of Islam<sup>291</sup> – a criticism which has intensified since 11 September; Dalil Boubakeur, the rector of the Big Mosque in Paris, denounced the participation of radical elements (meaning the *Tabligh*) in the Consultation in a daily newspaper.<sup>292</sup> Soheib Benschekh, spokesman of the National Federation of the Muslims of France (FNMF) for the south of France and Consultation participant since it was launched, has referred to the initiative as a “bureaucratic *mechouia*” (Tunisian salad), and called for an end to “this post-colonial approach. The Minister of Interior even called this Consultation *istichara*, with an associated publication whose title is in Arabic. But we are in France! It seems like they are looking for ‘local colour’ folklore.”<sup>293</sup> The most frequent critique voiced by Muslims is that the Consultation has adopted a paternalistic approach: Muslim leaders

<sup>289</sup> Interview with the President of Avicenne, Ecole de médecine, Paris, 24 May 2002.

<sup>290</sup> Such as, for example, the question of how to deal with Muslim countries which are still considered by some Muslims in France as their country of origin and how to deal with Islam in cases of conflict of international private law.

<sup>291</sup> For example, these critiques have been offered by Soheib Benschekh, major mufti of Marseilles, and by Muslims close to the ex-Rassemblement pour la République (RPR; the right-wing political party of the current President Chirac, renamed *Union pour la Majorité* in September 2002) such as Hamlaoui Mekachera, President of the National Council of French Muslims, and Khadija Khali, President of the Association of Muslim Women of France, who have criticised the inclusion of the Union of the Islamic Organisations of France (UOIF) and the *Tabligh* in particular.

<sup>292</sup> *Libération*, 29 October 2001.

<sup>293</sup> *Libération*, 22 October 2001.

and communities feel that the Consultation is aimed to check and control their loyalty, which is placed under doubt *a priori*.

However, increased institutionalisation of Islam undeniably would bring certain benefits and facilitate the resolution of certain issues. For example, it would be easier to clarify and regulate the role of Muslim communities' States of origin through an official interlocutor. At present, the role of foreign States in financing places of worship and mediating in national controversies (such as the veil affairs), *inter alia*, clearly demonstrates that French policy has been incapable of dealing with these issues internally.

## 4.2 Civil Society

It would be impossible to list all NGOs, Muslims' or migrants' associations which are engaged in fighting against discrimination. Organisations such as the *Groupe d'information et de soutien des immigrés*, (Group of Information and support to Immigrants, GISTI) or the *Mouvement contre le racisme et pour l'amitié entre les peuples*, (Movement against Racism and for Friendship between Peoples, MRAP) have integrated discrimination as one of their main topics, whether through workshops for internal staff or the organisation of public events.<sup>294</sup>

Though the concept of "minority" is rejected within the French legal framework, a consensus is emerging among Muslim associations that they, as a group, are treated differently from other religious minorities.<sup>295</sup> Muslim associations have formed several federations to identify and represent common interests *vis-à-vis* the State. For the moment, these associations remain the principal medium for communication between the State and Muslim communities.

Several national organisations have sought recognition as the official State representative of the Muslim community. These include the National Federation of the Muslims of France (FNMF), the Paris Mosque, the Union of the Islamic Organisations of France (UOIF), and the *Tabligh*.

The FNMF was established in 1985, and aims to meet the religious, cultural, educational, social and humanitarian needs of Muslims. The Paris Mosque (established in 1926) numbers more than 500 local associations among its members. Until 1993, it was financed by Saudi Arabia; today it is funded by the financial contributions of its members (a majority of whom are of Moroccan origin), and is closely affiliated to the Algerian

<sup>294</sup> See for the GISTI: <<http://www.gisti.org/doc/actions/2001/emplois/index.html>>, (accessed 2 October 2002) and for the MRAP: <[http://www.mrap.asso.fr/rubrique.php?id\\_rubrique=29](http://www.mrap.asso.fr/rubrique.php?id_rubrique=29)>, (accessed 4 October 2002).

<sup>295</sup> OSI Roundtable Meeting, Paris, July 2002.

Government. It has always been closely associated with various Government initiatives. The UOIF (established in 1983), is the French branch of the Union of the Islamic Organisations in Europe. It manages the European Institute of Social Sciences of Saint Léger de Fougeret (Nièvre). The *Tabligh* – a movement of Pakistani origin – is also a major actor within the Muslim community. The association “Faith and practice,” which belongs to this movement, is especially active in providing assistance and services to the residents of the so-called disadvantaged districts.<sup>296</sup>

Though they have established a strong presence at the regional and local level, local Muslim groups and associations were largely excluded from the Consultation until July 2001, when the Framework Agreement proposed to establish a Regional Council of Muslims in France along with the National Council.<sup>297</sup> Through regional and local groups, demands articulated by the younger generations (mainly for public recognition of their religion and a more active fight for equality among French citizens, regardless of their cultural and religious differences) are voiced alongside more traditional claims for Muslim plots in public cemeteries, new places of worship, and respect for dietary requirements by public service providers, reflecting an increasing will on the part of Muslim communities – including both observant and non-observant Muslims – to involve the State more actively in managing their affairs.

In their regional specificity, these local groups reflect the diversity of the Muslim communities, in terms of both organisation of religious life and character and style of leadership. The sensitivity of different municipalities to issues of relevance to Muslim communities is often a good indicator of the level of organisation of the local Muslim association(s). Growing awareness of the presence of Muslim communities is also apparent in the practice of some local businesses; for example, the director of one supermarket chain in Marseille has opened a *halal* section to meet the demands of his clientele.

The leaders of local Muslim associations increasingly utilise their positions and social capital as a resource for their members. Muslim associations and the Muslim elite engaged in other institutions such as the FAS or other anti-discrimination bodies and agencies promoting integration are now implicitly requested to play the role that institutions such as the school or the army played during the colonial period: they facilitate the emergence of groups of individuals acting in networks, providing

<sup>296</sup> This list is not exhaustive. There are also Turkish associations, Muslim African associations, and a number of mystic or Sufi groups.

<sup>297</sup> Most associations initially organised along ethnic lines, in some cases in relation to the States of origin (particularly for the Turks).

assistance to each other to gain access to increasingly higher positions.<sup>298</sup> Numerous local associations have emerged as effective and reliable partners for local governments.

Some Muslim associations have expressed concern about the impact of an increasingly intrusive official security policy (implemented by the national secret service but also by local police) on the daily life of Muslim communities. Local initiatives and activities are closely scrutinised by intelligence services, which reportedly sometimes use questionable means of compelling cooperation from Muslims. Coercive methods of compelling cooperation are likely to create more problems than they solve, and to exacerbate tensions further.

Finally, statements of association leaders reveal that they are aware of the potential – and the limitations – of the European-level institutions and legislation in addressing the issues and problems they confront at the domestic level:

Concerning the representativeness of Islam, the veil, places of worship – there will be an encouragement to arrange all these things in France, as the European framework is in favour of it ... the European Court of Human Rights represents a hope for Muslims. Muslims are informed about European legislation, but for the time being they do not see the necessity to call upon non-national authorities... They wish first to solve conflicts at the national level. Thanks to Europe, Muslims can hope to be better understood and recognised in France.<sup>299</sup>

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<sup>298</sup> R. Leveau, K. Mohsen-Finan, “France-Allemagne: nouvelles perspectives, identités et sociétés” (France-Germany: new perspectives, identities and societies), R. Leveau, K. Mohsen-Finan, C. Wihtol de Wenden, eds., pp. 9–15, p. 14.

<sup>299</sup> Interview with the director of La Réussite, 21 May 2002.

## 5. RECOMMENDATIONS

### To the French Government

#### *Discrimination*

- Affirm commitment to the fight against all forms of discrimination, including religious discrimination; create an official communications policy to encourage more visible public and official involvement in the fight against discrimination.
- Develop a coherent, comprehensive anti-discrimination policy, outlining targeted actions, which should include mechanisms to ensure systematic reparation and compensation of victims of discrimination as well as sanctioning of administrative bodies which practice discriminatory policies.
- Complement formal measures for the fight against discrimination with measures to provide information and training about Islam for non-Muslims, particularly for civil servants.
- Establish a central body to conduct research and monitoring of all forms of discrimination (particularly in regard to education, employment, housing, and public services) on an ongoing basis, including through the collection of statistical data on the basis of religious affiliation, while ensuring adequate protection of privacy and personal data.
- Support research and debate on the legal and symbolic distinctions currently drawn between nationals and non-nationals; clearly and consistently disassociate Islam from immigration issues: Islam and Muslims should be discussed and treated as an integral part of society.
- Provide active support for the development and implementation of a public information campaign to fight the diffusion of stereotypes, particularly by the media.

#### *Minority Rights*

- Place priority on ensuring adequate and effective training for public officials in schools and in local bodies regarding available resources for accommodating the needs of religious communities, including Muslims.
- Research the need for training for Muslim teachers and imams, and provide support for training where necessary.
- Ensure quality language instruction in Arabic as a foreign language to meet rising demand in public and private schools (collèges and lycées).

*Institutions*

- Establish a High Council of Worships to promote exchange and partnership among religious communities.
- Encourage associations and representatives of Islam in France to organise themselves also at the European level.

**To the European Union**

- Conduct research and statistical assessment on the situation of Muslims in Europe.
- Develop methods for providing information to Muslims about their rights and duties as EU citizens, including about the available mechanisms for legal recourse in cases of discrimination.
- Establish mechanisms to facilitate the political participation of Muslims at the European level.



# The Situation of Roma in Germany

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## 1. EXECUTIVE SUMMARY

In recent years the German Government has taken a number of positive steps towards the recognition of past injustices against Sinti and Roma. However, historical persecution as well as the continued existence and consequences of “anti-Gypsyism” (*Antiziganismus*) have not yet been fully confronted.

The collection of ethnic data is prohibited, and no informal alternatives to gathering such data in cooperation with minorities are being explored.<sup>1</sup> The absence of reliable ethnic statistics poses serious challenges to establishing the scale and scope of discrimination against minority groups, to actively combating discrimination, and to developing targeted policies to improve the situation of Sinti and Roma.

### *Discrimination*

Germany has ratified the major international human rights instruments against discrimination and for the protection of minority rights. However, legislation does not provide comprehensive protection against discrimination, and courts rarely apply existing provisions to vindicate ethnic or racial discrimination claims.<sup>2</sup> Despite allegedly frequent instances of racially motivated discrimination, including against Sinti and Roma,<sup>3</sup> there is a virtual absence of relevant case-law. As of August 2002, little progress had been made to transpose the EU Race Equality Directive into domestic law.

Sinti and Roma children face serious disadvantages in access to education. It is widely reported that these children are over-represented in “special schools” for underachievers, and drop out of school at a disproportionately high rate; only a handful attain a higher education. Different factors contribute to this situation, including lack of pre-schooling, insufficient knowledge of German, and high levels of poverty. In the view of Romani leaders discrimination in the school system is also a key factor. Individual German states (*Länder*) have taken initiatives to overcome these disadvantages. However, as yet there has been no systematic evaluation of their effectiveness with a view towards developing a

<sup>1</sup> See Comments of the Government of the Federal Republic of Germany to the Opinion of the Advisory Committee on the Report on Implementation of the FCNM in the Federal Republic of Germany, p. 9. Information from the Federal Ministry of the Interior, 29 July 2002.

<sup>2</sup> EUMC, Anti-discrimination Legislation in EU Member States – Germany, Vienna, 2002, p. 9. For full report, see: <<http://www.eumc.eu.int>>, (accessed 31 August 2002).

<sup>3</sup> ECRI noted that “(m)embers of Roma and Sinti communities face serious social disadvantages and are confronted with prejudice and discrimination in such fields as employment, housing and education.” See ECRI Country by Country Approach: Second Report on Germany, 2000, p. 14 (hereafter “ECRI Report 2000”). For full report, see: <<http://www.coe.int/ecri>>, (accessed 2 June 2002).

comprehensive and sustained policy to ensure that Sinti and Roma children enjoy equal access to educational opportunities.

Strong anti-Gypsyism can be noted in the labour market. The estimated unemployment rates among members of Sinti and Roma communities are grossly disproportionate, and appear to stem both from lack of education and discrimination in recruitment. Again, though some job-creation projects have been launched by state and local governments, there has been no evaluation or assessment of their effectiveness.

Sinti and Roma, along with other individuals belonging to “visible” minority groups, report widespread discrimination in gaining access to public goods and services including housing, and formidable obstacles to legally challenging discriminatory practices.<sup>4</sup> Often segregated and inadequate housing conditions are a combined result of long-term neglect by authorities and discrimination in access to commercial housing.

There is very little information about health-related concerns of Sinti and Roma. Accordingly, no Government programs exist and no resources have been allocated to deal with potentially serious health issues connected to large-scale unemployment, lower levels of education, and often inadequate living conditions and poverty among these communities.

Recent reports by international human rights organisations have highlighted a resurgence of violence against minorities and foreigners by private actors, as well as mistreatment by law enforcement officers.<sup>5</sup> Minority leaders assert that the response of law enforcement officials to cases of extremist violence against members of their communities is often unsatisfactory. Moreover, lawyers who deal with cases of minorities and foreigners and human rights monitoring bodies criticise official lenience with regard to infractions committed by law enforcement personnel.

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<sup>4</sup> See, OPAS – Open Access to Private Services for Members of Ethnic Minorities, Migrants and Refugees/Final Report, Commissioner for Foreigners’ Affairs, Brandenburg, February 2001 (hereafter, “OPAS Final Report”).

<sup>5</sup> For example, International Helsinki Federation Report 2002, see: <<http://www.ihf-hr.org/reports/AR2002/country%20links/Gernamy.htm>>, (accessed 31 August 2002), and Amnesty International Report 2002: Germany, see: <<http://www.amnesty.org>>, (accessed 12 July 2002).

*Minority rights*

Although recognised as a national minority, Sinti and Roma face serious obstacles to enjoying minority rights in practice.<sup>6</sup> At present, only five of 16 states have adopted legislative provisions regarding minorities; none mentions Sinti and Roma.

Attempts to secure linguistic and educational rights often meet with resistance on the part of responsible state authorities. Very few pilot projects have been developed to provide instruction in Romanes; school curricula do not as yet provide adequate information about Romani history and culture, and very limited support has been provided for developing minority media. Overall, State support for the Sinti and Roma minority has been limited to the cultural sphere, without adequate regard to enhancing their legal and political rights.

Lack of citizenship prevents access to minority rights for as many as half of all Roma living in Germany, diminishing incentives for political parties and leaders to take their concerns into consideration.

*Institutions*

There is no Government programme on Sinti and Roma, nor a specific body in charge of minority issues. State support for Sinti and Roma is inadequate compared with support for other recognised minority groups, and mechanisms for provision of public funding are selective, overly bureaucratic and insufficiently transparent,<sup>7</sup> encouraging competition rather than cooperation among Romani organisations. Governmental engagement with the broad spectrum of existing Sinti and Roma organisations would facilitate efforts to ensure equality and respect for minority rights of Sinti and Roma.

**2. BACKGROUND**

The situation of Sinti and Roma in Germany today can best be understood in the context of the historical treatment of “Gypsies.” Certain anti-Romani attitudes and behaviours, ranging from low levels of public acceptance to various forms of

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<sup>6</sup> “Noch immer vergessene Minderheit” (Still Ever-Forgotten Minority), *Husumer Nachrichten*, 18 May 2000. Also, OSI Roundtable Meeting, Hamburg, 8 April 2002. *Explanatory note: OSI held a roundtable meeting in Germany in April 2002 to invite critique of the present report in draft form. Experts present included representatives of the local government, Sinti and Roma representatives, civil society organisations, and lawyers.*

<sup>7</sup> See Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, paras. 26 and 76.

discrimination and exclusion to occasional physical violence, have their roots in the past. In recent years the Government has taken a number of positive steps towards the recognition of past injustices against Sinti and Roma. However, in contrast to anti-Semitism, which has been the focus of a process of intensive self-examination and self-criticism in the period since World War II, the continued existence – and consequences – of “anti-Gypsyism” (*Antiziganismus*) have not yet been fully recognised or confronted.

There are no reliable figures regarding the size of the Sinti<sup>8</sup> and Roma citizen population. Estimates vary widely: the Government recently estimated “up to 70,000” German Sinti and Roma,<sup>9</sup> while some Romani leaders put the number between 150,000 and 200,000.<sup>10</sup> Current estimates also indicate that up to 100,000 non-citizen Roma reside in Germany. Among these, the majority are Romani refugees from southeastern Europe, very few of whom have been awarded citizenship or permanent resident status. The total Sinti and Roma population constitutes only a small percent of the total population of approximately 82 million.<sup>11</sup>

### *Historical treatment of Sinti and Roma*

Sinti and Roma – who were long referred to and dealt with by authorities collectively as “Gypsies” (a designation they strongly reject) – became the target of official policies of persecution and expulsion soon after their arrival in Germany in the early 15th

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<sup>8</sup> “Sinti” is the name of a Romani group that settled in Germany about 600 years ago. Sinti speak a dialect of Romanes influenced by centuries of close contact with German. In recent years, and possibly out of fear of being associated with immigrant and foreign Roma, some Sinti have chosen to emphasise that they are “Sinti” and not “Roma;” hence, publications concerning Romani groups frequently use the term “Sinti and Roma.” This report will also refer to both “Sinti and Roma,” as many of the issues they face are similar.

<sup>9</sup> Report submitted by the German Government to the Advisory Committee on Implementation of the Framework Convention on National Minorities, 1999, p. 10 (hereafter “State FCNM Report”). For full report, see: <<http://www.coe.int>>, (accessed 2 June 2002).

<sup>10</sup> However, Romani leaders generally do not distinguish between various legal categories of Sinti and Roma (e.g. citizens, long-term residents without citizenship, and stateless persons and refugees), and commonly refer to a total Sinti and Roma population of 250,000–300,000.

<sup>11</sup> Federal Bureau of Statistics, see: <<http://www.destatis.de>>, (accessed 25 May 2001).

century.<sup>12</sup> From the 16<sup>th</sup>-18<sup>th</sup> centuries, a succession of laws and regulations made it acceptable to expel and even kill “Gypsies.”<sup>13</sup> Starting in the late 19<sup>th</sup> century, State policies began to distinguish between Sinti/Roma citizens and non-citizens; those who did not have citizenship were denied trade-permits, and were often subject to immediate expulsion.<sup>14</sup> Growing State centralisation in the 20<sup>th</sup> century led to a tighter net of official regulations and policies to “fight against the Gypsy menace;”<sup>15</sup> increasingly, these policies tended to criminalise their very existence.<sup>16</sup>

<sup>12</sup> The presence of Sinti and Roma in German-speaking territory had been mentioned in historical chronicles by the year 1419. By the end of the 15<sup>th</sup> century, “Gypsies” had been outlawed by most municipalities; see, I. Hancock, “Gypsy History in Germany and Neighbouring Lands: A Chronology Leading to the Holocaust and Beyond,” in D. M. Crowe, and J. Kolsti, eds., *The Gypsies of Eastern Europe*, Armonk, NY: M.E. Sharpe, 1991, pp. 395–396. Over 120 specific “anti-Gypsy” laws were passed between 1551 and 1751; see S. Tebbutt, ed., *Sinti and Roma: Gypsies in German-Speaking Society and Literature*, Oxford: Berghahn Books, 1998, p. 2. State FCNM Report (p. 9) recounts: “Again and again, in the course of history, Sinti and Roma suffered discrimination, were crowded out from various trades and driven out of towns or regions. In instances, even into this century, attempts made by Sinti to settle in their home region were thwarted.”

<sup>13</sup> For example, John George II of Saxony in 1661 “imposed death penalty for any “Gypsy” found in his territory, a practice which today would be described as ‘ethnic cleansing.’” S. Tebbutt, p. 2. Friedrich Wilhelm I of Prussia on 5 October 1725 issued an edict specifying that all “Gypsies” above the age of 18 should be hanged immediately, without a trial. See I. Hancock in Crowe and Kolsti, p. 397.

<sup>14</sup> The Berlin chancellery issued an instruction in 1871 that “Gypsies” who were “recent arrivals” should be denied trade permits, and that resident “Gypsies” should be granted permits only with great difficulty.” See, J. S. Hohmann, *Geschichte der Zigeunerverfolgung in Deutschland* (History of Gypsy Persecution in Germany), Frankfurt: Campus, 1988, p. 72. Otto von Bismarck issued a memorandum to the states of the second German Reich on 1 July 1886 which instructed officials to expel “Gypsies” without citizenship from their territories, using force if necessary; StAHH, Senat CL.I Lit. T Nr.1 Vol. 20c, p. 5.

<sup>15</sup> Such laws, decrees and regulations were particularly well-defined in the era of the Weimar Republic – in violation of its Constitution guaranteeing equal rights to all – in Baden, Prussia, and Bavaria. For example, the state of Bavaria issued a law to “fight Gypsies, tramps and shirkers” on 5 August 1926; the states of Baden (in 1922) and Prussia (in 1927) introduced requirements to have all “Gypsies” fingerprinted and photographed. See I. Hancock in Crowe and Kolsti, p. 399. Hesse issued a “law to fight the Gypsy menace” on 3 April 1929. See R. Hehemann, pp. 226–300.

<sup>16</sup> After 12 April 1928 all “Gypsies” were placed under permanent police surveillance. See I. Hancock in Crowe and Kolsti, p. 400.

Anti-Gypsy policies were pursued to extremes during the Nazi era, when Sinti and Roma, along with Jews, were the principal targets of extermination policies on racial grounds.<sup>17</sup> By some estimates, as many as 500,000 European Sinti and Roma were killed during the Holocaust,<sup>18</sup> after having been robbed of their possessions, deported to concentration camps, and in many instances sterilised or subjected to inhuman medical experimentation. The traumatic experiences of Sinti and Roma during the Nazi era and the subsequent failure of post-war Governments to recognise and rectify those injustices have had the effect of sowing an enduring fear and distrust for State institutions.<sup>19</sup>

### *Sinti and Roma in the post-WWII era*

It is estimated that well over half of German Sinti and Roma were killed during the war.<sup>20</sup> Those who survived were subjected to continued harassment and humiliation at the hands of the police and other authorities,<sup>21</sup> as a number of pre-war anti-Gypsy laws

<sup>17</sup> On the Holocaust of Sinti and Roma, see I. Hancock in Crowe and Kolsti, above; D. Kenrick and G. Puxton, *Gypsies under Swastika*, Hatfield: University of Hertfordshire Press, 1995; R. Rose, ed., *The Nazi Genocide of the Sinti and Roma*, Heidelberg: Documentation and Cultural Centre, 1995; S. Milton, "Holocaust: The Gypsies" in W. S. Parsons, I. Charny and S. Totten, eds. *Genocide in the Twentieth Century*, New York, London: Garland Publishing, 1995, pp. 209–264.

<sup>18</sup> The actual number of Romani victims of the Holocaust is a matter of debate. By earlier estimates, 220,000 were killed; see Kenrick and Puxton, above. Zimmermann has put the number of actual victims at 90,000; see M. Zimmermann, *Rassenutopie und Genozid. Die Nationalsozialistische Lösung der Zigeunerfrage* (Racial Utopia and Genocide: The National-Socialist Solution of Gypsy Question), Hamburg: Forschungsstelle für die Geschichte des Nationalsozialismus, 1986. Hancock, however, stated that the figure may be as high as 1.5 million; see I. Hancock in Crowe and Kolsti, p. 405. The figure currently supported by Sinti and Roma organisations is 500,000. See, for example, R. Rose, p. 9.

<sup>19</sup> See State FCNM Report, p. 10.

<sup>20</sup> "Of the 40,000 officially registered German and Austrian Sinti and Roma, more than 25,000 were murdered by May 1945." State FCNM Report, p. 10. See also R. Rose, p. 189, and R. Kawczynski, notes prepared for EUMAP, p. 5.

<sup>21</sup> Not infrequently, individuals who had actively participated in the persecution of Sinti and Roma before and during the war retained positions of authority. For example, Robert Ritter, one of the chief ideologists of the "final solution" of the "Gypsy question," was employed by the city of Frankfurt as a doctor until he died in 1951; Ritter's assistant Eva Justin remained an honorary member of the German Anthropological Society until her death; Leo Carstens, the head of the Berlin police department's "Gypsy Office," who was personally in charge of the deportation of Sinti and Roma, continued to be employed as a police officer in Ludwigshafen until his retirement. R. Kawczynski, notes prepared for EUMAP, p. 5.



and institutions remained in force.<sup>22</sup>

For example, the “Office for Fighting the Gypsy Menace” within the State Head Security Office (*Reichssicherheitshauptamt*) was closed after the war, but the “Land Traveller Head Office” in Bavaria continued to function as a chief authority for all questions concerning “Gypsies,” and continued to maintain an index of extensive personal information on individual Sinti and Roma.<sup>23</sup> The “Land Traveller” or “Vagrancy” departments within the police departments of individual states were maintained until the mid-1980s. From 1981 until the mid-1990s, the Federal Bureau of Criminal Investigation (BKA) maintained a special index of information on Roma and their motor vehicles.<sup>24</sup> During the 1990s most German states officially stopped racial profiling of Sinti and Roma, although the state of Bavaria officially continued the practice until October 2001 (see Section 3.1.5).

Many Sinti and Roma who returned to their hometowns or arrived as displaced persons from former German territories after the war were denied citizenship. Allegedly, hundreds of their descendants remain stateless today, and either are required to renew their residency permits every few years, or live unregistered. Moreover, there have been instances in which Sinti individuals whose families had historically resided in Germany have been stripped of citizenship, and have managed to regain it only with assistance from non-governmental organisations (NGOs).<sup>25</sup>

Although they were legally eligible to seek compensation along with other victims of the Nazi regime,<sup>26</sup> in practice support for reintegration and compensation was denied to Sinti and Roma on the grounds that their deportation had not constituted

<sup>22</sup> Although *Control Council Law No. 1* of the Allied powers ordered the repeal of the “laws of a political or discriminatory nature upon which the Nazi regime rested,” it did not specify which laws had to be repealed, and some anti-Gypsy laws of the NS-era remained in force or were reconfirmed. For example, the Cologne police department in 1949 “explicitly stipulated the validity of a 8 December 1938 directive issued by Heinrich Himmler for ‘Fighting the Gypsy Plague’” by issuing a circular giving instructions for *Bekämpfung des Zigeunerunwesens* (Combating the Gypsy Menace). S. Milton, “Persecuting the Survivors: The Continuity of ‘Anti-Gypsyism’ in Post-War Germany and Austria,” in S. Tebbutt, p. 36.

<sup>23</sup> The index contained information on the names, pictures, fingerprints, “characteristic features” (including numbers tattooed in concentration camps), record of cooperation with official authorities, placement of mobile homes, and individual possessions. Information was collected on standard forms. R. Kawczynski, notes prepared for EUMAP, p. 5.

<sup>24</sup> See R. Rose, *Bürgerrechte für Sinti und Roma* (Civil Rights for Sinti and Roma), Kassel: Central Council of German Sinti and Roma (Selbstverlag), 1980, p. 134.

<sup>25</sup> See *Pogrom*, periodical publication of the Society for Endangered Peoples (*Gesellschaft für die bedrohte Völker*); cited in C. Cahn, “Who is German?” in *SAIS Reports*, 5 August 1999.

<sup>26</sup> *Bundesentschädigungsgesetz* (Federal Compensation Law of 1953); hereafter, “BEG.”

persecution for racial reasons, but was a “criminal pre-emptive measure,” an argumentation confirmed by the Federal Supreme Court (*Bundesgerichtshof*) in 1956.<sup>27</sup> The decision was revised in 1963, but with some exceptions Sinti and Roma were excluded from compensation for decades.<sup>28</sup> As of 2002, many of the remaining German Sinti and Roma survivors of concentration camps have been compensated for deportation, but the issue of compensation for slave labour is ongoing and remains controversial.<sup>29</sup> There have been no cases of return or restitution of property confiscated from Sinti and Roma by the Nazi regime.

The genocide of Sinti and Roma was acknowledged officially in 1982. However even after that Sinti and Roma were frequently treated as “second-class victims.”<sup>30</sup> In 1985 the Mayor of Darmstadt declared that Sinti and Roma “insulted the honour” of the Holocaust “by wishing to be associated with it” during the commemoration of the anniversary of liberating the concentration camp in Bergen-Belsen.<sup>31</sup> Wilhelm Schmidt of the People’s Union Party publicly stated, in reference to the genocide of Sinti and Roma, that “it is a pity that only so few were killed.”<sup>32</sup> In 1999, the Berlin Senate denied permission to build a separate memorial for Sinti and Roma (after they had already been excluded from the Holocaust memorial for Jews);<sup>33</sup> the memorial later received the necessary approval, and as of August 2002 construction was pending a decision on its location. Günter Grass, a Nobel prize-winning author and the founder of the Roma Foundation, was one of few public figures to voice indignation about

<sup>27</sup> BGH 7.1.1956 – IV, ZR 211/55 (Koblenz).

<sup>28</sup> In individual states, those German Sinti and Roma who were denied compensation or did not file claims on time pursuant to the BEG could apply to the *Härtefonds* (Public Foundations). For example, exceptionally, the state of Hesse set up about 200 pensions of up to the minimum pension stipulated in the BEG. The Federal Government also set up *Härtefonds* of 80 million DM (c. €39 million), where German Sinti could file claims for one-time payments or pensions. This development came as the result of successful lobbying efforts by the Central Council and Associations of German Sinti and Roma. H. Heuss, notes prepared for EUMAP (part I), pp. 4–5.

<sup>29</sup> H. Heuss, notes prepared for EUMAP (Part II), p. 2.

<sup>30</sup> The leader of the Central Council of German Sinti and Roma reportedly stated in this respect that establishing separate memorials for different groups amounted to sorting the dead into “first and second class victims.” Cited in R. Kuder, *Recent Trends in German Ethnic Politics: the Roma*, MA thesis presented to the International Studies programme of the Graduate School of the University of Oregon, June 2000, p. 24.

<sup>31</sup> Cited in I. Hancock in Crowe and Kolsti, p. 407.

<sup>32</sup> Cited in I. Hancock in Crowe and Kolsti, p. 410. He was taken to court for racist speech, but was acquitted on appeal; R. Kawczynski, notes prepared for EUMAP, p. 9.

<sup>33</sup> *Deutsche Welle*, 7 July 1999, 20:00 UTC, cited in R. Kuder, *Recent Trends in German Ethnic Politics*, p. 24.

“this injustice [that] continues today,” stating that “one is forced to the conclusion that we have not rid ourselves of this vile exclusion: as though the Roma ... are still oppressed by our verdict that they belong to an inferior race.”<sup>34</sup>

The development of a Romani civil rights movement starting in the late 1970s has helped prompt a positive shift in governmental policies.<sup>35</sup> In 1982 the Central Council of German Sinti and Roma (hereafter, “Central Council”) was formed with support from the Federal Government.<sup>36</sup> In 1997 German Sinti and Roma were recognised as a national minority.<sup>37</sup> The Government has also stated repeatedly its commitment to improve social conditions and promote the integration of German Sinti and Roma.<sup>38</sup>

Nonetheless, Sinti and Roma leaders maintain that public attitudes as well as official policy continue to be marked by anti-Gypsyism and by a philosophy of “pre-emptive action” – by the perceived need to monitor, control and prevent “criminal tendencies.” Anti-Gypsyism makes itself felt in everyday life through the use of defamatory stereotypes and clichés in the media, lack of objective and comprehensive presentation of Sinti and Roma in history and school books, and the exclusion of Sinti and Roma from mainstream education, employment, housing and society in general. Long regarded as a police problem or a social problem, Sinti and Roma have often been made the object of official policies;<sup>39</sup> many maintain that a wide range of current projects and initiatives embody this approach rather than involving them as equal partners and participants in decision-making processes which concern them<sup>40</sup> (see Section 4.2).

### *Public opinion*

Surveys and opinion polls consistently indicate that public attitudes towards minorities and persons perceived as foreigners are generally marked by intolerance and low levels of acceptance. A recent survey conducted by the Migration Centre of North Rhine-Westphalia shows that about half of the population consider that “too many foreigners

<sup>34</sup> G. Grass, “Why the Roma?” See: <[http://www.oneworld.org/index\\_oc/498/grass.html](http://www.oneworld.org/index_oc/498/grass.html)>, (accessed 17 December 2001).

<sup>35</sup> Central Council of German Sinti and Roma is regarded by the Government as the main representative body of German Sinti and Roma (see Section 4). See also Y. Matras, “The Development of the Romani Civil Rights Movement in Germany 1945–1996” in S. Tebbutt, pp. 49–63.

<sup>36</sup> See Y. Matras, p. 56.

<sup>37</sup> “‘Appeal of Berlin’: Recognition and Compensation for All Victims of the National Socialist Regime,” see: <<http://www.romnews.com/a/6-98.html>>, (accessed 10 March 2002).

<sup>38</sup> See State FCNM Report (1999).

<sup>39</sup> H. Heuss, notes prepared for EUMAP (part II), pp. 1–2.

<sup>40</sup> OSI Roundtable Meeting, Hamburg, 8 April 2002.

live in Germany,” and wonder “what they [foreigners] are doing here.”<sup>41</sup> In fact, Sinti and Roma are also generally perceived as foreigners, despite their 600-year history in the country.<sup>42</sup>

A poll conducted in 1992 by the Allensbach Demoscopic Institute indicated that 64 percent of Germans had an unfavourable opinion of Roma – a higher percentage than for any other racial, ethnic or religious group.<sup>43</sup> A survey conducted in 1994 by the EMNID Institute indicated that some 68 percent of Germans did not wish to have Sinti and Roma as neighbours.<sup>44</sup> A 1995 poll conducted in German schools indicated the presence of strong anti-Romani attitudes even among the younger generation: 38 percent of students in Western and 60.4 percent in Eastern Germany expressed negative attitudes towards Sinti and Roma.<sup>45</sup> A 2001 policy study conducted by the Berlin-based European Migration Centre (EMZ) indicated a pattern of continuing prejudice towards and exclusion of Sinti and Roma.<sup>46</sup>

The Government has acknowledged that societal attitudes are only “gradually evol[ing] towards acceptance of German Sinti and Roma,” and that “the process has undergone a positive development, but is not yet completed,” before concluding that “society must come to be understanding of the free decision of various groups within this minority to centre their community life around centuries-old standards ... rather than to adapt themselves to the majority population in each and every respect.”<sup>47</sup>

<sup>41</sup> See D. Clayton, *Antidiskriminierungsarbeit in Nordrhein-Westfalen* (Anti-Discrimination Work in North Rhine-Westphalia), Solingen: Centre for Migration of North Rhine-Westphalia, July 2001, p. 11. See: <<http://www.lzz-nrw.de>>, (accessed 10 March 2002).

<sup>42</sup> J. Delfeld, *Tradition und Zukunft des Rechtstextremismus* (The Tradition and Future of the Right-Wing Extremism), Landau: State Association of German Sinti of Rhineland-Palatinate, 1999, p. 5.

<sup>43</sup> 17 percent had an unfavourable opinion of Muslims; of Indians, 14 percent; of guest workers, 12 percent; of dark-skinned persons, 8 percent, and of Jews, 7 percent. Cited in G. Margalit, “Anti-Gypsyism in the Political Culture of the Federal Republic of Germany: A Parallel with Anti-Semitism?” See: <<http://sicsa.huji.ac.il/9gilad.htm>>, (accessed 9 April 2002).

<sup>44</sup> Cited in D. Strauss, “Anti-Gypsyism in German Society and Literature” in S. Tebbutt, p. 89.

<sup>45</sup> Information from Sebastijan Kurtisi of the Roma Union Grenzland, OSI Roundtable Meeting, Hamburg 8 April 2002. See also B. Orthmeyer, E. Peters, D. Strauss, *Antiziganismus – Geschichte und Gegenwart deutscher Sinti und Roma* (Anti-Gypsyism – History and Presence of German Sinti and Roma), Wiesbaden: HeLP, 1998.

<sup>46</sup> This study was a part of a project, financed by the European Commission, to assess the situation of Sinti and Roma in select EU member States (Germany, Italy and Spain) and to advise respective Governments on policy. Interim report is on file with EUMAP.

<sup>47</sup> State FCNM Report, pp. 26–27.

At the same time, there is a tendency at the official level to deny the existence of discrimination against minorities,<sup>48</sup> and to equate anti-minority with anti-foreigner or xenophobic attitudes (*Fremdenfeindlichkeit*), despite the fact that such attitudes are often directed against minority individuals in possession of a German passport. Thus, official institutions such as the Ministry of the Interior and the Commissions for Foreigners' Affairs handle minority and foreigners' issues as a joint competence (see Section 4.1).<sup>49</sup>

### *Minorities and media*

Media coverage reflects a strong anti-Romani bias. The Government has stated that "problems are encountered, in particular, in the context of reporting on criminal charges which sometimes – also on the basis of information provided by the police – contains mentions as to the ethnicity of an accused person, without such mention being required for understanding the reported incident."<sup>50</sup> In the period between 1997–2000, the Central Council filed 30 to 45 objections annually against press articles defaming or insulting Sinti and Roma.<sup>51</sup> In the period from 2001 through the first quarter of 2002, 37 such objections were recorded.<sup>52</sup>

The weekly media digest of the Katholische Zigeunerseelsorge, a Cologne-based church organisation, indicates that the majority of print articles concerning Sinti and Roma are either about crime and immigration problems allegedly connected to the influx of Roma into Germany, or about cultural events such as concerts and exhibitions.<sup>53</sup> In recent years, the topic of Holocaust compensation has received substantial coverage,

<sup>48</sup> "Alarmed by Intolerance: British Delegation Finds Germany a Hotbed of Arrogance and Prejudice," see: <<http://www.demon.co.uk/castle/audit/adhoc.html>>, (accessed 20 January 2002).

<sup>49</sup> EUMC, Anti-discrimination Legislation in EU Member States – Germany, Vienna, 2002, p. 29. See also ECRI Report 2000, p. 16.

<sup>50</sup> State FCNM Report, p. 22.

<sup>51</sup> The Press Council "recognised one of third of them as complaints, and issued ... a total of three disapprovals and 17 [rectification recommendations]." See, Comments of the Government of the Federal Republic of Germany to the Opinion of the Advisory Committee on the Report on Implementation of the FCNM in the Federal Republic of Germany, p. 12. Information from the Federal Ministry of Interior, 29 July 2002.

<sup>52</sup> Information from Herbert Heuss, Chair of the Project Bureau for the Promotion of Roma-Initiatives – PAKIV Germany e.V., Hamburg, 8 April 2002. See also "Presserat-Rüge für den 'Stern'" (Reprimand of 'Stern' by the Press Council), *Medien*, a publication of the Press Council, 3 March 2002.

<sup>53</sup> *Infoblatt – Latscho Diwes* (weekly digest of the media on Sinti and Roma) from 2000 to 2002; digest available on request from <<http://www.kath-zigeunerseelsorge.de>>, (accessed 1 August 2002).

but only a small number of articles address daily discrimination and other contemporary issues.

In recent years, the Press Council has undertaken a commitment to promote more responsible reporting. For example, the Press Council established that “nobody may be discriminated against on account of his/her sex or his/her belonging to a racial, ethnic, religious, social or national group” in press releases,<sup>54</sup> and adopted a Directive on Protection from Discrimination which stipulates, *inter alia*, that:

In reports on criminal offences, the fact that a suspect or offender belongs to a religious, ethnic or other minority shall be mentioned only if there is a reasonable need for such information, without which the reported incident would not be properly understood. Special attention should be paid to the fact that such mention might foment prejudices against groups requiring protection.<sup>55</sup>

However, in the view of the Central Council of German Sinti and Roma, voluntary self-regulation has proven ineffective in stopping defamation of Sinti and Roma in the media.<sup>56</sup> The Central Council has attempted to secure Sinti and Roma representation on supervisory media boards, similar to the representation enjoyed by the Central Council of Jews. These attempts failed after a 1998 ruling of the Federal Constitutional Court, which held that there is no guaranteed “right of any socially relevant group – including, for instance, a national minority – to be represented on supervisory bodies,”<sup>57</sup> and that failure to include Sinti and Roma on the media board, while other minority groups are represented, does not constitute an act of discrimination.<sup>58</sup>

Most recently, the Advisory Committee on the Framework Convention for the Protection of National Minorities (hereafter, “FCNM”) found that “self-regulation in the German media does not seem to prevent ... mentioning suspects’ ethnic origin when they belong to the Roma/Sinti community” and recommended that the authorities should “encourage the media to follow their own rules of professional ethics to the letter” in order to respect the rights of minorities in practice.<sup>59</sup>

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<sup>54</sup> The Press Code, Rule 12.

<sup>55</sup> State FCNM report, p. 23.

<sup>56</sup> State FCNM Report, p. 23. Also, Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 79.

<sup>57</sup> State FCNM Report, p. 22.

<sup>58</sup> State FCNM Report, p. 64.

<sup>59</sup> Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 79.

### *Treatment of non-citizen Roma*

Germany recognises the existence of four minority groups, but restricts enjoyment of the minority rights accorded to these groups to those members who possess German citizenship.<sup>60</sup>

Generally speaking, the situation of Roma refugees (many of whom arrived from Romania and the former Yugoslavia in the late 1980s and early 1990s) is extremely precarious. In addition to the issues of discrimination and exclusion experienced by both citizen and non-citizen Sinti and Roma, refugees – even those who are long-term residents – often have problems obtaining the right to stay in the country. Many possess only “deferred deportation” status (*Duldung*), severely restricting their freedom of movement, access to employment and various forms of social protection (see Section 3.1), and live in constant danger of deportation.<sup>61</sup> International monitoring bodies have expressed concerns at the treatment of non-citizens, particularly refugees, and called for regularisation of their situation.<sup>62</sup>

Grave allegations have been made by some Romani leaders that in several instances refugees have been randomly assigned foreign citizenship and deported, following the

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<sup>60</sup> Germany’s Declaration, available on the Council of Europe website, see: <<http://www.coe.int>>. It is worth noting that the OSCE High Commissioner on National Minorities has expressed concern with regard to intended restrictive application of minority protection in Estonia, and appealed to the Estonian authorities not to restrict the definition of minority to Estonian citizens in the State’s Declaration on the FCNM. See, Letter of the OSCE High Commissioner on National Minorities (HCNM) Mr. Max van der Stoep, to the Minister for Foreign Affairs of the Republic of Estonia, Mr. Siim Kallas.

<sup>61</sup> “Fortress Europe – Refusing and Expelling Roma,” ERRC submission presented at the OSCE meeting on Roma, Bucharest, 9 September 2001. See, *Roma Rights*, Quarterly Journal of the European Roma Rights Centre, 2/2002.

<sup>62</sup> The UN Committee against Elimination of Racial Discrimination (hereafter, “CERD”) expressed concerns about absence of any protection accorded to populous *de facto* minority groups resident in Germany for longer periods of time; see CERD/C/338/Add.14, 10 August 2000. ECRI noted that around nine percent of the entire population (c. 7,000,000 persons) do not have German citizenship and called for regularisation of status of long-term foreign residents; see ECRI Report 2000, p. 9.

conclusion of bilateral repatriation agreements with Romania, Bulgaria, Poland and the Czech Republic.<sup>63</sup>

Most recently, a repatriation treaty has been concluded with Yugoslavia despite the efforts of the Society for Endangered Peoples, a Göttingen-based NGO, to highlight continuing persecution against Roma in Yugoslavia.<sup>64</sup> Moreover, as of June 2002 a proposal for a similar arrangement with Kosovo had been approved by the Federal and 16 state Ministers of Interior, notwithstanding the well-documented persecution Roma face in Kosovo.<sup>65</sup> If this agreement is effected, some 20,000 to 30,000 persons may be subject to “repatriation.”

Although this report focuses on the treatment of citizens, whose rights are recognised by the German State, it must be noted that most Germans do not appear to distinguish between Sinti and Roma (or between citizens and non-citizens) in their negative attitudes towards and treatment of “Gypsies” and “foreigners.” Treatment of non-citizen Roma further raises serious questions regarding the treatment of other racial, ethnic and religious minority groups which are composed of both citizens and non-citizens with long-term residency.

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<sup>63</sup> Allegedly, some individuals have been “repatriated” without adequate evidence that they indeed originated from that country. Some treaties such as with Poland (1993) and the Czech Republic (1994) regulate the admission of persons who are not nationals of these States but are in possession of a residence title or visa issued by these States or who illegally entered Germany from there; see: <<http://www.bmi.bund.de>>, (accessed 1 July 2002). The Treaty between Germany and Romania (1992) regulates the “transfer of refugees who are not in possession of valid documents” to Romania; according to the agreement it is sufficient that the German authorities “assume that the persons concerned are Romanian citizens” in order to effect deportation. Art. 2, Section 5 of the Treaty stipulates: “German authorities will consider allowing persons to return to Germany if the Romanian authorities deliver convincing proof that those persons are not and never have been Romanian citizens;” in other words, the Treaty allows for a substantial margin of error in deportation decisions. See <[http://www.romnews.com/3\\_9.html](http://www.romnews.com/3_9.html)>, (accessed 4 April 2002).

<sup>64</sup> Interview with Tilman Zülch, Society for Endangered Peoples, Göttingen, 13 May 2002.

<sup>65</sup> Society for Endangered Peoples, Press-release: “Antiziganismus der 17 deutschen Innenminister noch erschreckender als Möllemanns antisemitische Ausfälle” (Anti-Gypsyism of 17 German Ministers of Interior Is Even More Alarming Than Anti-Semitic Slurs of Möllemann); see: <<http://www.gfbv.de>>, (accessed 1 July 2002). See also recent OSCE Reports on the situation of Roma in Kosovo, <<http://www.osce.org>>, (accessed 12 July 2002).



### 3. MINORITY PROTECTION: LAW AND PRACTICE

Germany has ratified the major international human rights instruments that provide for protection against discrimination and safeguard minority rights, including the FCNM and the Charter on Regional or Minority Languages (CRML). Germany has signed but has not as yet ratified Protocol 12 to the European Convention for the Protection of Human Rights (ECHR). Most recently, on 30 August 2001, the authorities made a declaration under Article 14 of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), recognising the competence of the Committee on the Elimination of Racial Discrimination (CERD) to accept individual complaints.<sup>66</sup>

The Constitution (hereafter, “the Basic Law”) takes precedence over all other laws including the legislation of 16 constituent states (*Länder*).<sup>67</sup> International treaties become part of domestic law upon ratification by the Federal Parliament.<sup>68</sup>

#### 3.1 Protection from Discrimination

German legislation does not provide comprehensive protection against discrimination, particularly indirect discrimination, and in practice courts have seldom applied existing provisions to vindicate ethnic or racial discrimination claims.<sup>69</sup> Despite allegedly frequent instances of racially motivated discrimination, including against Sinti and Roma,<sup>70</sup> there is a virtual absence of relevant case-law.

<sup>66</sup> See: <[http://www.unhchr.ch/html/menu3/b/treaty2\\_asp.htm](http://www.unhchr.ch/html/menu3/b/treaty2_asp.htm)>, (accessed 30 March 2002).

<sup>67</sup> The German Basic Law (1949), hereafter, “Basic Law,” Art. 20, para. 3, and Art. 30.

<sup>68</sup> There is no express mention in the Basic Law of the effect of international law on the Constitution. Art. 24, para. 1, of the Basic Law states: “The Federation may by legislation transfer sovereign powers to international organisations.” Art. 25 states: “General rules of international law shall be an integral part of Federal law. They shall override laws and directly establish rights and obligations for the inhabitants of the Federal territory.” Art. 59, para. 2 states: “Treaties which regulate the political relations of the Federation or relate to matters of Federal legislation shall require the approval or participation of the appropriate Federal body in the form of a Federal law.” Nevertheless, the ECHR, the FCNM and CRML were incorporated into the statutes before coming into effect.

<sup>69</sup> See, OPAS Final Report, Attachment 6.3, p. 50.

<sup>70</sup> See ECRI Report 2000, p. 14. The UN ECOSOC also has criticised “continuing discrimination against Roma and Sinti, who are treated much less favourably than other citizens when it comes to education, employment and housing.” See: <<http://www.romnews.com/archive.html>>, (accessed 4 April 2002).

The Basic Law states that: “no person shall be prejudiced or favoured because of sex, birth, race, language, national or social origin, faith, religion or political opinions.”<sup>71</sup> Similar clauses are found in the Constitutions of individual states, such as Bavaria, Berlin, Brandenburg, Bremen, Rhineland-Palatinate, Saarland and Saxony.<sup>72</sup> Constitutional anti-discrimination provisions generally are directly applicable against public bodies, but there is only limited effect on private parties.<sup>73</sup>

Beyond the Basic Law, provisions addressing some forms of discrimination (primarily with regard to gender) can be found in a number of different laws of different legislative rank (e.g. the Criminal Code, Civil Code, Labour Code, Licensing Act, and Trading Regulations). However, none contains a definition of direct or indirect discrimination, racial harassment, incitement to discrimination, and other modes of discriminatory behaviour, or provides for the reversal of the burden of proof in cases of alleged racial/ethnic discrimination<sup>74</sup> as required by the EU’s Race Equality Directive.<sup>75</sup>

The CERD, International Helsinki Federation and ECRI have all recommended the adoption of specific anti-discrimination legislation,<sup>76</sup> and all EU member States are required to introduce and implement legislation transposing the EU Race Equality Directive by July 2003. In its 15<sup>th</sup> regular report under Article 9 of ICERD, the Government stated that it “continues to seriously consider the Committee’s proposal to adopt comprehensive anti-discrimination legislation.”<sup>77</sup> As of August 2002, little progress had been made to transpose the EU Race Directive into domestic law.

### *Lack of data*

The absence of reliable statistical data poses an additional challenge to establishing the scale and scope of ethnic and racial discrimination in general, and against recognised

<sup>71</sup> Basic Law, Art. 3, para. 3.

<sup>72</sup> EUMC, Anti-discrimination Legislation in EU Member States – Germany, Vienna, 2002, p. 11.

<sup>73</sup> The State is in fact expected to be minimally intrusive into private sphere. See N. Foster, *German Legal System and Laws*, London: Blackstone Press Ltd., 1996. Also, see EUMC, Anti-discrimination Legislation in EU Member States – Germany, Vienna, 2002, p. 10.

<sup>74</sup> EUMC, Anti-discrimination Legislation in EU Member States – Germany, Vienna, 2002, pp. 13–26.

<sup>75</sup> Council Directive 2000/43/EC, adopted by the Council of the European Union on 29 June 2000. OJ SOC 221 JAI 67 (hereafter, “the EU Race Directive”).

<sup>76</sup> CERD/C/338/Add.14, 10 August 2000; ECRI Report 2000; International Helsinki Federation Report 2001, see: <<http://www.ihf-hr.org/reports/ar01/Country%20issues/Countries/Germany.pdf>>, (accessed 14 December 2001).

<sup>77</sup> CERD/C/338/Add.14, 10 August 2000, para. 68.

minorities such as Sinti and Roma in particular. According to the Government, ethnic data are not gathered,<sup>78</sup> in line with a 1983 decision by the Federal Constitutional Court.<sup>79</sup> No such data is officially available.

The absence of ethnic data also presents an impediment to full implementation of the Race Equality Directive, which recommends the use of statistical evidence to establish instances of discrimination. International bodies such as ECRI have highlighted the effectiveness of “opinion polls involving members of the minority populations to ascertain how they perceive levels of discrimination and intolerance.”<sup>80</sup> The Government, however, has asserted that collection of such data “could only be achieved with disproportionate investments of time and effort,” and to date no such polls have been conducted or planned.<sup>81</sup>

The Advisory Committee on the FCNM recommended that “the authorities should seek means of obtaining more relevant statistical data on persons belonging to national minorities ... and in particular seek better to evaluate the socio-economic situation of the Roma/Sinti and, as appropriate, undertake measures in their favour to promote full and effective equality in the socio-economic field.”<sup>82</sup>

### 3.1.1 Education

Educational matters lie within the exclusive competence of individual states. Only a few states, such as Brandenburg, Hesse, Saxony and Thuringia, have adopted specific (though limited) provisions prohibiting discrimination in education.<sup>83</sup>

<sup>78</sup> See, e.g., the State FCNM Report.

<sup>79</sup> The Court decided that citizens could only be obliged to fill in detailed census questionnaires if the secrecy of the data could be assured, and found that existing statistics legislation did not provide a sufficient guarantee. See, BVerfGE 65, 1ff. However, the authorities occasionally produce ethnic data concerning foreign Roma, for example, for a recent listing of Roma refugees from Kosovo, see: <[http://www.bafl.de/bafl/template/index\\_statistiken.htm](http://www.bafl.de/bafl/template/index_statistiken.htm)>, (accessed 15 January 2002).

<sup>80</sup> ECRI Report 2000, p. 14.

<sup>81</sup> Comments of the Government of the Federal Republic of Germany to the Opinion of the Advisory Committee on the Report on Implementation of the FCNM in the Federal Republic of Germany, p. 9.

<sup>82</sup> Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 75.

<sup>83</sup> EUMC, Anti-discrimination Legislation in EU Member States – Germany, Vienna, 2002, pp. 17–18.

Sinti and Roma children face serious disadvantages in access to education. Although no official statistics are available, it is widely reported that Sinti and Roma children are over-represented in the system of special schools and that these children drop out of school at a disproportionately high rate. Only a handful attain a higher education.

This situation arises as a result of a number of different factors which may affect individual Sinti and Roma families, including lack of pre-schooling, insufficient knowledge of the German language, and high-levels of poverty, leading to living conditions which are not conducive to study. In the view of many Romani leaders, discrimination against Sinti and Roma children by teachers and school administrations is also a key factor.

### *Special schools*

Special schools (*Sonderschule*), also known as schools for the mentally-disabled (*Geistigbehinderteschule*), and “promoting schools” (*Förderschule*) are intended for children with consistently lower levels of academic achievement, or for children who come from difficult social backgrounds, manifest behavioural problems, or have difficulty coping in the school environment.

The conditions at special educational establishments<sup>84</sup> are not observably inferior to those in regular schools. Special schools generally have even better recreational facilities, more qualified staff and a smaller pupil-to-teacher ratio than regular schools. The interactive teaching methods utilised in special schools reportedly help children improve weak German language skills when needed.

However, children who enter such schools have little chance of re-integrating into the mainstream schooling system, since the curriculum of special schools focuses on preparing pupils for low-skilled labour, rather than for continuing or higher education; thus, graduation from special schools effectively bars children from better professional opportunities. A number of minority representatives express skepticism about the substance of education in special schools. For example, the President of the Rom and Cinti Union in Hamburg referred to special schools as “factories producing cheap and undemanding unskilled labour.”<sup>85</sup>

Referral to special schools is based on a child’s lower academic performance, assessed on the basis of tests and upon the recommendations of teachers. However, according to some German experts, the selective character of the school system, although not

<sup>84</sup> In this report, the term “special schools” refers to both schools for mentally-disabled and “promoting schools,” as their conditions and substance of education are not greatly different. According to some school authorities, “promoting schools are a new name to an old problem.” OSI Roundtable Meeting, Hamburg, 8 April 2002.

<sup>85</sup> Interview with Rudko Kawczynski, the Rom and Cinti Union, Hamburg, 19 November 2001.

specifically biased against any particular minority group, in effect screens out those children who have weaker German language skills or come from different cultural or social backgrounds, together with those children who learn more slowly.<sup>86</sup> Thus, while the national average of children attending special schools is 1.2 percent, the average for “foreign”<sup>87</sup> children attending special schools is currently almost three times higher (3.3 percent).<sup>88</sup>

### *Disproportionate referral of Sinti and Roma to special schools*

In the absence of official statistics or comprehensive studies it is difficult accurately to ascertain the exact numbers or percentage of Sinti and Roma children attending special schools.<sup>89</sup> However, in the opinion of many Sinti and Roma representatives, the transfer of Sinti and Roma children to special schools occurs at a disproportionately high rate and often arbitrarily, these children allegedly being regarded by many teachers and school administrations as “a distraction to the normal educational process.”<sup>90</sup>

School administrations in principle have to advise the parents about a pending transfer. Reportedly, due to language problems or lack of education many Romani parents do not realise the implications of the measure and give their consent. Moreover, once one child is sent to a special school it is more likely that parents would agree to send their other children to the same school to avoid separating them; allegedly, in this way entire Sinti and Roma families and neighbourhoods end up attending special school.<sup>91</sup>

In Hamburg, according to research conducted in the mid-1980s, as many as 70 percent of Sinti and Roma children were attending special schools; by 2002 the situation had improved noticeably due to the efforts of local Romani organisations working in cooperation with school authorities.<sup>92</sup> Nevertheless, members of the

<sup>86</sup> H. Heuss, notes prepared for EUMAP (Part III), p.12.

<sup>87</sup> Again, “foreign” denotes children without German citizenship; many “foreign” children have been born and raised in Germany.

<sup>88</sup> Federal Bureau of Statistics, see: <<http://www.destatis.de>>, (accessed 10 July 2002).

<sup>89</sup> The Government asserts that there is “no reliable statistical evidence to suggest that this group has a lower rate of participation in education... However some Länder have reported that in isolated cases children of Sinti and Roma have a particularly high level of representation in general remedial schools.” Comments of the Government of the Federal Republic of Germany to the Opinion of the Advisory Committee on the Report on Implementation of the FCNM in the Federal Republic of Germany, p. 13.

<sup>90</sup> OSI Roundtable Meeting, Hamburg, 8 April 2002.

<sup>91</sup> OSI Roundtable Meeting, Hamburg, 8 April 2002.

<sup>92</sup> OSI Roundtable Meeting, Hamburg, 8 April 2002.

Hamburg-based Rom and Cinti Union claim that Romani children are still several times more likely to be diverted to special schools than non-Romani children.<sup>93</sup>

A number of Romani organisations in North Rhine-Westphalia, such as the Rom e.V. and the Roma Union Grenzland, which work both with German and foreign Roma and Sinti, maintain that referrals of Romani children to special schools take place “so often as [to suggest] it’s automatic.”<sup>94</sup>

Several German teachers in predominantly “ethnic” neighborhoods of Berlin (Kreuzberg, Tiergarten, Schöneberg) stated in separate interviews that Romani children are not placed in schools for the mentally-handicapped, “like they do in Eastern Europe.” One, acknowledging that Sinti and Roma children, as children with “social problems,” are usually sent to “promoting schools,” added that these schools are not exclusively for Sinti and Roma, as “there are other minorities there, too.”<sup>95</sup>

Indeed, according to a recent study conducted by the European Migration Centre, a Berlin-based research institution, minority and foreign children are both severely under-represented in educational establishments beyond the elementary level and over-represented in special educational establishments in greater Berlin. While minorities and foreigners together constitute approximately 13 percent of the population of Berlin, the study showed that some 20 percent of the students in special schools were not ethnic Germans.<sup>96</sup> Keeping in mind that according to this study only slightly over half of minority and foreign children in Berlin attend school at all, this means that, with the existing trend of disproportionate referral to special schools, if 100 percent of minority and foreign children attended school, their percentage in special schools could double to over 40 percent – about three times more than their percentage in relation to the overall population.<sup>97</sup>

In the town of Ravensburg, Baden-Württemberg, the local primary school ran a project in the 1980s to support schooling for local Sinti children; reportedly, it was so

<sup>93</sup> Interviews with Rudko Kawczynski, Janina Janson, Marko Knudsen, and other members of the Rom and Cinti Union, Hamburg, 4 and 7 December 2001.

<sup>94</sup> Sebastijan Kurtisi of the Roma Union Grenzland, presentation made at OSI Roundtable Meeting, Hamburg, 8 April 2002. See also “Romakinder werden zu schnell in die Sonderschule überwiesen” (Romani Children are Transferred to Special Schools Too Quickly), *Roma-Nachrichten*, newsletter of the Cologne-based Rom e.V., July 2001.

<sup>95</sup> Interviews with school teachers in Berlin, 15-16 November 2001.

<sup>96</sup> See *Citizens Organise Networks Against Discrimination*, Edition Parabolis, 2000, p. 8; also interview with a researcher of the European Migration Centre, Berlin, 27 November 2001. Figures for Sinti and Roma who are German citizens are included in numbers shown for Germans in special schools.

<sup>97</sup> See *Citizens Organise Networks Against Discrimination*, Edition Parabolis, 2000, p. 8.

successful that only one Sinti child attended a special school at that time. However, in the late 1990s the Director and some other responsible staff of the school retired, and the programme has become less effective; today many Sinti children again attend special schools.<sup>98</sup> Most recently, following the closure of a lower intermediate school and several elementary schools Sinti children from the Ummenwinkel settlement in Ravensburg were transferred *en masse* to the only school which remained open in the vicinity – the “promoting school” St. Christina.<sup>99</sup>

### *Segregated schools*

Although there is no official data, school segregation appears to be a serious and growing problem. While all minorities (including long-term legal residents without citizenship) constitute not more than 12 to 14 percent of the entire population,<sup>100</sup> minority children reportedly constitute well over half – and sometimes as much as 90 percent – of the student body in many schools, especially those located in “ethnic districts.”<sup>101</sup> These are not necessarily special schools, but the concentration of minorities in certain schools is a factor working against their subsequent integration into the society.

There are no State-supported initiatives to address the growing tendency of ethnic segregation in schools, which often accompanies patterns of ethnic segregation in housing (see Section 3.1.3).

### *Bilingualism*

While Sinti and Roma representatives and parents point out that the performance of Romani children is often adversely affected by insufficient German language skills, interviews with officials, school authorities, and representatives of non-Romani organisations indicate that awareness of this problem may be low among the majority population (including teachers).<sup>102</sup> It is generally believed that German Sinti and Roma

<sup>98</sup> H. Heuss, notes prepared for EUMAP (Part I), p. 2.

<sup>99</sup> The schools were closed as a result of financial difficulties of the local government. See “Scheitert Projekt im Ummenwinkel am Geld?” (Will Money Stall Project in Ummenwinkel?), *Schwabische Zeitung*, 8 December 2001.

<sup>100</sup> Federal Bureau of Statistics, see: <<http://www.statistik-bund.de>>, (accessed 28 October 2001).

<sup>101</sup> For example, in schools of several “ethnic” districts of Berlin (Kreuzberg, Wedding, Tiergarten, Schöneberg and Neukölln). See *Citizens Organise Networks Against Discrimination*, Edition Parabolis, 2000, p. 12–13.

<sup>102</sup> Interviews were conducted by the reporter in twelve states visited during field research in the period November 2001-January 2002 and May-July 2002: Baden-Württemberg, Bavaria, Berlin, Brandenburg, Hamburg, Hesse, Lower Saxony, Mecklenburg-West Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saxony-Anhalt and Schleswig-Holstein.

are bilingual,<sup>103</sup> and only foreign Roma have weak language skills. In reality, German Sinti and Roma children often also enter school with poor language skills, and this may contribute to teachers' conclusions that they would be better off in a special school.

According to Jacques Delfeld, the leader of the Association of German Sinti of Rhineland-Palatinate, "Sinti and Roma children grow up bilingual. Achievement problems in school are often attributable to bilingualism. Teachers often do not take this into consideration, and children are referred to special schools due to weaker performance."<sup>104</sup> The leader of the Association of German Sinti and Roma of Schleswig-Holstein, Matthäus Weiss stated that bilingualism is a cause of frequent and often automatic referrals of Sinti children to special schools.<sup>105</sup> Members of the Association of German Sinti of Lower Saxony, and minority representatives in the state of Hesse also identified bilingualism as a cause of lower performance of Sinti and Roma in regular schools. Some school authorities concurred that bilingualism is often the biggest (though not the only) problem that affects school performance of Sinti and Roma children.<sup>106</sup>

CERD General Recommendation XXVII (2000) concerning measures in the field of education stresses the need "[t]o prevent and avoid as much as possible the segregation of Roma students, while keeping open the possibility for bilingual or mother tongue tuition."<sup>107</sup> The only state in Germany where instruction in the Romani language is offered in several state-run schools is Hamburg (see Section 3.3.3).

The ECRI Report 2000 specifically recommended that "measures should be taken to assist children with a mother tongue other than German to participate fully and successfully within the school system," and urged the Government to investigate and address issues of over-representation of minority and foreign children in "special schools for underachievers" and "corresponding under-representation in intermediate and grammar schools."<sup>108</sup>

<sup>103</sup> See State FCNM Report, p.112.

<sup>104</sup> Interview with Jacques Delfeld, the State Association of German Sinti of Rhineland-Palatinate, Landau, 9 January 2002.

<sup>105</sup> Interview with Matthäus Weiss, the leader of the Association of German Sinti and Roma of Schleswig-Holstein, cited in "Deutscher geht nicht" (Could Not Be More German), *Frankfurter Rundschau*, 2 January 2002.

<sup>106</sup> OSI Roundtable Meeting, Hamburg, 8 April 2002.

<sup>107</sup> General Recommendation XXVII (Discrimination against Roma) adopted by the Committee on the Elimination of Racial Discrimination at its fifty-seventh session on 16 August 2000, see: <http://www.imadr.org/regional/roma1.html>, (accessed 25 May 2002).

<sup>108</sup> ECRI Report 2000, p. 11.



*Pre-school education*

Lack of pre-schooling is frequently identified as another chief cause of lower performance in school. Sinti and Roma children often do not attend pre-school institutions (kindergartens), and arrive at elementary schools unprepared. The poor living conditions of many school-age Sinti and Roma children afford them little space or opportunity to complete their homework. Many parents, who often have not received an education themselves (or in the case of some German Sinti and Roma and many foreign Roma are not proficient in German) are unable to provide their children with assistance.<sup>109</sup>

At the same time, children are assessed on the basis of standard tests which, in the opinion of Romani mediators and social pedagogues, do not assess intellectual potential so much as presuppose some prior training, such as at minimum the ability to use a pen or a pencil.<sup>110</sup> These tests tend to disproportionately disadvantage Romani children, who often lack such experience.

A social pedagogue in Cologne explained: "Romani children usually do not go to kindergarten, but spend early childhood with the family. They come to school and do not know basic things, such as how to draw, or the names of colours, or the days of the week. Some children do not even know German that well, since they mostly speak Romanes with their parents. When the teacher says: 'write this,' or 'draw that,' they do not understand what the teacher wants from them."<sup>111</sup>

Several international organisations have made specific recommendations regarding the importance of pre-schooling. Council of Europe Recommendation No R (2000) 4 states that: "in order to secure access to school for Roma/Gypsy children, pre-school education schemes should be widely developed and made accessible to them."<sup>112</sup> The OSCE High Commissioner on National Minorities has urged Governments to

<sup>109</sup> Although poverty and overcrowded conditions are said to characterise the living situation mostly of foreign Roma (particularly refugees), it appears that poverty and inadequate living conditions among German Sinti and Roma is also a serious problem; see Section 3.1.3 Interview with Annelore Hermes, the Society for Endangered Peoples, Göttingen, 16 November 2001; interview with members of the Rom e.V., Cologne, 10 December 2001; interviews with members of the Rom and Cinti Union, Hamburg, 4 and 7 December 2001.

<sup>110</sup> Letter from members of the Rom e.V., 31 January 2002; on file with EUMAP.

<sup>111</sup> Interview with Beata Burakowska, the Rom e.V., Cologne, 10 December 2001.

<sup>112</sup> Council of Europe Recommendation No R (2000) 4 of the Committee of Ministers to member States on the education of Roma/Gypsy children in Europe, see: <<http://www.coe.int>>, (accessed 2 January 2002).

“consider supporting pre-school programs that help prepare Romani children for primary school.”<sup>113</sup>

Projects conducted by Sinti and Roma organisations in cooperation with school authorities to provide pre-school preparation to Sinti and Roma children now exist in several states, and their success is said to be largely attributable to the fact that Sinti and Roma themselves are involved in work to ensure that their children enjoy access to educational opportunities.

“Schaworalle/Förderverein” project in Frankfurt (Main), in the state of Hesse, has been quoted by many Romani representatives as a positive example of providing necessary pre-school training to Romani children.<sup>114</sup> Most recently, the Association of German Sinti of Lower Saxony succeeded in receiving state support for establishing a kindergarten with instruction in Romanes, which would provide necessary pre-school training for Sinti and Roma children.<sup>115</sup>

### *Discriminatory treatment in schools*

Sinti and Roma representatives assert that anti-Gypsy attitudes lead to discriminatory treatment, rendering the school environment inhospitable to Sinti and Roma children.

Members of the Association of German Sinti of Rhineland-Palatinate claim that they are frequently confronted with clichéd attitudes, such as that “Sinti and Roma are ‘different’ and do not need academic education.”<sup>116</sup> In fact, during recent interviews, individual social workers and teachers claimed that Sinti and Roma children manifest “inherent learning difficulties,” a “characteristic inability to concentrate,” and that they “do not have the patience to sit through the lesson,” “are not meant for school,” and would “do better to learn some trade” in a “promoting school.”<sup>117</sup>

Representatives of the Association of German Sinti of Lower Saxony maintain that Sinti and Roma children are much more likely than non-Romani children to be

<sup>113</sup> Organisation of Security and Cooperation in Europe, High Commissioner on National Minorities, *Report on the Situation of Roma and Sinti in the OSCE Area*, 2000, p. 93.

<sup>114</sup> OSI Roundtable Meeting, 8 April 2002.

See also: <<http://www.foerdervereinroma.de/index.htm>>, (accessed 31 January 2002).

<sup>115</sup> “Bildungschancen für Sinti verbessern” (To Improve Educational Opportunities for Sinti), *Infoblatt – Latscho Diwes*, 7 February 2002.

<sup>116</sup> Information from the Association of German Sinti of Rhineland-Palatinate, Landau, 9 January 2002.

<sup>117</sup> Interviews were conducted by the reporter in twelve states during field research in the period November 2001-January 2002 and May-July 2002: Baden-Württemberg, Bavaria, Berlin, Brandenburg, Hamburg, Hesse, Lower Saxony, Meklenburg-West Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saxony-Anhalt and Schleswig-Holstein.

referred to special schools on the basis of alleged learning difficulties.<sup>118</sup> One member of the Association stated: “Generally, when children go to school they do not know how to read, write or calculate. This is why they go to school – to learn. However, when German children do not know something, they are taught. When Sinti or Roma children do not know something – they are sent to special schools.”<sup>119</sup>

The *Schaworalle/Förderverein* project in Frankfurt (Main), designed to promote progress at school among Romani children, relied on interviews with school administrations and teachers to assess the “typical” problems of Romani pupils (referring to foreign Roma). The list of typical characteristics of Romani children, in the view of teachers and school directors, was the following:

They often make mistakes; they are not punctual; they do not bring along school books; they do not do homework; they do not sit still; they do not participate in group exercises; they speak poor German; they speak up and answer directly without permission, they talk to each other in class notwithstanding teacher’s warnings; they are often ill; they become frustrated quickly; they provoke other students and respond aggressively to provocation by others; they have no respect; they do not accept the authority of the teacher, and they skip classes.<sup>120</sup>

Romani parents claim that verbal and at times even physical assaults against their children by their classmates are commonplace, and allege that teachers are sometimes indifferent to these assaults.<sup>121</sup> In an incident recorded in one of Hamburg’s “promoting schools” two Romani children were reportedly doused with cold water by a teacher for speaking Romanes among themselves.<sup>122</sup> Individual Sinti and Roma families in Cologne claimed that their children are frequently subjected to verbal harassment, such as the taunt: “Zigeuner – out!” or “Zigeuner – in gas!”<sup>123</sup>

A lawyer working with the Association of German Sinti of Lower Saxony has tried to bring to the attention of the Ministry of Education and Culture a pattern of teachers reportedly verbally insulting and allegedly even slapping Sinti and Roma children.

<sup>118</sup> The organisation claims to confront at least two referrals of Sinti and Roma children to special schools a month. Interviews with Siegfried Franz and Leo Oehle, the Association of German Sinti of Lower Saxony, Hanover, 15 January 2002.

<sup>119</sup> Interview with Siegfried Franz, the Association of German Sinti of Lower Saxony, Hanover, 15 January 2002.

<sup>120</sup> “Roma in Frankfurt,” see: <<http://www.foerdervereinroma.de/index.htm>>, (accessed 31 January 2002).

<sup>121</sup> Interview with Janina Janson, working as a moderator between Romani parents and school authorities, the Rom and Cinti Union, Hamburg, 7 December 2001.

<sup>122</sup> Information from Janina Janson, the Rom and Cinti Union, Hamburg, 4 December 2001.

<sup>123</sup> Interviews with members of the Rom e.V., Cologne, 10 December 2001.

However, as the lawyer acknowledged, “we usually have only the word of a child against the word of a teacher who says ‘I did not do it, the child is lying,’” and there has been no official reaction.<sup>124</sup>

Romani parents further claim that, while teachers tend to ignore complaints of harassment, disciplinary measures are often taken against Romani children, such as for example transferring Sinti and Roma children to special schools on the grounds of “behavioural problems,” “bad temper” and “aggressiveness.” Reportedly, some Sinti and Roma children react to such treatment by learning to hide their identity, both to complete school and to avoid jeopardising their opportunities to find work.

### *High drop-out rates*

Though no official statistics are available, existing research indicates that minority and foreign children frequently do not complete even basic education.<sup>125</sup> ECRI noted with concern “a higher than average drop-out rate amongst these groups of children.”<sup>126</sup> Sinti and Roma children appear to drop out of school more often and earlier than their peers.<sup>127</sup>

Several NGO projects seem to have been quite successful in addressing the problem of absenteeism and high drop-out rates among Sinti and Roma children. For example, the NGO Sinti Verein in Bremen, in cooperation with parents and with support from the state, has achieved regular attendance at school from most local Sinti children.<sup>128</sup> In Hamburg, the joint efforts of the Rom and Cinti Union and state education authorities have helped reduce drop-out rates among Romani children.<sup>129</sup> At the same time, the Government mentions that rates of absenteeism remain extremely high in many states.

<sup>124</sup> Interview with Leo Oehle, the Association of German Sinti of Lower Saxony, Hanover, 15 January 2002.

<sup>125</sup> A more detailed study is available for Berlin, see *Citizens Organise Networks Against Discrimination*, Edition Parabolis, 2000, pp. 8–9.

<sup>126</sup> ECRI Report 2000, p. 11.

<sup>127</sup> Petra Rosenberg, a leader of the Association of German Sinti and Roma of Berlin-Brandenburg, asserted that “Sinti and Roma children were better integrated in German schools before the NS-era than at present.” Cited in “Erschaft des Stolzes” (Heritage of Pride), *Der Tagesspiegel*, 18 December 2001.

<sup>128</sup> State FCNM Report, p. 100.

<sup>129</sup> Staff member of the Hamburg Institute for Furthering Education of Teachers, presentation at the conference “Roma Projects ‘Good practices’: Possibilities and Limits,” organised by the Roma National Congress/Rom and Cinti Union, Hamburg, 19–21 November 2001.

For example, the problem persists in the state of Schleswig-Holstein, despite the involvement of Sinti women as mediators.<sup>130</sup>

Sinti and Roma representatives as well as some school officials maintain that high drop-out rates are the result of a combination of the above-described factors, such as insufficiently intercultural school curricula and discrimination, which lead Sinti and Roma children to fear school.<sup>131</sup> Segregation in special schools also appears to contribute to high drop-out rates; as graduation from special schools limits subsequent professional opportunities in addition to contributing to stigmatisation and lowering children's self-esteem, the utility of school attendance may be questioned by some parents.

### *Government response*

The Government recognises the existence of the problems faced by Sinti and Roma in access to education, and has outlined the causes of “shortfalls” among Romani students as follows:

[O]n the one hand, the difficult transition from the traditional perception of the family being an all-embracing social community, to the concepts of modern society, with compulsory education and vocational training ... outside the family. On the other hand, defensive reactions on the part of the parents or grandparents *vis-à-vis* the publicly maintained school system also come into play; such defensive reactions stem from the marginalisation of these persons and from their negative experience during their school days, and from subsequently being denied all educational opportunities during the persecution suffered under the Nazi régime.<sup>132</sup>

The Government has advanced “promoting schools” as a means of equalising opportunities for Sinti and Roma children. The State FCNM Report mentions that: “Special possibilities ... exist for promoting the schooling progress of children of Sinti and Roma in some *Länder* of the Federal Republic of Germany,”<sup>133</sup> “in cases where

<sup>130</sup> The Government has suggested that “it is therefore necessary for the individual families of this group of pupils to make sure their children attend school regularly and that they make use of government facilities that are currently available in the educational system.” Comments of the Government of the Federal Republic of Germany to the Opinion of the Advisory Committee on the Report on Implementation of the FCNM in the Federal Republic of Germany, p. 13.

<sup>131</sup> Staff member of the Hamburg Institute for Furthering Education of Teachers, presentation at the conference “Roma Projects ‘Good practices’: Possibilities and Limits,” organised by the Roma National Congress/Rom and Cinti Union, Hamburg, 19-21 November 2001. The complete video recording of the conference is available from the organisers.

<sup>132</sup> State FCNM Report, p. 99.

<sup>133</sup> State FCNM Report, p. 97.

children of individual families of German Sinti and Roma do not fully meet the general attainment targets.”<sup>134</sup>

However, in the opinion of Sinti and Roma leaders, many of these “promotional opportunities” are imposed on Sinti and Roma children arbitrarily, as is attendance at other special schools (see above). Some school authorities acknowledge that “promoting schools” are merely “a new name for an old problem.”<sup>135</sup> For its part, the Government has acknowledged that “experience gained in this context has shown that, on a long-term basis, only those initiatives will be successful which are launched locally with the consent, will and participation, including shared responsibility, of the persons concerned.”<sup>136</sup>

A number of states provide support for NGO initiatives to overcome disadvantages faced by Sinti and Roma children in access to education. However, there has been no systematic evaluation of their effectiveness or assessment of “good practices” with a view towards sharing and exchanging these experiences. There is no comprehensive Government policy that commits adequate and sustained financial support to initiatives to ensure that Sinti and Roma children enjoy equal access to educational opportunities. NGO projects often run into financial and logistical difficulties, and can hardly cope with the scale of the problems described above. One Romani representative urged the Government to “give it a thought: without education, what kind of a future does a new generation of Sinti and Roma have?”<sup>137</sup>

### 3.1.2 Employment

There is no specific and comprehensive legislation prohibiting ethnic or racial discrimination in employment.<sup>138</sup> Select anti-discrimination provisions are scattered through legislation of differing status, covering some but not all forms of discrimination.

For example, Section 8.1 of the Federal Civil Services Code, Section 75 of the Working Conditions Act, and Section 67 of the Federal Staff Representation Act all forbid differentiated treatment of employees on the basis of religion, nationality and origin, *inter alia*, while the Labour Code prohibits arbitrary dismissal on discriminatory

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<sup>134</sup> State FCNM Report, p. 99.

<sup>135</sup> OSI Roundtable Meeting, Hamburg, 8 April 2002.

<sup>136</sup> State CRML Report, p. 118.

<sup>137</sup> Sebastijan Kurtisi of the Roma Union Grenzland, OSI Roundtable Meeting, Hamburg, 8 April 2002.

<sup>138</sup> Basic Law, Art. 3.

grounds. However, there are no provisions regarding discrimination in recruitment.<sup>139</sup> There are no legal provisions penalising instructions to discriminate, unless such instructions are accompanied by serious threats or violent coercion, which could trigger the application of the Criminal Code.<sup>140</sup>

It appears possible for courts to sanction discriminatory practices in employment on the basis of the Basic Law. For example, when in 1997 a radio-controlled taxi centre in Duisburg began offering its customers the option of requesting an ethnic German driver, several Turkish taxi drivers challenged the practice in court. The lower court found no legal violation,<sup>141</sup> but on 28 May 1999 the Düsseldorf Higher Regional Court issued a non-appealable decision that exclusion from jobs on an ethnic basis violated the principle of equal treatment under Article 3 of the Basic Law.<sup>142</sup> However, in the past ten years very few such cases have been recorded.<sup>143</sup>

### *Discrimination in recruitment*

Although there is little case-law, discrimination against minority groups (often perceived as “foreigners”) in recruitment appears to be strong. A study conducted in 1996 by the International Labour Organisation (ILO) indicated high levels of discrimination against “foreigners” on the German labour market. Discrimination was found to run particularly high (over 50 percent) in areas requiring higher qualifications.<sup>144</sup> More recent tests conducted in 2001 by the Solingen-based Migration Centre, in cooperation with the Aachen-based Educational Centre, and the Berlin-based research institute INFIS indicate that this trend continues. The findings show a pattern of structural discrimination, as well high levels of personal discrimination:

<sup>139</sup> *Betriebsverfassungsgesetz* (The Working Conditions Act), Section 118.1. The Act’s anti-discrimination provisions do not apply to organisations of political, coalitional, confessional, charitable, educational, academic, or artistic nature, as well as the media. This Act, besides, applies only to those private sector companies which have at minimum five permanent employees and a working council. EUMC, *Anti-discrimination Legislation in EU Member States – Germany*, Vienna, 2002, p. 20.

<sup>140</sup> That is, for “incitement of people” (*Volksverhetzung*), Criminal Code (StGB), para. 30.

<sup>141</sup> EUMC, *Anti-discrimination Legislation in EU Member States – Germany*, Vienna, 2002, p. 22.

<sup>142</sup> U 238/98 – 14 – (ZIP 1999, 1357 ff.), 28 May 1999.

<sup>143</sup> Furthermore, this case was relatively unique in that it had attracted international attention and was being monitored by CERD. See, CERD/C/338/Add.14, 10 August 2000.

<sup>144</sup> See, A. Goldberg and D. Mourinho: “Empirical Proof of Discrimination against Foreign workers in Labour Market Access” in A. Goldberg, D. Mourinho and U. Kulke, *Labour Market Discrimination against Foreign Workers in Germany*, ILO, International Migration Papers No.7, Geneva 1996, pp. 3–53. The study focused on the situation of Turkish workers widely perceived in Germany as “foreigners.”

among job applicants with identical qualifications white applicants (with German names) have been clearly preferred by employers; in the case of telephone interviews, applicants without foreign accents have been preferred.<sup>145</sup>

There are no studies concerning discrimination in recruitment against Sinti and Roma. However, minority representatives assert that anti-Gypsyism and negative stereotypes about Sinti and Roma result in strong discrimination in the labour market against members of these communities.<sup>146</sup> The Advisory Committee on the FCNM further notes that although “authorities assume that, in principle, membership of a national minority has no impact on a person’s economic, social or cultural status,” “[evidently] members of the Roma/Sinti minority, in particular, find it significantly more difficult than the rest of the population to find work.”<sup>147</sup>

For many Sinti and Roma individuals access to a variety of jobs is often closed due to lack of formal education (see Section 3.1.1). Romani leaders at the same time maintain that in fact “a Sinto or Rom with education is in no better position on the labour market than a Sinto or Rom without education because of prejudices.”<sup>148</sup> For example, there have been many reports that Sinti and Roma are rejected (or are double- and triple-checked) when applying for work as a cashier or at shop or restaurant counters.<sup>149</sup> Sinti and Roma report that they commonly experience mistrust from prospective employers, and that many employers are reluctant to hire them.<sup>150</sup>

Fear of discrimination in recruitment and of arbitrary dismissals allegedly leads many Sinti and Roma to conceal their identity. Most German Sinti individuals with steady

<sup>145</sup> Jobless persons of foreign (e.g. Turkish) descent with varying degrees of foreign accent were invited to act as test persons. See, D. Clayton, *Antidiskriminierungsarbeit in Nordrhein-Westfalen*, pp. 10, 17–18.

<sup>146</sup> OSI Roundtable Meeting, Hamburg, 8 April 2002.

<sup>147</sup> Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 24.

<sup>148</sup> Interview with Rudko Kawczynski, the Rom and Cinti Union, Hamburg, 4 December 2001.

<sup>149</sup> Information from members of the Association of German Sinti of Rhineland-Palatinate, Landau, 9 January 2002.

<sup>150</sup> Anecdotal evidence suggests that such allegations are not unfounded. A Romani salesperson in Cologne reported that, after having worked for several years without complaint, she was overheard by her supervisor speaking Romanes on the telephone, and five days later was asked to leave due to downsizing. Information from the Rom e.V., Cologne, 10 December 2001. A Sinti individual from Bavaria reported that after applying for a maid’s position at a hotel over the telephone and being called in for an interview, she was told “as soon as I walked in, very civilly, with a smile” that the position had just been filled. Interview with NN (anonymity requested), Munich, 18 January 2001.



jobs who were interviewed for this report, stated that they prefer “not to take chances,” and do not disclose their identity at work.<sup>151</sup>

There is no registration of ethnicity on employment forms or applications. However, employers are reportedly able to determine an applicant’s ethnicity by other means,<sup>152</sup> such as the applicant’s home address. Because Sinti and Roma are often settled in compact areas (see Section 3.1.3), these areas are known as “Gypsy” addresses. For example, according to a representative of the Eppenheim-based NGO “PAKIV,” when an employer sees the address “Industriestrasse” (“Industry street,” now renamed as “Henkel-Teroson-Strasse,” a street in greater Heidelberg where several Sinti families live), he or she knows who is applying. In this way, segregated housing facilitates profiling and discrimination by employers.<sup>153</sup> Similar issues have been reported in other cities where compact Sinti and Roma settlements exist.

Racial motivation behind refusals to hire Sinti and Roma or their sudden dismissals is reportedly never made explicit, which makes it difficult to mount a legal challenge, and there are no allegations of public advertisements specifically discouraging Sinti and Roma from applying for available jobs. Formal complaints and court cases are extremely rare; persons who feel they have been discriminated against by employers reportedly either lack concrete proof, or doubt their chances of winning the case, or simply are unaware of the procedures for filing a complaint.<sup>154</sup>

### *Unemployment*

The absence of an effective legal framework against discrimination may be at least partially responsible for higher than national average unemployment rates among

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<sup>151</sup> The interviews have been conducted by the reporter in twelve states visited during field research in the period November 2001-January 2002 and May-July 2002: Baden-Württemberg, Bavaria, Berlin, Brandenburg, Hamburg, Hesse, Lower Saxony, Meklenburg-West Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saxony-Anhalt and Schleswig-Holstein.

<sup>152</sup> Employers also often require a photograph to be enclosed with the job application.

<sup>153</sup> Interview with Herbert Heuss, Project Bureau for the Promotion of Roma-Initiatives – PAKIV Germany e.V., Heidelberg, 7 January 2002. However, this has an impact also on individuals of lower economic strata, who live in poor neighbourhoods, regardless of their ethnic origin.

<sup>154</sup> Commentators note a discrepancy between the existence of possibilities to vindicate discrimination claims and “realities of the legal culture where these provisions do not play any positive role for the protection of [alleged victims].” Information provided by Minority Rights Group, Interrights and European Roma Rights Centre under the auspices of the joint project, ‘Implementing European Anti-Discrimination Law,’ July 2001.

“foreigners” (including long-term residents without German citizenship).<sup>155</sup> Official unemployment statistics for national minorities such as Sinti and Roma do not exist.<sup>156</sup>

Without official statistical data or studies it is difficult to determine unemployment figures among Sinti and Roma. However, minority representatives maintain that the rate of unemployment among Sinti and Roma communities is grossly disproportionate, with estimates ranging from 60 to 90 percent,<sup>157</sup> and allegedly stems from discrimination on the part of public and private employers in recruitment as well as lower levels of education. By comparison, the national unemployment average for the year 2001 was approximately nine percent, and shows signs of a slight decrease for the year 2002.<sup>158</sup>

Some experts have pointed out that high estimates of unemployment among Sinti and Roma may be a result of informal employment; that is self-employed individuals may be regarded by authorities as unemployed.<sup>159</sup> This form of occupation in practice often translates into limited social protection, such as health and pension insurance, unstable income, and dependence on the social welfare system.

### *Social protection*

The social protection system comprises a wide range of benefits, including unemployment benefits, payable to individuals who worked at one time but have lost their jobs, and social welfare, payable to individuals who have no employment history and require continuous social assistance. Unemployment benefits are higher than social welfare (which covers only basic minimum costs, e.g. food, accommodation, clothing, hygiene and heating); the amount of unemployment benefits is calculated on the basis of previous income.<sup>160</sup>

<sup>155</sup> Federal Ministry of Interior, see: <<http://www.bmi.bund.de>>, (accessed 30 June 2002).

<sup>156</sup> Advisory Committee finds that “the lack of good statistical data makes it difficult ... to ensure that the full and effective equality of national minorities is promoted effectively, including as concerns the situation of Roma/Sinti on the labour market.” See Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 75.

<sup>157</sup> OSI Roundtable Meeting, 8 April 2002. Interview with Annelore Hermes, Roma and Sinti/Refugees Desk of the Society for Endangered Peoples, Göttingen, 16 November 2001. Interview with a researcher of the European Migration Centre, Berlin, 27 November 2001. Letter from a social worker in Düsseldorf commenting on an earlier draft of this report; on file with EUMAP.

<sup>158</sup> Federal Bureau of Statistics, see: <<http://www.destatis.de>>, (accessed 25 May 2002).

<sup>159</sup> Letter from a social worker in Düsseldorf commenting on an earlier draft of this report; on file with EUMAP. H. Heuss, notes prepared for EUMAP (Part III), p. 24.

<sup>160</sup> N. Foster, *German Legal System and Laws*, pp. 181–183.

Recent amendments to social protection legislation require unemployed persons to make regular job applications in order to maintain entitlement to unemployment benefits; for the long-term unemployed, benefits may be reduced and even cut. This measure does not take into account the possibility that members of certain minority groups may be unable to find work due to discrimination in recruitment.

Sinti and Roma leaders further point out that due to cultural taboos on certain types of activities, members of their communities sometimes cannot accept certain jobs, including jobs in hospitals and cemeteries (regarded as unclean places) or dealing with garbage. Allegedly, responsible employment offices are sometimes ignorant of or insensitive to these concerns.<sup>161</sup> For example, in Cologne, a 32-year-old German Sinto, registered as a gardener with the city's employment agency, was fired because he refused to accept work at the cemetery. He appealed his dismissal to the Labour court in Cologne, but lost.<sup>162</sup> In the absence of legislation that would protect minorities from indirect forms of discrimination the chances of winning such cases are minimal. At the same time, multiple refusals to accept job offers, even when the refusal constitutes a "conscientious objection," may cause an individual to lose access to benefits.

### *Government response*

Authorities in individual states have made attempts to reduce high levels of unemployment among Sinti and Roma through various job-creation projects; however, the effectiveness of these projects has been limited.

In Hamburg, education authorities waived certain qualification requirements to allow the employment of four Romani individuals as language instructors in schools (see Section 3.3). In Bremen two offices are publicly funded within the framework of job creation schemes for Sinti and Roma;<sup>163</sup> there is no data about the effectiveness of these projects.

As in the area of education, there has not been any large-scale evaluation or assessment of successful job-creation projects with a view towards exchanging experiences to identify positive practices. Doing so could support the development of more systematic policy measures to alleviate the disadvantages faced by Sinti and Roma on the labour market.<sup>164</sup>

<sup>161</sup> OSI Roundtable Meeting, Hamburg, 8 April 2002.

<sup>162</sup> "Gärtner darf kein Totengräber sein: Gefeuert!" (Gardner Cannot Work at Graveyard: Fired!), *Express Köln*, 15 December 2001.

<sup>163</sup> State FCNM Report, p. 28.

<sup>164</sup> H. Heuss, notes prepared for EUMAP (Part I), p. 2.

*Romani refugees*

Barriers to gainful employment are particularly high for Roma refugees, even those who have lived in Germany for many years awaiting a decision on permission to stay or deportation. The recently-amended Asylum Law allows these individuals to apply for a work permit (a requirement for legal employment) after one year. However, in addition to the same barriers of discrimination faced by Sinti and Roma citizens or permanent residents, Roma refugees with work permits experience difficulties in finding employment due to the fact that “deferred deportation” status is usually extended only for three-month periods.

Moreover, in practice the procedure for obtaining a work permit is extremely bureaucratic and slow, and many refugees never obtain one. In the opinion of Romani leaders, authorities procrastinate on issuing work permits and other documents, in hopes that the situation in refugees’ countries of origin may improve, allowing their return.<sup>165</sup> At the same time, those who take up unauthorised employment are at risk of deportation for violation of the law. Those who remain unemployed are dependent on welfare,<sup>166</sup> the amount of which has been assessed by the International Helsinki Federation as falling below subsistence level.<sup>167</sup>

The ECRI Report 2000 warned that preventing access to employment for refugees while reducing their benefits leaves these individuals “in destitute condition,” and may “reinforce prejudices, stereotypes and hostility towards such individuals” in society.<sup>168</sup>

### 3.1.3 Housing and other public goods and services

There is no specific legislation that would prohibit discrimination in access to housing and other goods and services, aside from a generic provision in the Basic Law.<sup>169</sup> In the private sector especially, service providers enjoy a wide degree of contractual freedom.

<sup>165</sup> Interview with Rudko Kawczynski, the Rom and Cinti Union, Hamburg, 4 December 2001.

<sup>166</sup> *Asylbewerberleistungsgesetz* (The Asylum Law) stipulates that the needs for housing, food and clothing shall be provided in kind, in addition to a monthly allowance of €40 for an adult and €20 for each child. *AsylbLG*, para. 3.

<sup>167</sup> The amount of welfare payments has not been adjusted since 1993; it fails to reflect an increase in the cost of living. See Report by International Helsinki Federation (2001), <<http://www.ihf-hr.org/reports/ar01/Country%20issues/Countries/Germany.pdf>>, (accessed 3 August 2001).

<sup>168</sup> ECRI Report 2000, pp. 10–11.

<sup>169</sup> Basic Law, Art. 3.

Housing conditions of Sinti and Roma vary significantly. Some families live in conditions similar to those of other Germans. However, it appears that the living conditions of a majority of Sinti and Roma remain sub-standard, as a result of poverty and dependence on social welfare, long-term neglect by public authorities, and allegedly strong discrimination in access to commercial housing.

### *Public housing*

CERD has expressed concern about a pattern of ethnic segregation in housing.<sup>170</sup> The Government has responded that “(i)nsofar as foreign citizens in Germany live in self-contained communities in conurbations, they do this because this is what they want. These people frequently belong to the same ethnic group.”<sup>171</sup>

Authorities seem to assume that Sinti and Roma who are German citizens also prefer to settle together, although most of the so-called “Sinti settlements” were formed after the war, when German Sinti and Roma who returned to their hometowns from concentration camps were resettled in city and town slums, usually in the least attractive areas, in conditions which posed serious environmental and health risks. From the 1970s onward social offices began to deal with this problem, making significant improvements to many settlements. However, in many instances the authorities chose to rebuild already existing ghettos, replicating patterns of ethnic segregation.

In Düsseldorf, North Rhine-Westphalia, upon their return after the war Sinti were housed in dilapidated slums in an isolated settlement,<sup>172</sup> which public authorities reconstructed only in 1983. The reconstruction of the settlement is known as a local Act of Atonement.<sup>173</sup> Today approximately 160 German Sinti live in 27 houses in this settlement in relatively good conditions. According to a local social worker, the improvements are a result of support from the state and local government and the concerted efforts of several non-Romani organisations.<sup>174</sup>

The Sinti settlement of some 250 persons on the outskirts of Hamburg was built on a former garbage dump, about which residents reportedly were not informed.<sup>175</sup> The houses in the settlement are in relatively good condition, although the settlement itself

<sup>170</sup> CERD/C/338/Add.14, 10 August 2000.

<sup>171</sup> Here the Government refers to immigrants as “foreigners.” CERD/C/338/Add/1410, August 2000, para. 26.

<sup>172</sup> S. Milton, “Persecuting the Survivors: the Continuity of ‘Anti-Gypsyism’ in Post-War Germany and Austria” in S. Tebbutt, p. 37.

<sup>173</sup> OSI Roundtable Meeting, Hamburg, 8 April 2002.

<sup>174</sup> Letter from a social worker in Düsseldorf, commenting on an earlier draft of this report; on file with EUMAP.

<sup>175</sup> OSI Roundtable Meeting, Hamburg, 8 April 2002.

is isolated and not easily accessible by public transportation.<sup>176</sup> The new city dump is located close by. Both the land on which the settlement was built and its proximity to the dump present a constant health hazard.

Pursuant to a 1970s Sinti housing project in the city of Freiburg, Bavaria, the authorities built new homes, schools and a community centre in a compact area, on the assumption that Sinti wanted to stay together. Other residents gradually moved out of this area, leaving it ethnically segregated.<sup>177</sup>

The Kistnersgrund Sinti settlement in Bad Hersfeld, Hesse, was built in the 1970s on the outskirts of the city on the site of the garbage dump. After an outbreak of hepatitis in the early 1980s due to unsanitary conditions in the settlement, the authorities decided to move it.<sup>178</sup> However the new settlement, Haunewiese, was also located on the outskirts of the city; again, substandard housing was constructed: concrete walls with no insulation and no central heating. The residents used an outside heating oven, collecting wood in the nearby forest. In the past decades the heating system on the settlement has been improved, and now residents have central heating.<sup>179</sup>

In Munich, Bavaria, families of Sinti and occupational travellers had lived in an isolated settlement since the 1950s, being moved periodically “from one provisional housing [arrangement] to another,”<sup>180</sup> until the land they had been living on was purchased by a major car producer (BMW) in 1998. Reportedly, the barracks and provisional homes in which the families had lived for decades lacked insulation and provided little protection against cold temperatures and humidity; as a result of the combined humidity and lack of ventilation, the walls of some houses were covered in mould.<sup>181</sup> After BMW purchased the land on which the provisional homes were located from the government of Munich, the city government arranged for the resettlement of the residents.<sup>182</sup> The relocation of Sinti to new homes in another compact settlement took place in January 2002.

<sup>176</sup> Information gathered during site visit to the Sinti settlement, Hamburg, 16 May 2002.

<sup>177</sup> See, P. Widmann, *An den Rändern der Städte. Sinti und Jenische in der deutschen Kommunalpolitik* (On the Margins of Cities. Sinti and Jenishes in German Social Policy), Berlin: Metropol, 2001.

<sup>178</sup> Interview with Herbert Heuss, Project Bureau for the Promotion of Roma-Initiatives – PAKIV Germany e.V., Heidelberg, 24 July 2002.

<sup>179</sup> Interview with Herbert Heuss, Project Bureau for the Promotion of Roma-Initiatives – PAKIV Germany e.V., Heidelberg, 24 July 2002.

<sup>180</sup> “Neue Heimat für die Freimanner Sinti” (New Home for Sinti in Freimann), *Süddeutsche Zeitung*, 28 July 2002.

<sup>181</sup> Information gathered during site visit to the Sinti settlement, Munich, 10 January 2002.

<sup>182</sup> “Neue Heimat für die Freimanner Sinti” (New Home for Sinti in Freimann), *Süddeutsche Zeitung*, 28 July 2002.

Several German Sinti families live in a recently renovated settlement in the industrial area of Heidelberg, Baden-Württemberg, on a plot across from a large chemical company (Henkel-Teroson-Strasse), where the land is widely believed to be heavily polluted by chemicals.<sup>183</sup>

Desperate conditions are reported from the Sinti settlement of Ummenwinkel in Ravensburg, Baden-Württemberg. The settlement's wooden houses are in extremely bad repair, and the lack of sanitary facilities allegedly has caused serious health problems for children living there (see Section 3.1.4). The appeals of the leader of the local Association of German Sinti and Roma to the authorities to improve the situation by renovating settlement housing have so far been unsuccessful.<sup>184</sup>

### *Government response*

The Bundestag, in its Resolution of 26 June 1986, both acknowledged the need and confirmed the intention to improve the living conditions of Sinti and Roma and to promote their integration into society.<sup>185</sup> Responsibility for public housing and social services lies with individual states, but few have developed comprehensive measures to improve the quality of housing for Sinti and Roma on the basis of the resolution.

For example, in the state of Bavaria, Nuremberg city authorities support the "Action Group for improving the living conditions of Sinti" by paying the staff costs for a social worker.<sup>186</sup>

There have been success stories. For example, authorities in charge of a housing project in Straubing, Bavaria, settled Sinti among other residents in the city to avoid perpetuating ghettos. The Sinti residents were fully included in planning and decision-making by means of a permanent group which was organised by social workers for that purpose.<sup>187</sup> In Munich, Bavaria, the Sinti residents formed a standing committee of tenants, which was involved in consultation and planning for the recent resettlement.<sup>188</sup>

<sup>183</sup> Information gathered during site visit to the Sinti settlement and interview with Herbert Heuss, Project Bureau for the Promotion of Roma-Initiatives – PAKIV Germany e.V., Heidelberg, 7 January 2002.

<sup>184</sup> "Steitert Projekt im Ummenwinkel am Geld?" (Will Money Stall the Ummenwinkel Project?), *Schwabische Zeitung*, 8 December 2001.

<sup>185</sup> State FCNM Report, p. 43.

<sup>186</sup> State FCNM Report, p. 29.

<sup>187</sup> See, P. Widmann, *An den Rändern der Städte. Sinti und Jenische in der deutschen Kommunalpolitik* (On the Margins of Cities. Sinti and Jenishes in German Social Policy), Berlin: Metropol, 2001.

<sup>188</sup> Information gathered during site visit to the Sinti settlement and interview with Herbert Heuss, Project Bureau for the Promotion of Roma-Initiatives – PAKIV Germany e.V., Heidelberg, 24 July 2002.

However, many Sinti and Roma representatives have criticised paternalistic attitudes on the part of some social offices that “always know better what is good for Sinti [and Roma];” these representatives favour the development of a meaningful dialogue with the members of Sinti and Roma communities to avoid perpetuating ghettoisation under the pretext of complying with the assumption of a wish of Sinti and Roma to “stay together.”<sup>189</sup>

Minority representatives acknowledge the complexity of the issue: on the one hand, living in communities allows them to preserve and foster their language and culture. However, they insist that forced settlement – especially in less than adequate conditions – is an unacceptable solution.<sup>190</sup> The OSCE High Commissioner on National Minorities has reinforced the need for public authorities to strike a careful balance in developing and implementing housing policies: “While respecting the free choice of particular Romani communities to live with other Roma, Governments should ensure that housing policies do not foster segregation.”<sup>191</sup> To strike this balance, meaningful and ongoing dialogue with Roma representatives is necessary.

The ECRI Report 2000 has recommended that the Government should “initiate research into discriminatory practices and barriers or exclusionary mechanisms in public and private sector housing.”<sup>192</sup> As yet, there has been no response to this recommendation.

### *Commercial housing*

A study conducted by the Migration Centre of North Rhine-Westphalia in Dortmund and Düsseldorf indicates widespread discriminatory practices by owners of commercial housing. Persons perceived as “foreigners” – even if they are German citizens – are frequently subjected to means-testing and stricter background checks, and are required to produce references from previous landlords and neighbours, as well as from the

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<sup>189</sup> OSI Roundtable Meeting, Hamburg, 8 April 2002.

<sup>190</sup> OSI Roundtable Meeting, Hamburg, 8 April 2002.

<sup>191</sup> Organisation of Security and Cooperation in Europe, High Commissioner on National Minorities, *Report on the Situation of Roma and Sinti in the OSCE Area*, 2000, p. 126.

<sup>192</sup> ECRI Report 2000, p. 11.



police.<sup>193</sup> In the end, “foreigners” typically succeed in finding accommodation of a lower standard than is generally available on the market.<sup>194</sup>

In a 1994 survey conducted by the EMNID Institute, about 68 percent of Germans stated that they did not wish to have Sinti and Roma as neighbours.<sup>195</sup> Such attitudes sometimes have led to actions to bar Sinti and Roma from housing or camping facilities. Sinti and Roma claim that frequently when they arrive to view housing which was said to be available over the phone, it turns out to be “just rented.” Some of these cases have been challenged in courts, but they are extremely difficult to prove.<sup>196</sup> Allegedly, the majority of such cases go unreported and unpunished.<sup>197</sup>

In Bochum, North Rhine-Westphalia, after a flat-owner refused a lease contract to a Sinti family because they were “Gypsies,” the family filed a legal complaint. However, the District Court on 25 September 1996 ruled that the owner had the right to refuse the tenants: “Traditionally, this ethnic group is predominantly unsettled and ... is clearly so unrepresentative of the average suitable tenant, with a corresponding outlook for the future, that expectations of further fruitful negotiations were ... fully unfounded and untenable.”<sup>198</sup> The Central Council challenged this decision at the European Court for Human Rights, but the application was declared inadmissible *rationae personae*, because the applicants (the Central Council and its Chair) were not personally affected.<sup>199</sup>

In the village of Helsa, near Kassel, the owner of the Goldener-Adler agency recently chose to revoke an agreement to sell a house to a Sinti family, after receiving repeated

<sup>193</sup> D. Clayton, *Antidiskriminierungsarbeit in Nordrhein-Westfalen* (Anti-Discrimination Work in North Rhine-Westphalia), p. 18.

<sup>194</sup> Thus, in Berlin minorities are reportedly often offered apartment in “ethnic” (populated by ethnic non-Germans) districts, which Germans usually would not accept. Despite poor conditions, lessees are reportedly charged prices comparable to those for apartments in much better condition in other neighbourhoods of Berlin. Interview with a researcher of the European Migration Centre, Berlin, 27 November 2001.

<sup>195</sup> Cited in D. Strauss, “Anti-Gypsyism in German Society and Literature” in S. Tebbutt, p. 89.

<sup>196</sup> The interviews have been conducted by the reporter in twelve states visited during field research in the period November 2001-January 2002 and May-July 2002: Baden-Württemberg, Bavaria, Berlin, Brandenburg, Hamburg, Hesse, Lower Saxony, Meklenburg-West Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saxony-Anhalt and Schleswig-Holstein.

<sup>197</sup> OSI Roundtable Meeting, Hamburg, 8 April 2002.

<sup>198</sup> Application No. 35208/97, *Zentralrat Deutscher Sinti und Roma and Romani Rose against Germany*, 27 May 1997.

<sup>199</sup> Application No. 35208/97, *Zentralrat Deutscher Sinti und Roma and Romani Rose against Germany*, 27 May 1997.

anonymous threats of violent retaliation if the sale of the house to “Gypsies” should be effected.<sup>200</sup>

There were many reports in July and August 2001 from Bad Hersfeld, Hesse, of flat-rental agencies refusing to let flats to Sinti and Roma. In the District Council a written notice stated that “rental contracts with Sinti will be concluded only when a flat previously used by another Sinti lessee becomes available.”<sup>201</sup> The leader of the Association of German Sinti and Roma of Hesse stated that the practice ran counter to the Basic Law, the ECHR, and data protection laws. However, the Mayor of Bad Hersfeld made a public statement that private rental agencies are free to conclude or not to conclude rental contracts. When asked how it would be possible for the District Council to single out Sinti, the Mayor reportedly answered, “We know our clients.”<sup>202</sup>

Allegedly, a number of private camping facilities in Frankfurt (Main), Cologne, Berlin and Brandenburg refuse entry to Roma.<sup>203</sup> An official in Brandenburg affirmed in an interview that when owners wish they are able to effectively bar Roma from their campgrounds without incurring legal difficulties. Moreover, local citizens reportedly made repeated calls to the local government and police demanding the removal of the caravans of Sinti and Roma – including those arriving to take up seasonal work in the period from April to October – from the area. The authorities in Brandenburg engaged an *ad hoc* mediator to encourage Romani migrant workers to leave, with the result that Roma “do not come anymore to Brandenburg.”<sup>204</sup>

Since 1995, the Berlin Senate has provided financial support for and managed the Drei Linden caravan facility for foreign Sinti and Roma annually travelling for seasonal work. The authorities acknowledged that “Sinti and Roma ... desire permanent parking places” but “(i)t has not yet been possible to make this intention reality because of political opposition and the ever-tighter budget situation.”<sup>205</sup> The Drei Linden facility is located along the highway on the outskirts of Berlin; infrastructure is minimal.<sup>206</sup> From May through August the settlement is provided with shower and

<sup>200</sup> “Besitzer: Kein Verkauf an Sinti” (The Owner: No Sale to Sinti), *Rundbrief*(2000), annual publication of the Association of German Sinti and Roma of Hesse.

<sup>201</sup> Cited in “Keiner Zigeuner in Freibad” (No Gypsies in the Pool), *Junge Welt*, 20 August 2001.

<sup>202</sup> Cited in “Keiner Zigeuner in Freibad” (No Gypsies in the Pool), *Junge Welt*, 20 August 2001.

<sup>203</sup> OSI Roundtable Meeting, Hamburg, 8 April 2002.

<sup>204</sup> Interview with an employee of the Brandenburg Ministry for Labour, Social Affairs and Women, Potsdam, 15 November 2001.

<sup>205</sup> Berlin Senate website, see: <<http://www.sensjs.berlin.de>>, (accessed 1 January 2002).

<sup>206</sup> Information gathered during site visit to Drei Linden, Berlin, 25 November 2001.

toilet containers and washing machines, which are dismantled every year at the end of the season. Sinti and Roma that arrive earlier or leave later are forced to wait in parking spaces in Charlottenburg (Berlin) without any sanitary facilities.<sup>207</sup> Some Romani leaders have questioned the validity of the decision to establish a “Roma-only” campground, whose low quality is not commensurate with its cost (approximately €250,000 per year).<sup>208</sup>

### *Housing conditions for Roma refugees*

High rates of unemployment among refugees have led to high levels of dependence on subsidised social housing. The poor quality of social housing for Roma refugees has been criticised by many minority representatives.

Since Summer 2001 the city of Cologne, North Rhine-Westphalia, has been embroiled in a heated controversy over the transfer of Roma refugees from the former Yugoslavia (resident in Cologne since the early 1990s) into small wooden containers in a new, specially-designated refugee camp in Kalk.<sup>209</sup> In the 1960s Kalk was the site of a chemical plant. The plant was subsequently closed but not resettled, due to the fact that the site was officially designated as hazardous for human health;<sup>210</sup> moreover, recent soil tests confirmed the persistence of unacceptably high concentrations of arsenic, lead and other heavy metals.<sup>211</sup> Roma protested against the resettlement, but the Mayor of Cologne declared that there was no alternative to containers in Kalk.<sup>212</sup> With support from the Rom e.V., local Roma appealed to the city’s administrative court, which ordered a resettlement to a different location. The city authorities

<sup>207</sup> See, “District Wants to Build a Motel on the Sinti Place, but Senate Claims Extension for an ‘All Year Place,’” see: <<http://www.romnews.com/a/86-98.html>>, (accessed 31 January 2002).

<sup>208</sup> “District Wants to Build a Motel on the Sinti Place, but Senate Claims Extension for an ‘All Year Place,’” see: <<http://www.romnews.com/a/86-98.html>>, (accessed 31 January 2002). Also, interview with Rajko Djuric, the Romani Union, Berlin, 17 November 2001.

<sup>209</sup> The “containers” are sized approximately 14 sq. m. Photos of the containers on file with EUMAP, courtesy of the Rom e.V., which provided information on this case.

<sup>210</sup> “Langeweile, Frust und wenig Hoffnung” (Boredom, Frustration and Little Hope), *Kölnische Rundschau*, 16 November 2001.

<sup>211</sup> The concentration of lead (1700 mg per cubic m.) exceeds the Federal stipulated maximum for an adult by 4.25 times (400 mg per cubic m.) and for a child by 8.5 times (200 mg per cubic m.). The concentration of arsenic (69 mg per cubic m.) exceeds the Federal stipulated maximum by 1.5 times for an adult (50 mg per cubic m.) and almost three times for a child (25 mg per cubic m.). Copy of the laboratory test results on file with EUMAP, courtesy of the Rom e.V. in Cologne.

<sup>212</sup> “Keine Alternative zum Container” (No Alternatives to Containers), *Kölnische Rundschau*, 7 November 2001.

appealed,<sup>213</sup> and with court proceedings pending, 60 Romani families who were moved to Kalk in Fall 2001 were still living there as of August 2002.

The Cologne authorities in charge of dealing with Romani refugees have announced that the resettlement is a part of a new refugee policy.<sup>214</sup> According to the Rom e.V., “this is done not so refugees would like it but rather so they would dislike it; those who are unhappy with what Germany has to offer are always free to go back to their country.”<sup>215</sup>

The Rom e.V. has questioned the financial justification for the new policy. While normally maintaining a refugee family of four cost DM 1200 per month (c. €650), maintaining a family of four in the specially-built “container-land” in Kalk currently costs DM 5000 (c. €2700) – more than four times as expensive. According to the Rom e.V., “this proud figure leaves tax-payers sour, and refugees sick.”<sup>216</sup>

Romani leaders also point out that both refugee camps and “ethnic neighbourhoods” present an easy and convenient target for attacks by right-wing extremists. The problem is particularly acute in the “new federal territories,” i.e. East Germany (see Section 3.2).

### *Other goods and services*

Individuals belonging to “visible” minority groups<sup>217</sup> report widespread discrimination in gaining access to public goods and services, and formidable obstacles to legally challenging such practices.<sup>218</sup> A study conducted by the Brandenburg anti-discrimination bureau under the auspices of the project “Open Access to Services”

<sup>213</sup> “Köln streitet mit Roma” (Cologne Quarrels with Roma), *Aachener Zeitung*, 5 December 2001.

<sup>214</sup> Among other measures, the Cologne authorities started cutting cash payments to refugees. Instead, refugees are provided with food directly on the premises of refugee settlements. See “Fluchtlingerrat gegen Container” (Refugee Council against Containers), *Kölner Stadt-Anzeiger*, 1 October 2001.

<sup>215</sup> Interviews with members of the Rom e.V., Cologne, 10 December 2001.

<sup>216</sup> D. Schmitz, *Die Roma und ihre Diskriminierung durch die Politik und die Presse* (Roma and Their Discrimination in Politics and Press), unpublished. On file with EUMAP, courtesy of the Rom e.V. in Cologne.

<sup>217</sup> Groups which are easily identified as not ethnically German, regardless of citizenship.

<sup>218</sup> For example, in Potsdam, a private entrepreneur who explicitly stated that he would not lease his cars to foreigners, was supported by a member of Brandenburg Parliament who wrote a letter on 8 October 2002 to an officer of the local anti-discrimination bureau (which had filed a complaint against that businessman) that “fortunately, German entrepreneurs are legally free to conclude contracts with, and to provide services to, whomever they wish.” Copy of letter on file with EUMAP.

(OPAS) noted that “apart from insults, verbal abuse and humiliation of clients, the most severe form of discrimination is withholding of services.”<sup>219</sup>

According to tests conducted by the Brandenburg anti-discrimination bureau, about 30 percent of discothèque and bar/restaurant owners in Brandenburg employ discriminatory admissions policies, and do so “for the sake of white customers.”<sup>220</sup> During testing, persons of African, Middle-Eastern and Indian descent were refused entry under various pretexts, such as “we are full,” “tonight is a private party,” “a club-card is required,” or “there are skinheads here, and they may beat you up,” while freely admitting white guests.<sup>221</sup> The manager of the “Röhre” disco in Frankfurt (Oder) justified her instruction to bouncers not to let “foreigners” in as follows: “The problem is just ... and I’ll tell you the way things are – if I let these three young men in, as much as I regret the situation, other guests will begin to feel uncomfortable and leave.”<sup>222</sup>

One employee of the anti-discrimination bureau noted that in such clear cases, the bureau seeks the only enforceable sanction within private business regulations;<sup>223</sup> that is, withdrawal of a business license on the grounds of “unreliability” or “untrustworthiness.”<sup>224</sup> However, he went on to say that in practice it is extremely difficult to convince the courts to apply such a serious measure. One judge stated, in regard to discrimination complaints, that a “(l)egal action is a question of time, money and nerves, and success is never assured.”<sup>225</sup>

There are numerous allegations of discrimination specifically against Sinti and Roma in access to goods and services. The Association of German Sinti of Rhineland-Palatinate reported that Sinti and Roma experience particular problems in obtaining insurance and communications (telephone installation) services.<sup>226</sup> In August 2001, in the city of Offenbach, Hesse, Sinti and Roma were refused entry to the Rosenhoehe Einlass

<sup>219</sup> OPAS Final Report, Attachment 6.3, p. 60.

<sup>220</sup> OPAS Final Report, Attachment 6.3, p. 60.

<sup>221</sup> The testers were accompanied by a cameraman and an officer of the anti-discrimination bureau, and exchanges were recorded on video. OPAS Final Report, Attachment 6.3, p. 60.

<sup>222</sup> Video and transcript are available at: <<http://www.wdr.de/tv/monitor/archiv>>, key-word: “Diskotheken,” (accessed 2 January 2002).

<sup>223</sup> OPAS Final Report, Attachment 6.3, p. 60.

<sup>224</sup> “The license will not be granted or may be taken away if the applicant does not have required reliability.” The Licensing Code (1970) and Article 35 of the Trading Regulations. However, authorities and courts have utilised this provision only very rarely. EUMC, Anti-discrimination Legislation in EU Member States – Germany, Vienna, 2002.

<sup>225</sup> OPAS Final Report, Attachment 6.3, p. 61.

<sup>226</sup> Cited in J. Delfeld, *Tradition und Zukunft des Rechtsextremismus* (The Tradition and Future of the Right-Wing Extremism), p. 7.

swimming pool; an employee of the facility declared: “we don’t want any more Gypsies in the swimming pool.”<sup>227</sup>

Many Sinti and Roma individuals allege that they are conspicuously followed in shops and stores by sales staff.<sup>228</sup> Such indirectly discriminatory and prejudicial behaviours tend to discourage minorities from attempting to access certain public goods and services. Many simply avoid unpleasant experiences by avoiding shops, restaurants, and other service locations.<sup>229</sup>

### 3.1.4 Healthcare

There is no legislation specifically prohibiting discrimination in healthcare. The healthcare system is said to function well in general, although there are allegations of discriminatory incidents involving Sinti and Roma as well as other minorities or foreigners.<sup>230</sup> However, under existing legislation it is extremely difficult to prove such allegations before courts, and there is little relevant case-law.<sup>231</sup>

#### *Health conditions*

In Germany, as throughout Europe, there is very little information about specific health-related concerns of Sinti and Roma;<sup>232</sup> there are neither official statistics nor research as to life expectancy, infant mortality rates, or other health issues. Accordingly, no specific Government programmes exist and no resources have been allocated to deal with potentially serious health issues connected to large-scale unemployment, lower levels of education, often inadequate living conditions and poverty among these communities.

<sup>227</sup> “Keine Zigeuner in Freibad” (No Gypsies in the Pool), *Junge Welt*, 20 August 2001.

<sup>228</sup> Interviews were conducted by the reporter in twelve states from November 2001-January 2002 and May-July 2002: Baden-Württemberg, Bavaria, Berlin, Brandenburg, Hamburg, Hesse, Lower Saxony, Meklenburg-West Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saxony-Anhalt and Schleswig-Holstein.

<sup>229</sup> OPAS Final Report, p. 50.

<sup>230</sup> Interviews with Janina Janson, the Rom and Cinti Union, Hamburg, 4 and 6 December 2001. Interviews with members of the Rom e.V., Cologne, 10 December 2001. Interview with Leo Oehle, a lawyer with the Association of German Sinti of Lower Saxony, Hanover, 15 January 2002.

<sup>231</sup> EUMC, Anti-discrimination Legislation in EU Member States – Germany, Vienna, 2002, p. 9.

<sup>232</sup> Organisation of Security and Cooperation in Europe, High Commissioner on National Minorities, *Report on the Situation of Roma and Sinti in the OSCE Area*, 2000, p. 117.

Despite the lack of official information, anecdotal evidence of health risks faced by Sinti and Roma communities abounds. For example, high rates of illness have been reported among Sinti children in the Ummenwinkel settlement in the town of Ravensburg, Baden-Württemberg,<sup>233</sup> and are believed to be caused by the unsanitary conditions in the settlement (see Section 3.1.3). Another smaller Sinti settlement in Baden-Württemberg, located in the industrial zone of Heidelberg, is built on a plot of land across from a large chemical company (Henkel-Teroson-Strasse). The land and ground water are widely believed to be heavily polluted.<sup>234</sup> Though no information has been gathered, these hazardous conditions have almost certainly had an adverse impact on the health of its residents.

Members of the Rom and Cinti Union estimate that the top three health problems among Romani families in greater Hamburg are heart disease, asthma and rheumatism. Asthma and rheumatism are thought by Union workers to be directly linked to the living conditions in Romani ghettos; most buildings in Romani neighbourhoods are damp, poorly heated with coal or oil, lack proper ventilation, and are poorly maintained.<sup>235</sup> Comparable living conditions have been identified in other cities, and suggest that similar health problems are likely to exist, though there are no official sources to confirm or refute this possibility.

In light of the disastrous consequences of medical research on Sinti and Roma in Germany prior to and during World War II,<sup>236</sup> as well as subsequent discrimination by the healthcare bureaucracy,<sup>237</sup> members of Sinti and Roma communities reportedly manifest strong suspicion and distrust toward any scientific or medical inquiries into Romani health. There has been no systematic attempt on the part of health authorities to confront and overcome this suspicion and mistrust as a first step towards addressing potentially serious health-related issues among Sinti and Roma communities.

<sup>233</sup> "Scheitert Projekt im Ummenwinkel am Geld?" (Will Money Fail Ummenwinkel Project?), *Schwabische Zeitung*, 8 December 2001.

<sup>234</sup> Information gathered during site visit to the Sinti settlement and interview with Herbert Heuss, Project Bureau for the Promotion of Roma-Initiatives – PAKIV Germany e.V., Heidelberg, 7 January, 2002.

<sup>235</sup> Interview with Janina Janson, the Rom and Cinti Union, Hamburg, 4 and 7 December 2001.

<sup>236</sup> For a description of the racial hygiene research conducted by Dr. Ritter and the experiments on humans by Dr. Mengele in Auschwitz, see R. Rose, *The Nazi Genocide of the Sinti and Roma*, 1995.

<sup>237</sup> State FCNM Report, p. 10.

On occasion, medical personnel have cooperated with law enforcement authorities in incidents involving non-citizen Roma.<sup>238</sup> On 13 April 1995, 150 policemen raided a Romani refugee residence in Cologne in order to investigate a case of an abandoned baby who, according to a doctor, had “pigmentation common to Gypsies.”<sup>239</sup> About 40 women were forced to undergo blood tests, their pictures and fingerprints were taken, and four of them – including young unmarried girls – were forced to have a gynecological examination at the local University Hospital; the mother was not established notwithstanding these “special efforts.” Professor Gilad Margalit noted, “The issue of abandonment ... could have been handled gently by psychologists and social workers rather than the police. The German police, used to regarding Romanies as criminals even after 1945, probably could not free itself from these traditional patterns,” and further that “the brutality of the investigation, especially the uncritical cooperation of the medical staff with the police was for the Romanies reminiscent of the Nazi past.”<sup>240</sup>

### 3.1.5 Access to justice

The Basic Law guarantees everyone the right to inviolable human dignity,<sup>241</sup> and the right to redress against unjustified actions by a public authority.<sup>242</sup> However, there is no legislation specifically prohibiting discrimination in the justice system, aside from a generic provision of the Basic Law.<sup>243</sup> Romani leaders have claimed that the discriminatory treatment that members of their communities experience from some

<sup>238</sup> Such allegations have also been made by members of other minorities and foreigners. Most recently, Amnesty International reported a death of an asylum-seeker in police custody allegedly resulting from a forcibly administered emetic substance by the medical personnel. Amnesty International Report 2002: Germany, see: <<http://www.amnesty.org>>, (accessed 12 July 2002).

<sup>239</sup> ‘Wir hatten gehofft, dass es in Deutschland keinen Rassismus mehr gibt...’ Dokumentation zur Polizei-Razzia gegen Roma-Frauen am 14.04.95 in Köln (We Hoped that There Was No More Racism in Germany... Documentation on the Police Raid against Romani Women on 14 April 1995 in Cologne). Information from the Rom e.V. in Cologne.

<sup>240</sup> G. Margalit, “Anti-Gypsyism in the Political Culture of the Federal Republic of Germany: A Parallel with Anti-Semitism?” See: <<http://sicsa.huji.ac.il/9gilad.htm>>, (accessed 9 April 2002).

<sup>241</sup> Basic Law, Art. 1, para. 1.

<sup>242</sup> Basic Law, Art. 19, para. 4.

<sup>243</sup> Basic Law, Art. 3.



private citizens is exacerbated by humiliating treatment and discriminatory application of punitive measures by law enforcement authorities.<sup>244</sup>

In the absence of specific anti-discrimination legislation, victims of discrimination have little prospect of successful vindication of their rights through the courts, while the award of legal aid is based on the likelihood of a successful outcome.<sup>245</sup> The cost of legal proceedings combined with the low likelihood of success in practice appear to dissuade victims of discrimination from lodging complaints. At the same time, though legislation does not preclude human rights and other organisations from financially assisting in legal actions against discrimination, these organisations do not have *locus standi* to launch legal actions on behalf of alleged victims of ethnic and racial discrimination.<sup>246</sup>

CERD further has expressed concern over the fact that “with respect to Article 6 of the Convention ... certain groups of foreigners – including people without legal status or with temporary residence – do not have the right to call for redress for racially discriminating incidents.”<sup>247</sup>

### *Ethnic profiling*

The regulation and management of courts and police are matters within the competence of individual states. Although ethnic and racial profiling is officially forbidden,<sup>248</sup> exception may be made for the investigation and/or prevention of crime.<sup>249</sup>

Ethnic profiling of Sinti and Roma by law enforcement authorities officially continued in Bavaria (the last German state to abolish the practice) through October 2001.<sup>250</sup> While in all other states police forms contained four description columns to indicate a

<sup>244</sup> Interview with Rudko Kawczynski, Rom and Cinti Union, Hamburg, 26 June 2002. The Central Council of German Sinti and Roma further asserts that there is ongoing harassment by public authorities of members of the Sinti and Roma minority; see State FCNM Report, p. 22.

<sup>245</sup> EUMC, Anti-discrimination Legislation in EU Member States – Germany, Vienna, 2002, p. 24.

<sup>246</sup> EUMC, Anti-discrimination Legislation in EU Member States – Germany, Vienna, 2002, p. 25.

<sup>247</sup> CERD/C/338/Add.14, 10 August 2000, para. 18.

<sup>248</sup> Since the 1983 landmark decision by the German Constitutional Court, BVerfGE 65. See also Section 3.1.

<sup>249</sup> *Unterschiede der Erfassungssysteme “Kriminalpolizeilicher Meldedienst – Staatsschutz” KPMD-S und Definitionssystem “Politische motivierte Kriminalität.”* Information from the Alliance for Democracy and Tolerance, Berlin, 27 November 2001.

<sup>250</sup> Central Council German Sinti and Roma, Press-release of 28 July 1998. On file with EUMAP.

description of the suspect (North-European, Mediterranean, Asian, and African) in Bavaria police forms included a fifth column: “persons of Sinti and Roma type.” This term replaced a traditionally used designation “Gypsy-type person,” and was used interchangeably with other supposedly neutral designations of Sinti and Roma, such as “migrant people” and “frequently changing place of residence.”<sup>251</sup> The FCNM Advisory Committee has noted the use also of such details as “East Prussian,” “West Prussian,” “Negroid,” and physical descriptions such as “full breasted.”<sup>252</sup>

The police were trained to fill in forms on the basis of physical appearance, and suspects were not required either to identify themselves, or to give their consent to the police identification.<sup>253</sup> To justify the practice, the Bavarian police claimed that the data was collected on the basis of the “perceptions of average citizens” rather than prejudices.<sup>254</sup>

The practice provoked an international scandal,<sup>255</sup> and Sinti and Roma organisations challenged it at the Bavarian Constitutional Court.<sup>256</sup> In October 2001 the Bavarian authorities made a declaration that the practice would be discontinued.<sup>257</sup> The forms now reportedly indicate only four valid columns: North-European, Mediterranean, African and Asian, leaving the fifth column (“persons of Sinti and Roma type”) blank or crossed out.

Nevertheless, some representatives allege that the police continue to profile Sinti and Roma unofficially.<sup>258</sup> For example, in a recent announcement issued by the Bavarian police in connection with reported instances of fraud, the public was warned to take precautions when dealing with persons belonging to a “mobile ethnic minority with

<sup>251</sup> A. Dix, paper presented at the conference “Race/Ethnic Statistics and Data Protections” Organised by INDOK at the Central European University, Budapest, 15-17 December 2000.

<sup>252</sup> See Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 19.

<sup>253</sup> See Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 19.

<sup>254</sup> A. Dix, paper presented at the conference “Race/Ethnic Statistics and Data Protection,” organised by INDOK at the Central European University, Budapest, 15-17 December 2000.

<sup>255</sup> A petition to discontinue the racist practice was signed by over 40 prominent international figures and presented to the Bavarian authorities in April 1999; a copy of the petition is on file with EUMAP.

<sup>256</sup> The President of the Bavarian Constitutional Court reportedly personally addressed the Bavarian Minister of Interior in reference to the practice. Central Council German Sinti and Roma, Press-release of 12 October 2001; on file with EUMAP.

<sup>257</sup> Central Council of German Sinti and Roma, Press-release of 12 October 2001; on file with EUMAP.

<sup>258</sup> Criminal data recording techniques vary from state to state. See Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 20.

Southern appearance.”<sup>259</sup> However, there have not been other documented instances of circumvention of the ban, and reportedly the police authorities in Bavaria have pledged to prevent the occurrence of similar incidents in future.<sup>260</sup>

In October 2001, the police in Cologne, North Rhine-Westphalia, collected mandatory DNA samples from persons living in the Roma settlement, allegedly for the purpose of establishing parenthood and preventing manipulation of the social security system by single mothers. According to one of the investigators, “these people are not officially registered, but marry according to their ‘odd ancient customs,’ which makes it very difficult to find out who the fathers of children are.”<sup>261</sup> According to the authorities, this makes it possible for Romani mothers to claim fraudulently that “the father is not known” as a means of obtaining benefits for single mothers. In the view of minority representatives, such measures are disproportionate and reveal a lack of cultural sensitivity.

### *Criminal justice*

Lawyers that deal frequently with minority cases have reported a number of discriminatory practices against “visually distinct” minorities by law enforcement authorities.<sup>262</sup> Amnesty International also noted a pattern of allegations that the law enforcement personnel tend to be verbally and even physically abusive with “non-Caucasian and foreign nationals”<sup>263</sup> (see Section 3.2).

In December 1996 in Nuremberg, Bavaria, the police came to the house of a 62-year-old Sinti woman looking for her son, who had defaulted on paying a traffic violation fine of DM 200 (c. €98). The police officers reportedly behaved in an aggressive and provocative manner, and called the woman a “dirty Gypsy sow,” whom “Hitler forgot to put to the gas.”<sup>264</sup> The woman attempted to prevent the police officers from entering the house, but the officers forced their way in, and her arm was broken during

<sup>259</sup> “Senioren als Opfer: Freche und fiese Täter – Angst vor Euro und Banken ausgenutzt” (Senior Citizens as Victims: Impudent Culprits – Exploiting Fear of Euro and Banks), *Nürnberger Nachrichten*, 24/25 November, 2001, p. 19.

<sup>260</sup> Letter from members of the Association of German Sinti and Roma of Bavaria, commenting on an earlier draft of this report; on file with EUMAP.

<sup>261</sup> “30 Verwandte müssen zum Speichertest” (30 Relatives Must Go Through DNA-Test), *Kölner Stadt-Anzeiger*, 17 October 2001.

<sup>262</sup> Interviews with lawyers in Berlin, 22 November 2001. Interviews with lawyers in Hamburg, 5 December 2001. Interviews with lawyers in Cologne, 10 December 2001. Interview with a lawyer in Hanover, 15 January 2002.

<sup>263</sup> Amnesty International Report 2001: Germany, see: <<http://www.amnesty.org>>, (accessed 25 October 2001).

<sup>264</sup> “Wer schlug zuerst zu?” (Who Hit Whom First?), *Nürnberger Nachrichten*, 30 June 1998.

the struggle. The woman filed charges against the police, but the judge ruled that they had committed no violation. The police officers subsequently brought a case against the Sinti woman for damaging a police uniform, and the court ordered her to pay DM 2700 DM (c. €1500) in damages. The judge took no notice of the allegations of racist speech by the police officers.<sup>265</sup>

On 11 October 2001, at six in the morning 15 police officers in full combat gear raided the house of a Sinti family in Niedererbach, Rhineland-Palatinate, on suspicion of robbery of a petrol station where the family had been seen the previous day. The 52-year-old I.L. and her 49-year-old husband G. L. were pulled out of bed, ordered to the ground, and held at gunpoint while officers searched the house. The incident was later acknowledged as an “embarrassing mistake.”<sup>266</sup>

In Cologne, lawyers reported that the police undress Romani children detained on charges of theft, and take pictures of underwear and limbs (e.g. feet) to demonstrate that Roma are not hygienic.<sup>267</sup> This evidence has been presented in courts to press charges against parents for not taking proper care of their children.<sup>268</sup> Such degrading practices are reportedly unheard of with regard to ethnic German children, regardless of their social background.

There have been reports from across Germany that young Romani suspects of non-German nationality (who have no papers) are routinely given X-ray tests as a means of establishing their age.<sup>269</sup> Minor offenders (under age 14) may not be criminally prosecuted, and police authorities claim that some apprehended suspects lie about their age to avoid criminal responsibility. However, the procedure reportedly is not commonly employed in relation to offenders from other ethnic groups, with or without papers.

There are allegations that the authorities disproportionately apply to Roma such punitive measures as taking away their children. In Cologne, a faction in the local government advanced a proposal that “criminal children” should be removed from their families and placed in closed correctional establishments “to protect them from their families and their environment, ... [and] from themselves.”<sup>270</sup> The proposal came

<sup>265</sup> “Vier Polizisten glaubwürdiger als zwei Sinti-Frauen” (Four Police Officers Are More Trustworthy Than Two Sinti Women), *Süddeutsche Zeitung*, 2 March 1998.

<sup>266</sup> “Sondereinheit der Polizei stürmt das Haus einer Sinti-Familie in Niedererbach” (Special Police Forces Storm the House of a Sinti Family in Niedererbach), *MNZ*, 13 October 2001.

<sup>267</sup> Information from lawyers in Cologne, 10 December 2001.

<sup>268</sup> Case of M. Photos and rulings are on file with EUMAP.

<sup>269</sup> X-raying of the wrist bone is considered an accurate means of establishing human age.

<sup>270</sup> “FDP: Kriminelle Kinder von Eltern trennen” (FDP: Separate Criminal Children from Parents), *Kölner Stadt-Anzeiger*, 6 April 2002.

as a reaction to police reports that crime rates had increased, allegedly due to crimes committed by refugees (mostly from ex-Yugoslavia) resident in Cologne.

### 3.2 Protection from Racially Motivated Violence

Despite levels of racially motivated violence that are already among the highest in the EU<sup>271</sup> and appear to be rising, existing legislation does not stipulate enhanced sentencing for crimes committed with a racial motivation.<sup>272</sup> Violence against minorities and foreigners by private actors as well as by law enforcement officers has been a recurring theme in reports and recommendations by international human rights organisations. The ECRI Report 2000 stated that:

Germany is a society in which serious instances of racially motivated violence occur. This means that issues of racism, anti-Semitism, xenophobia and intolerance are yet to be adequately acknowledged and confronted. The existing legal framework and policy measures have not proven to be sufficient to effectively deal with or solve these problems.<sup>273</sup>

The response of the Government contended that these statements were “much too sweeping and do not reflect the actual situation in Germany.”<sup>274</sup> However, CERD has also expressed concern that “the number of racist-related incidents, which had more or less stagnated during the 1990s, suddenly and dramatically increased during the year 2000,”<sup>275</sup> and Amnesty International Report noted a 50 percent increase in right-wing violence (also resulting in deaths) and harassment against minorities and foreigners from 10,000 cases in 1999 to 15,000 cases in 2000.<sup>276</sup> In December 2000, the Federal Criminal Bureau registered 854 racially motivated violent acts, with 37 persons injured,<sup>277</sup> and for the first half of 2001 the Ministry of Interior estimated a total of

<sup>271</sup> Greek Helsinki Monitor online, May 2001, see: <<http://www.greekhelsinki.gr>>, (accessed 25 May 2001).

<sup>272</sup> Article 224 of the Penal Code provides for higher sentences, if “the offender deliberately or knowingly causes certain consequences of a bodily injury, e.g. loss of sight.” However, no mention is made of racial motivation as an aggravating circumstance.

<sup>273</sup> ECRI Report 2000, p. 4.

<sup>274</sup> Annex to ECRI Report 2000, p. 27.

<sup>275</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination: Germany. 27/04/2001. CERD/C/304/Add.115.

<sup>276</sup> See, Amnesty International Report 2001: Germany, see: <<http://www.amnesty.org>>; International Helsinki Federation Report 2001, see: <<http://www.ihf-hr.org/reports/ar01/Country%20issues/Countries/Germany.pdf>>, (accessed 3 August 2002).

<sup>277</sup> APA, 5 February 2001.

7,729 cases of right-wing offences – both violent and non-violent – two-thirds of all politically motivated crime.<sup>278</sup>

The US State Department Human Rights Report on Germany released in March 2002 noted the continuation of the trend, though reporting no deaths.<sup>279</sup> The IHF Report 2002 (concerning events in 2001) notes: “Xenophobia and racial discrimination remained a serious problem in Germany in 2001. In the first six months of the year, the number of xenophobic and anti-Semitic offenses increased slightly.”<sup>280</sup>

With regard to protection from racially motivated violence, the State FCNM Report states that “[members of national minorities and ethnic groups] are entitled, under the Criminal Code (*StGB*), to the same protection of legal rights as everybody else.”<sup>281</sup> Moreover, in its 15<sup>th</sup> report under Article 9 of the ICERD (1999) the Government explained that Sections 86, 86(a), 130, 131 of the German Penal Code since 1994 “have proved themselves. There has been no need for further changes to the law.”<sup>282</sup>

Presently, Section 130(1) of the Criminal Code prohibits incitement of hatred,<sup>283</sup> and the Federal Supreme Court may regard racism as an aggravating circumstance in cases of murder under Section 211 of the Criminal Code.

In light of the rising incidence of violence against minority groups and foreigners, special legislative measures appear warranted to punish and dissuade racially motivated crimes. ECRI “considers that the fight against this violence could be further improved through defining racially motivated offences as specific offences.”<sup>284</sup>

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<sup>278</sup> Ministry of Interior,  
see: <[http://www.bmi.bund.de/dokumente/Pressemitteilung/ix\\_52443.htm](http://www.bmi.bund.de/dokumente/Pressemitteilung/ix_52443.htm)>, (accessed 3 August 2002).

<sup>279</sup> US State Department Human Rights Report: Germany (2001);  
see: <<http://www.state.gov>>, (accessed 5 March 2002).

<sup>280</sup> International Helsinki Federation Report 2002,  
see: <<http://www.ihf-hr.org/reports/AR2002/country%20links/Gernamy.htm>>, (accessed 3 August 2002).

<sup>281</sup> State FCNM Report, p. 51.

<sup>282</sup> CERD/C/338/Add.14, 10 August 2000, para. 32.

<sup>283</sup> “[A] term of imprisonment from three months to five years [may] be imposed on whomever, in a manner designed to interfere with public peace, violates the dignity of others by inciting hatred against parts of the population, inciting violent or arbitrary action against them, or insulting, maliciously disdain[ing] or disparag[ing] them.” Cited in the State FCNM Report, p. 51.

<sup>284</sup> ECRI Report 2000, p. 19.

### 3.2.1 Violence by private individuals

The State FCNM report acknowledges that:

In the last years, xenophobia on the part of a small segment of the German population ... has become a problem in society. It has increasingly emerged in the “new Länder”... and has ranged from verbal attacks to violent acts, also involving loss of life, primarily against foreigners of non-European origin who live in Germany. ... In some cases ... there have been attacks against German Sinti and Roma.<sup>285</sup>

It is undeniable that many cases of xenophobic or racially motivated violence are carried out by members of right-wing organisations, and the authorities have taken fairly robust measures to monitor and control the activities of these organisations. The Basic Law and Federal laws ban organisations that profess totalitarian, racist, anti-Semitic, xenophobic and other intolerant attitudes (anti-Gypsyism is not regarded as a special form of racism).<sup>286</sup> The dissolution of such organisations must be decided by a special court decree,<sup>287</sup> although it is fairly easy to reassemble and register any party under a different name.<sup>288</sup>

ECRI and the International Helsinki Federation welcomed the 2001 decision of the authorities to suspend an openly fascist party, the National Democratic Party (NPD). The party had been founded in 1964 and numbered about 6,000 members around Germany.<sup>289</sup> The party’s chief goal was to create “minority-free zones” in cities. However, two other notoriously right-wing parties, Die Republikaner (REP) and Deutsche Volkunion (DVU) are active.

The Berlin-based REP, founded in 1983, has a membership of approximately 15,000. The party’s chief objective is to support “Germany for the Germans.” Its programme sets forth a specifically anti-Roma platform, demanding a visa regime on the Polish and Czech borders, across which large numbers of Roma arrive. Although the party is

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<sup>285</sup> State FCNM Report, p. 52.

<sup>286</sup> Basic Law, Art. 9, para. 2.

<sup>287</sup> The Federal Constitutional Court is the only body with powers to ban political parties; in the 1950s, the Court banned a neo-Nazi party and a Communist party. See US State Department Human Rights Report: Germany (2000): <<http://www.state.gov/g/drl/rls/2000/eur/index.cfm?docid=765>>, (accessed 5 March 2002).

<sup>288</sup> Information provided by Minority Rights Group, Interrights and European Roma Rights Centre under the auspices of the joint project, ‘Implementing European Anti-Discrimination Law,’ July 2001.

<sup>289</sup> Information on the membership and programmes of the right-wing organisations in this and the next two paragraphs draws extensively upon the thesis of R. Kuder, *Recent Trends in German Ethnic Politics: the Roma*, pp. 38–40.

under Government surveillance for “criminalising and defaming foreigners,” its members held 14 of 160 (nine percent) of the seats in the Parliament of Baden-Württemberg from 1992 through March 2001.

The Munich-based DVU, founded in 1987, counts approximately 15,000 members. This party’s chief objective is also to support “Germany for the Germans.” Its programme takes a position against collective German responsibility for the Holocaust. Although the party is under Government surveillance, its members consistently held 16 of 116 seats (15 percent) in the Parliament of Saxony-Anhalt since 1998, and five of 89 seats (six percent) in Brandenburg since 1999 (data as of 2000). Allegedly, DVU members were behind the “Citizens initiative of Lichtenhagen” – a three-day pogrom against Romani refugees in Rostock in August 1992 (see below).<sup>290</sup>

In addition, there are also around 150 neo-Nazi groups, as well as “a thriving skinhead sub-culture” numbering approximately 9,000 members.<sup>291</sup> The informal nature of these groups make it difficult for law enforcement authorities to identify and counter their activities.

Right-wing organisations have quickly recognised the potential for proliferation of information through the Internet; the US State Department recently noted the establishment of approximately 800 Internet sites “with what [the German authorities] consider objectionable or dangerous right wing content.”<sup>292</sup> ECRI expressed concern about a “steep rise in numbers of racist Internet sites originating in Germany.”<sup>293</sup> CERD also noted this development, and recommended that the authorities “seek solutions to this problem” which is “likely to become more significant in the future.”<sup>294</sup>

The Government has pointed out that right-wing extremism is higher in the “new federal States,” i.e. East Germany, where the authorities are allegedly less well-prepared

<sup>290</sup> G. Margalit, “Anti-Gypsyism in the Political Culture of the Federal Republic of Germany: A Parallel with Anti-Semitism?” See: <<http://sicsa.huji.ac.il/9gilad.htm>>, (accessed 9 April 2002).

<sup>291</sup> P. Sussman, “The Menace of the Far Right,” see: <<http://europe.cnn.com/SPECIALS/2000/germany/stories/resurgence>>, (accessed 15 October 2001).

<sup>292</sup> US State Department Human Rights Report: Germany (2000); see: <<http://www.state.gov/g/drl/rls/2000/eur/index.cfm?docid=765>>, (accessed 5 March 2002).

<sup>293</sup> ECRI Report 2000, p. 15.

<sup>294</sup> Concluding observations of the Committee on the Elimination of Racial Discrimination: Germany, CERD/C/304/Add.115, 27 April 2001.



to deal effectively with such issues.<sup>295</sup> ECRI, meanwhile, expressed concern over “a tendency amongst German authorities and the media to portray the problem of racist and anti-Semitic violence and harassment as a problem of former Eastern Germany,”<sup>296</sup> and asserted that “some media simplify these crimes to problems of juvenile delinquency ... neglecting to place the events in a broader context of racism, anti-Semitism and intolerance.”<sup>297</sup>

Racially motivated attacks have sometimes been encouraged by ordinary individuals. Thus, during a three-day pogrom against a refugee settlement in the city of Rostock in August 1992, thousands of ordinary citizens reportedly cheered and encouraged extremists and local youths to throw Molotow-cocktails at the settlement where as many as 200 refugees were trapped.<sup>298</sup> The last group of perpetrators were charged only in 2001.<sup>299</sup>

Police officials in Essen, Hesse, reportedly obtained evidence in 1997 that a group of German citizens paid right-wing extremists to attack Roma refugees in hopes that the refugees would be removed from the area, as had previously happened in the towns of Hoyerswerda and Mölln following murderous arson attacks there on Turkish refugees. The perpetrators of these attacks were prosecuted and awarded sentences from 1.5 years to five years of imprisonment.<sup>300</sup>

Several Berlin school teachers claimed during interviews that they are afraid to take their pupils on excursions around Brandenburg, because minority children in the class are so frequently subjected to verbal harassment and threats of physical attack by right-wing extremists.<sup>301</sup> Reportedly, some minority entrepreneurs have been forced to relocate because of persistent acts of vandalism by unidentified individuals. The Association of

<sup>295</sup> International Helsinki Federation Report 2001, see: <<http://www.ihf-hr.org/reports/ar01/Country%20issues/Countries/Germany.pdf>>, (accessed 13 December 2001).

<sup>296</sup> ECRI Report 2000, p. 20.

<sup>297</sup> ECRI Report 2000, p. 15.

<sup>298</sup> G. Margalit, “Anti-Gypsyism in the Political Culture of the Federal Republic of Germany: A Parallel with Anti-Semitism?” See: <<http://sicsa.huji.ac.il/9gilad.htm>>, (accessed 9 April 2002).

<sup>299</sup> “Neun Jahre zum Protest um Rostock” (Nine Years since Protest in Rostock), *Der Tagesspiegel*, 12 February 2001.

<sup>300</sup> See Tolmein (1998), p. 62. Cited in R. Kuder, *Recent Trends in German Ethnic Politics: the Roma*, p. 47.

<sup>301</sup> Interviews with school teachers in Berlin, 15-28 November 2001. Also media clips from *TAZ*, *Junge Welt* and *Archiv gegen Rechts* from 2000/01.

German Sinti and Roma of Berlin-Brandenburg removed the organisation's title from the door-bell because of allegedly frequent threats contained in anonymous hate mail.<sup>302</sup>

### *Response by law enforcement officials*

Sinti and Roma representatives assert that the response of law enforcement officials to cases of violence against members of their communities is often unsatisfactory. Lawyers specialising in defence of minority groups concur that police are often slow to arrive to the scene of racially motivated crimes, slow to gather evidence, and slow to open cases and investigate, but quick to close files for lack of evidence.<sup>303</sup>

On 30 July 2001 in Wildau, Brandenburg, a camping site at which about 40 Roma were settled was bombed with at least three Molotow-cocktails and set on fire. The identity of the perpetrators has not been established, but the police spokesperson declared that "right-wing motives could not be concluded."<sup>304</sup> Romani leaders criticised the authorities for not taking greater care to find and prosecute perpetrators, even though nearly identical attacks had taken place before and those apprehended were known right-wing extremists.<sup>305</sup> The Romano Rat e.V. has asserted that too many perpetrators of terrorist acts against Roma and Sinti remain unidentified and therefore unpunished, and has called upon the police to carry out their investigations of these acts in good faith.<sup>306</sup>

Some public officials have suggested that victims of racially motivated crimes are to blame for attacks against them. When 15 right-wing youths chased and assaulted an asylum-seeker in the town of Spremberg, Brandenburg, in November 1999, rather than condemning the attack, the Mayor reportedly asked, "And what was he looking for in the streets at this hour of the night?"<sup>307</sup> According to a study conducted by the Brandenburg anti-discrimination bureau, in the absence of sufficient protection from

<sup>302</sup> Cited in "Erschaft des Stolzes" (Heritage of Pride), *Der Tagesspiegel*, 18 December 2001.

<sup>303</sup> Interviews with lawyers of the Association of Criminal Lawyers of Berlin, 26 November 2001. Also, the IHF Report 2002 notes that "[r]acial offenders [are] frequently only sentenced years after the offences were committed." See International Helsinki Federation Report 2002, see: <<http://www.ihf-hr.org/reports/AR2002/country%20links/Gernamy.htm>>, (accessed 3 August 2002).

<sup>304</sup> *Aktiv gegen Rechts* (Newsletter), 30 July 2001.

<sup>305</sup> For example, in April 1998, when several youth shouting "Sieg-Heil" threw Molotow-cocktails at a Traveller. See *Rundbrief 1999*, annual publication of the Association of German Sinti and Roma of Hesse, p. 19.

<sup>306</sup> The Romano Rat e.V., Press-release: "Declaration Addressed to the Berlin Authorities," 31 July 2001; on file with EUMAP.

<sup>307</sup> Cited in J. Delfeld, *Tradition und Zukunft des Rechtsextremismus* (The Tradition and Future of the Right-Wing Extremism), p. 7.

law enforcement authorities, members of ethnic minority groups resort to such “preventive” measures as avoiding trouble by “staying home after dark.”<sup>308</sup>

### 3.2.2 Violence by public actors

Legislation does not stipulate specific sentencing enhancements for racially motivated crimes perpetrated by law enforcement officers. Although the police are generally considered well-trained and respectful of human rights, reports of alleged violence and mistreatment against minority individuals, including Sinti and Roma, by law enforcement authorities are not uncommon (see Section 3.1.5). Most reported abuses are directed against “foreigners” (citizens of non-German origin, immigrants, migrant workers, asylum seekers and refugees, most of whom belong to racially distinct groups).

The official response to allegations of mistreatment by law enforcement personnel has been criticised as inadequate. For example, ECRI notes “a wide discrepancy between reports of excesses and the results of criminal proceedings and internal investigations of complaints, which find a relatively small number of complaints to be valid.”<sup>309</sup> Amnesty International asserts that investigations of law enforcement officers accused of having committed human rights violations against minority individuals and foreigners proceed slowly:<sup>310</sup> several reported cases of mistreatment by law enforcement authorities have remained unresolved for years.<sup>311</sup> Moreover, lawyers who deal frequently with cases of minorities and foreigners assert that the authorities are often too lenient with regard to infractions committed by law enforcement officials.<sup>312</sup> However, the Government has asserted that “(t)he investigations against police officers suspected of criminal acts are conducted carefully, just like other investigation proceedings, and without consideration of the identity of the person concerned.”<sup>313</sup>

Reportedly, victims of mistreatment by State officials are often reluctant to press charges against the alleged perpetrators, in part because of the expense involved, but also out of fear that the police might bring counter-charges. In a recent case in Berlin, a

<sup>308</sup> OPAS Final Report, p. 50.

<sup>309</sup> ECRI Report 2000, p. 14.

<sup>310</sup> Amnesty International Report 2001: Germany, see: <<http://www.amnesty.org>>, (accessed 25 October 2001).

<sup>311</sup> Amnesty International Report 2002: Germany, see: <<http://www.amnesty.org>>, (accessed 22 July 2002).

<sup>312</sup> Interviews with lawyers of the Association of Criminal Lawyers of Berlin, 26 November 2001. Interviews with lawyers in Hamburg, 5 December 2001. Interviews with lawyers in Cologne, 10 December 2001.

<sup>313</sup> CERD/C/338/Add.14, 10 August 2000, para. 99.

non-Caucasian person was arrested on suspicion of breaking into a flat. A false alarm was subsequently established. However, during the arrest the man's arm had been broken, and he decided to file a lawsuit against the police officer. Following two years of preliminary investigations (from 1998 until 2000), the case was dismissed by the state prosecutor, on the grounds that "the testimony of the claimant contradicted the testimony of the police officer," and there was "nothing to suggest that the testimony of the claimant should be trusted more than the testimony of the police officer;" the prosecutor estimated "only a 70 percent chance" that the incident took place as alleged.<sup>314</sup>

### *Treatment of non-citizens*

Alleged violence against and mistreatment of foreigners, particularly refugees, by law enforcement authorities (border control, railroad and ordinary police) presents a significant problem. The Amnesty International Report 2001 notes "a clear pattern of abuse" of foreigners in custody by the police,<sup>315</sup> and Amnesty and IHF have documented a number of incidents in which inhuman methods have been used during the forced deportation of asylum-seekers and refugees.<sup>316</sup>

ECRI has urged the Government to provide training to law enforcement officials, prosecutors, judges and lawyers "to enable the successful application of legal provisions aimed at combating racist and anti-Semitic crimes."<sup>317</sup>

## 3.3 Minority Rights

With ratification of the FCNM and the CRML, Germany undertook an obligation to support the right of its four recognised minority groups (Danes, Friesians, Sinti/Roma,

<sup>314</sup> Letter of the state prosecutor to M. R., the lawyer in the case. Copy of the letter on file with EUMAP.

<sup>315</sup> Amnesty International Report 2001: Germany, see: <<http://www.amnesty.org>>, (accessed 25 October 2001).

<sup>316</sup> International Helsinki Federation Report 2001, see: <<http://www.ihf-hr.org/reports/ar01/Country%20issues/Countries/Germany.pdf>>, (accessed 13 December 2001). See also, Amnesty International, "Germany: The Death During Forcible Deportation of Aamir Ageeb," EUR 23/004/00, 4 October 2000.

<sup>317</sup> ECRI Report 2000, p. 7.

and Sorbs) to maintain and foster their identity, language and culture.<sup>318</sup> However, Sinti and Roma often face serious obstacles to enjoyment of these rights in practice.<sup>319</sup>

The Federal Act of 22 July 1997 ratifying the FCNM and the Federal Act of 9 July 1998 ratifying the CRML<sup>320</sup> are subordinate to the Basic Law, although as Federal laws they take precedence over state laws, and as the more specific laws override other Federal laws.<sup>321</sup>

Aside from these ratification acts, there is no specific Federal legislation stipulating the rights of minorities, with the exception of the Declaration on the Rights of the Danish Minority of 29 March 1955.<sup>322</sup> The only existing provisions on the Federal level cited as applicable for minority protection in the State FCNM Report (1999) are Article 2 of the Basic Law, which guarantees the right to personal self-fulfilment, and Article 3, which bans discrimination by State agencies.<sup>323</sup> The leader of the Central Council for German Sinti and Roma has demanded that minority rights protection should be written into the Basic Law, but no such initiative is contemplated.<sup>324</sup>

Legislation on cultural matters, including language and education, is a prerogative of individual states. As of August 2002, only five of 16 states had adopted legislative provisions regarding minority protection: Article 25 of the Constitution of Brandenburg, Article 18 of the Constitution of Mecklenburg-West Pomerania, Articles 5.2 and 6 of the Constitution of Saxony, Article 37.1 of the Constitution of Saxony-

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<sup>318</sup> State FCNM Report, p. 114.

<sup>319</sup> “Noch immer vergessene Minderheit” (Still Ever-Forgotten Minority), *Husumer Nachrichten*, 18 May 2000. Also, OSI Roundtable Meeting, Hamburg, 8 April 2002. Advisory Committee concluded that “[d]espite valuable efforts, the implementation of the Framework Convention has not been fully successful for the Roma/Sinti.” See Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 97.

<sup>320</sup> Germany’s Declaration under the CRML stipulates that the Romani language on the territory of FRG “shall be protected pursuant to Part II of the Charter.”

<sup>321</sup> State FCNM Report, p. 5.

<sup>322</sup> The Declaration specifically guarantees that the members of the Danish minority enjoy fundamental rights on par with the German citizens. Cited in the State FCNM Report, p. 21.

<sup>323</sup> State FCNM Report, pp. 18–19.

<sup>324</sup> Federal Agency for Employment, Press-release of 27 April 2001; see <[http://www.arbeitsamt.de/hst/services/pressearchiv/26\\_01.html](http://www.arbeitsamt.de/hst/services/pressearchiv/26_01.html)>, (accessed 20 January 2002).

Anhalt, and Article 5 of the Constitution of Schleswig-Holstein.<sup>325</sup> None of these articles specifically mentions Sinti and Roma, although the other three recognised minority groups (Danes, Frisians, and Sorbs) are specifically mentioned in the legislation of the states in which individuals belonging to these groups reside. At the same time, the State FCNM Report points out “that Sinti and Roma more or less live in *all* parts of Germany” [emphasis in the original].<sup>326</sup>

Given the federal structure of Germany and the fact that the Sinti and Roma population is widely dispersed throughout the country, international legal experts have recommended the adoption of public law agreements between minority organisations and the Government as a means of ensuring specific and enforceable minority rights for German Sinti and Roma.<sup>327</sup> Sinti and Roma leaders have welcomed this recommendation; as of August 2002, however, only the state of Rhineland-Palatinate has initiated negotiations on, but not yet concluded, such an agreement with the local Sinti and Roma Association (see below).

### 3.3.1 Identity

The FCNM guarantees the right of persons belonging to ethnic and national minorities to maintain a separate identity.<sup>328</sup> The State FCNM Report cites Article 2.1 of the Basic Law (on the right to personal self-fulfilment) as providing protection of this right at the Federal level.<sup>329</sup>

There is no legal definition as to what constitutes a minority. The State FCNM Report explains that “(w)ithin the organisations of the German Sinti and Roma, there is ... no general agreement on the designation as either a national minority or an ethnic group,”<sup>330</sup> that “it is everybody’s individual personal decision – which is neither registered, reviewed or contested by the German State – whether he/she chooses to be considered a member of any of the groups protected under the Framework

<sup>325</sup> Thus, Schleswig-Holstein recognises Danish and Frisian minorities as entitled to protection and promotion in that State, Saxony and Brandenburg recognise minority rights for Sorbs (including the right to bilingual public signs), and Saxony-Anhalt and Meklenburg-West Pomerania recognise the right of minorities in general to cultural autonomy. State FCNM Report, p. 32.

<sup>326</sup> State FCNM Report, p. 18.

<sup>327</sup> See Central Council of German Sinti and Roma, ed., *Expert Opinion by Theo van Boven, Public Law Agreements about the Minority-Protection for the German Sinti and Roma* (1998).

<sup>328</sup> See FCNM, Art. 5.

<sup>329</sup> State FCNM Report, pp. 18–19.

<sup>330</sup> State FCNM Report, p. 11.

Convention,<sup>331</sup> and that the State “acknowledges the ... common basic position” that “the German Sinti and Roma are an inseparable part of the German people.”<sup>332</sup>

In reality, the right of Sinti and Roma to self- or non-identification is allegedly not always respected. The ECRI Report 2000 notes that some media perpetrate “(s)igmatising prejudices about Roma and Sinti ... particularly by naming alleged perpetrators of crime as Roma and Sinti without such mention being required for understanding of the reported incident”<sup>333</sup> (see Section 1).

Many Sinti and Roma reportedly conceal their identity in an attempt to avoid the negative effects of widespread anti-Gypsy prejudices, particularly in gaining access to employment, housing, education and commercial services.<sup>334</sup> The State CRML Report acknowledges that “[Sinti and Roma] are still subject to occasional private discrimination, due to the prejudices on the part of some fellow citizens,” which is “one of the reasons why the Romany language is rarely used in public.”<sup>335</sup>

ECRI criticised “the lack of recognition of the possibility that German identity may also be associated with other forms of identity than the traditional one,”<sup>336</sup> and stated that current debate on “defining culture” (*Leitkultur*) is a “worrying concept,” because it “reflects a concept of German identity as a fairly homogeneous one” and “reinforces negative stereotypes about other cultures.”<sup>337</sup> ECRI considered that “increased acknowledgement” of multiple identity besides the traditional German one may be a key to ensuring that minorities, including Sinti and Roma, “enjoy real equality in all fields of life.”<sup>338</sup>

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<sup>331</sup> State FCNM Report, p. 19.

<sup>332</sup> State FCNM Report, p. 11.

<sup>333</sup> ECRI Report 2000, p. 13.

<sup>334</sup> The interviews have been conducted by the reporter in twelve states visited during field research in the period November 2001-January 2002 and May-July 2002: Baden-Württemberg, Bavaria, Berlin, Brandenburg, Hamburg, Hesse, Lower Saxony, Meklenburg-West Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saxony-Anhalt and Schleswig-Holstein.

<sup>335</sup> State CRML Report, p. 7.

<sup>336</sup> ECRI Report 2000, p. 4.

<sup>337</sup> ECRI Report 2000, p. 17.

<sup>338</sup> ECRI Report 2000, p. 17.

### 3.3.2 Language

With ratification of the CRML in 1999, Germany granted minority language status to Romanes.<sup>339</sup> However there is no Federal legislation recognising the right of persons belonging to national minorities to use their language freely in the private sphere and before public authorities.<sup>340</sup> Regulation of language use is understood as a cultural matter, lying within the competence of individual states. As of August 2002, Hesse remains the only state that has accepted all 35 points required for implementing Part III of the CRML, despite the fact that the Romani language “is spoken in most of the *Länder* of the Federal Republic of Germany.”<sup>341</sup> Sinti and Roma leaders have expressed concern about the lack of protection afforded in practice to Romanes.<sup>342</sup>

The Association of German Sinti of Rhineland-Palatinate is currently negotiating a public law agreement with the state authorities with particular regard to minority language rights. The draft agreement also addresses the issues of discrimination, education and media, including representation on media boards, and legally enforceable actions for violations of minority rights.<sup>343</sup> However, the agreement has been blocked in the state Parliament, which has not yet approved the required minimum 35 of 108 points of the CRML; only 24 points had been agreed upon as of August 2002.<sup>344</sup> Jacques Delfeld, the leader of the Sinti Association, and Romani Rose, the head of the Central Council, have criticised the President of Rhineland-Palatinate, Kurt Beck, for an “unacceptable minority rights policy,”<sup>345</sup> claiming that he has

<sup>339</sup> Germany’s Declaration on the CRML states: “Minority languages within the meaning of the European Charter for Regional or Minority Languages in the Federal Republic of Germany shall be the Danish, Upper Sorbian, Lower Sorbian, North Frisian and Sater Frisian languages and the Romany language of the German Sinti and Roma; a regional language within the meaning of the Charter in the Federal Republic shall be the Low German language.” See: <<http://www.bmi.bund.de>>, (accessed 10 July 2002).

<sup>340</sup> State FCNM Report (p. 32) cites Article 2 of the Basic Law (guaranteeing the right of all to free development of personality) as the primary tool for protection of minority language rights at the Federal level.

<sup>341</sup> State FCNM Report, pp. 10–11. Several other states have accepted Part II of the CRML.

<sup>342</sup> “Sorge um Sprache: Sinti und Roma fordern Schutz des ‘Romanes’” (Concerns about the Language: Sinti and Roma Promote Protection of Romanes), *Wiesbadener Tagblatt*, 28 July 2001.

<sup>343</sup> H. Heuss, notes prepared for EUMAP (Part I), p. 40.

<sup>344</sup> “‘Offener Rassismus’ in Rheinland-Pfalz? Sinti und Roma kritisieren Landesregierung” (‘Open Racism’ in Rhineland-Palatinate? Sinti and Roma Criticise the State Government), *Wiesbadener Kurier*, 28 July 2001.

<sup>345</sup> “Sinti und Roma kritisieren Beck” (Sinti and Roma Criticise Beck), *Regionaldienst Sudwest*, 31 July 2001.



obstructed the passage of legislation to ensure minority rights for Sinti and Roma in Rhineland-Palatinate since 1992.<sup>346</sup> The spokesperson for the state government denied the allegations, and declared that the Central Council and the Association “adopted a politics of symbols, which in real life German Sinti and Roma let go.”<sup>347</sup>

The state of North Rhine-Westphalia supports a unique cultural initiative: the Roma theatre “Pralipe” in Mülheim (Ruhr).<sup>348</sup> The “Pralipe” theatre produces plays in Romanes, which has far-reaching implications for the preservation and fostering of the Romani language, culture and identity. Moreover, its commitment to fighting xenophobia earned a 1998 award from the International Institute of Mediterranean Theatre.<sup>349</sup>

### *Use of minority languages with public authorities*

The right of minorities to use their language before public bodies, particularly before courts, is articulated in a number of international legal instruments to which Germany is a party.<sup>350</sup> However, only two of 16 states, Schleswig-Holstein and Hesse, have accepted this obligation for Romanes; according to the Government, this is “due to the mostly small number of members of minorities as a percentage of the given local population” [in other states].<sup>351</sup>

In Schleswig-Holstein, the State Administration Act provides for a possibility to submit documents in a “foreign” language, that is, according to the State CRML Report, “a language other than the official language [German].”<sup>352</sup> Hesse adopted an obligation under Article 10.4 (points e and f) concerning the use of minority languages by authorities in debates in their assemblies. If two or more members of Sinti and Roma minority are represented in regional parliaments, councils, parties, etc., they may use Romanes in debates, with a German translation included in the minutes.<sup>353</sup> However,

<sup>346</sup> “Minderheitenrechte verhindert” (Minority Rights Stalled), *Die Rheinpfalz*, 28 July 2001.

<sup>347</sup> “Rose wirft Beck Hinhalte-Taktik vor” (Rose Reproaches Beck’s Delay Tactic), *Pirmasenser Zeitung*, 28 July 2001.

<sup>348</sup> State FCNM Report, p. 45.

<sup>349</sup> State CRML Report, p. 139.

<sup>350</sup> See FCNM, Art. 10, para. 3; See also ICCPR, Art. 14, para. 3, and ECHR, Art. 5, para. 2, and CRML, Art. 9 and 10.

<sup>351</sup> State FCNM Report, p. 75. An estimated 35,000 members of the Sorbian minority, and an estimated 50,000 members of the Danish minority have command of their languages as well as of German. See State FCNM Report, p. 6. Romanes is spoken by 70,000 persons at a minimum. See State FCNM Report, p. 10.

<sup>352</sup> State CRML Report, p. 130.

<sup>353</sup> State CRML Report, p. 131.

there are no Sinti or Roma representatives in the elected bodies, and the provision has not yet been utilised.

The State FCNM Report asserts that Sinti and Roma object to the notion that the State authorities would learn Romanes for the purposes of communicating with Romani clients, and that since Sinti and Roma “grow up as bilingual speakers of Romany and German and, as a rule, have a command of both languages, no actual requirement for using Romany in relations with administrative authorities has been observed.”<sup>354</sup> As regards the provision on drafting and translating legal documents and evidence in minority languages to avoid misunderstandings and errors, the State CRML Report asserts that “this obligation is met by the legal situation prevailing in Germany” and “no special measures have been taken.”<sup>355</sup>

However, some Romani leaders have claimed that many Roma experience difficulties when served with court papers in the German language, which they do not always understand well, making it difficult for them to follow the procedure in an informed manner.<sup>356</sup> Some Roma leaders have demanded that Roma and Sinti should be given the opportunity to represent themselves before the authorities, including before courts, in their own language.<sup>357</sup>

The State CRML Report indicates that there is information only about one case, in Baden-Württemberg, where a court contacted the Ministry of Justice for a qualified translator of Romanes to assist in proceedings. The Federal Association of Interpreters and Translators helped find an interpreter, and the Ministry in Baden-Württemberg has now supplemented its list of interpreters for rarely used languages, published in its *Official Gazette*, with one interpreter of Romanes.<sup>358</sup>

Experts note that involving Sinti and Roma individuals themselves as translators or mediators with authorities would not only relieve possible tensions concerning outsiders’ involvement, but would also present additional employment opportunities for members of the minority. However, this suggestion which has not received serious consideration to date.<sup>359</sup>

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<sup>354</sup> State FCNM Report, p. 79.

<sup>355</sup> State CRML Report, p. 129.

<sup>356</sup> R. Kawczynski, “Report on the Condition of Roma in Europe,” submitted to the OSCE, October 2000, p. 10.

<sup>357</sup> R. Kawczynski, “Report on the Condition of Roma in Europe,” submitted to the OSCE, October 2000, p. 10.

<sup>358</sup> State CRML Report, p. 129.

<sup>359</sup> H. Heuss, notes prepared for EUMAP (Part I), p. 43.

### 3.3.3 Education

The regulation of education is within the legislative competence of the states. Six of sixteen states (Hesse, Berlin, Rhineland-Palatinate, Hamburg, North Rhine-Westphalia and Baden-Württemberg) have adopted select legislative provisions on pre-school, primary, secondary, and post-secondary or adult education for Sinti and Roma, supporting implementation of Article 8 of the CRML.<sup>360</sup> These activities have provided historical and cultural information in teaching curricula about Sinti and Roma, reportedly “(o)n the basis of the requirements and wishes stated by the representatives of the persons concerned.”<sup>361</sup>

With the exception of Hamburg, no state presently provides for instruction in Romanes within the public school system, on the grounds that such instruction is “not wanted by German Sinti parents.”<sup>362</sup> The State FCNM Report acknowledges that some Roma organisations take a different view, and “argue in favour of the inclusion of Romany in school education and wish to support measures, like those taken in European neighbouring countries, for the development of a written form of this language,” but indicates that the Government chooses to respect the will of the majority of Sinti, who reportedly insist on “cultivat(ing) their language exclusively within the family and family clans.”<sup>363</sup>

#### *Teaching in Romanes*

In individual states, authorities have provided support and financing for NGO pilot projects to provide education in Romanes. The first such project is currently being implemented in Hamburg, where the Senate Authority for Schools, Youth and Vocational Training supports instruction in Romanes at four schools in schooling districts in which substantial numbers of Roma and Sinti reside.<sup>364</sup> Teaching in Romanes is integrated into the curriculum of select schools, and Roma teachers work in a team with another teacher. Some of the learning materials are bilingual and include information on Romani history and literature.<sup>365</sup> Hamburg authorities also support vocational training and continued education in Romanes at the Adult

<sup>360</sup> As cited in the State CRML Report, pp. 119–123.

<sup>361</sup> State FCNM Report, p. 112.

<sup>362</sup> State FCNM Report, p. 112.

<sup>363</sup> State FCNM Report, p. 96.

<sup>364</sup> The project is being implemented at Läiszstrasse Primary School, at Billbrookdeich Primary, Secondary Modern and Secondary Technical Schools, at Friedrichstrasse Primary, Secondary Modern and Secondary Technical Schools, and at Ochsenwerder Primary, Secondary Modern and Secondary Technical Schools.

<sup>365</sup> State CRML Report, p. 121.

Education Centre.<sup>366</sup> Exceptionally in Germany, Hamburg authorities on a number of occasions have waived qualification examinations in order to employ Roma teachers (currently four Roma teachers are employed).<sup>367</sup>

The State FCNM report maintains, however, that “apart from a number of pilot test models for Roma children, Romany is *not* taught at German schools ... in compliance with the parents' wish [emphasis in the original].”<sup>368</sup>

There is no Sinti and Roma University or Department of Romani studies.<sup>369</sup> The Government asserts that Sinti and Roma oppose the development of a written form of their language, and object to outsiders learning and providing instruction in their language.<sup>370</sup> With regard to the State obligation under Article 8(2) of the CRML to provide education in minority or regional languages at all stages of education, including higher education, the State CRML Report asserts: “On account of the situation of this minority/language group in terms of school education ... this provision is not relevant in practice.”<sup>371</sup>

### *Minorities in school curricula*

The FCNM and CRML both require State Parties to disseminate knowledge about minority history and culture in education and research.<sup>372</sup> As individual states have competence over educational matters, initiatives to impart information about the history and culture of Sinti and Roma vary from state to state.

In Hesse, teaching the history and culture of Sinti and Roma forms a part of the school curricula on the basis of educational materials developed by the State Institute for Pedagogy in cooperation with the Ministry of Culture and the Fritz-Bauer Institute. In addition, the Marburg-based Educational Bureau for National Minorities has produced

<sup>366</sup> State FCNM Report, p. 112.

<sup>367</sup> Staff Member of the Institute for Furthering Education of Teachers, presentation at the conference “Roma Projects’ ‘Good Practices’: Possibilities and Limits,” conference organised by the Roma National Congress/Rom and Cinti Union in Hamburg, 19-21 November 2001.

<sup>368</sup> State FCNM Report, p. 112.

<sup>369</sup> The Marburg-based Society for Anti-Gypsyism Studies, founded in 1998, is an interdisciplinary scholarly project. However, it is not intended to train Romani scholars. Its members are “scholars from various special-subject fields, who study anti-Gypsy attitudes in the past and at present and the outflow of such attitudes, especially the destruction of Sinti and Roma during the Holocaust.” See State FCNM Report, p. 92.

<sup>370</sup> State FCNM Report, p. 86.

<sup>371</sup> State CRML Report, p. 128.

<sup>372</sup> See FCNM, Art. 12(1) and CRML, Art. 8(1g).

materials on Sinti and Roma history and culture which are designed for use with the majority population.<sup>373</sup>

In Baden-Württemberg, the Association of German Sinti and Roma, in cooperation with the State Institute for Political Education, has published a brochure intended for teachers: “Between Romanticising and Racism – 600 Years of Sinti and Roma History in Germany.” In Hamburg, a reading book with pictures on the history and culture of Sinti and Roma – “We Speak Many Languages” – was prepared by the Centre for Political Education, and is used in schools (also in classes attended by Roma). The Centre for Political Education in Rhineland-Palatinate, in cooperation with the Educational Centre, has also developed educational material: “Sinti and Roma – a German Minority.”<sup>374</sup>

However, aside from these books and brochures, Sinti and Roma leaders maintain that school curricula do not as yet provide adequate information about the history and culture of this minority, or about their victimisation in the Holocaust. Depending on the school, the history of Sinti and Roma receives from one hour per month to two days per year. Moreover, the images of Sinti and Roma in texts and school-books recommended for reading to school-age children are often stereotyped; “respected” or “successful” Sinti and Roma are often portrayed as those who have assimilated into the majority society rather than maintaining Romani identity.<sup>375</sup> In this respect, the FCNM Advisory Committee “considers that the German authorities should intensify their efforts to enhance awareness of minority cultures ... [*inter alia*] in education.”<sup>376</sup>

### 3.3.4 Media

The FCNM and the CRML stipulate a State obligation to support minority media.<sup>377</sup> However, jurisdiction over media matters rests within the competence of individual states, and the Federal Government is furthermore constitutionally prohibited from exerting influence on the content of broadcasting programs.<sup>378</sup>

<sup>373</sup> Information from the Association of German Sinti and Roma of Hesse, Darmstadt, 11 January 2002.

<sup>374</sup> State FCNM Report, p. 88.

<sup>375</sup> M. Krausnick, “Images of Sinti and Roma in German Children’s and Teenage Literature,” in S. Tebbutt, pp. 107–127.

<sup>376</sup> Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 78.

<sup>377</sup> See FCNM, Art. 9; CRML, Art. 11.

<sup>378</sup> State FCNM Report, p. 50.

The state of Schleswig-Holstein has adopted concrete legal provisions on minority media. The Broadcasting Act was amended in 1999 to allow any socially relevant group to apply for nominations for election to the Media Council.<sup>379</sup> The broadcasting corporation has a legal mandate to support minority protection and to report on cultural diversity.<sup>380</sup> In addition, the Prime Minister of Schleswig-Holstein sent a letter to the broadcasting authorities urging them to explore possibilities “for integrating contributions in the minority languages ... into their programs, as a service for the citizens and in support of this element of the culture of Schleswig-Holstein.”<sup>381</sup>

There are no television programs in Romanes, allegedly because the dispersion of the Sinti and Roma population across Germany renders the development and broadcasting of such programming impractical.<sup>382</sup> However, in the states of Hesse and Rhineland-Palatinate TV programmes in Romanes may be broadcast over the “Open Channel,” although as of August 2002 there had not been any such broadcasts.<sup>383</sup>

The State FCNM Report states that “(p)ublication of print media in the Romany language is not in agreement with the conviction of the German Sinti that cultivation of their language should be confined to the family and family clan and that no written form of this language should be developed.”<sup>384</sup> The Government nevertheless acknowledges that Sinti and Roma organisations issue print materials in Romanes, such as brochures, information leaflets and circulars.<sup>385</sup>

The Central Council issues various publications of concern to Sinti and Roma in the German language. The Berlin-based Romani Union e.V., with funds from the European Commission, for several years published the journal *Romano Lil* in Romanes and German; however, the publication recently ceased, as funding was discontinued.<sup>386</sup> Several Associations of German Sinti and Roma and Romani NGOs publish annual reports or periodic newsletters. With the exception of the Central Council’s

<sup>379</sup> State Broadcasting Act (13 October 1999), Section 17, para. 2, Section 24, para 3, Section 34, para. 1, and Section 54, para. 3.

<sup>380</sup> Inter-State Treaty on North German Television (NDR), Art. 3, para. 3, Art. 5, para. 2, and Art. 7, para. 2.

<sup>381</sup> Cited in State CRML Report, p. 134.

<sup>382</sup> State FCNM Report, p. 71. The Advisory Committee on FCNM, however, notes that the situation is “not explained solely by the numbers and the economic and practical possibilities of the groups concerned.” See Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 44.

<sup>383</sup> State CRML Report, p. 135.

<sup>384</sup> State FCNM Report, p. 67.

<sup>385</sup> State FCNM Report, p. 67.

<sup>386</sup> Information from Rajko Djuric, Magdeburg-Loburg, 25 July 2002.

publications, which are almost exclusively financed by the Federal Government, funding for the few existing Sinti and Roma publications is usually provided by local authorities in select states or by international organisations or private funds.

The only existing radio broadcasting programme in Romanes is broadcast by Berlin Radio SFB 4 *Multikulti*, which broadcasts in Romanes for 30 minutes once a week on Sunday night from 9:35pm to 10:05pm.<sup>387</sup>

### 3.3.5 Participation in public life

The State FCNM Report reveals that support for the Sinti and Roma minority has been limited to the cultural sphere. There have been few efforts to enhance their legal and political rights.

The only state to have adopted legislative provisions concerning the right of minorities to participation in public life is Schleswig-Holstein. Its Constitution stipulates:

The existence ... of the culture of national minorities and ethnic groups and their political participation are afforded protection by the State, local governments and local authority associations. The national Danish minority and the Frisian ethnic group are entitled to protection and promotion.<sup>388</sup>

The Danes (an estimated 50,000 persons) are exempted from the Electoral Act's five percent threshold for representation in the state Parliament; however, no such allowance has been made to ensure participation for Sinti and Roma (an estimated 7,000 persons). Matthäus Weiss, the leader of the Association of German Sinti and Roma of Schleswig-Holstein, noted that it is usually "forgotten that the Danes and Frisians are not the only minorities in the state."<sup>389</sup> In fact, a modest package proposal by the Social-Democratic Party (SPD), in coalition with the Alliance 90/Green Party, to grant protection to the Sinti and Roma minority (together with protection of the disabled and animals) in Schleswig-Holstein was blocked by the CDU/FDP opposition.<sup>390</sup>

The Government acknowledges that "(o)n account of their widely dispersed homes, direct participation of the German Sinti and Roma in political life is more difficult

<sup>387</sup> Radio Berlin Multikulti homepage, see: <<http://www.multikulti.de>>, (accessed 30 November 2001).

<sup>388</sup> Constitution of Schleswig-Holstein, Art. 5.2, cited in the State FCNM Report, p. 37.

<sup>389</sup> "Deutscher geht nicht" (Could Not Be More German), *Frankfurter Rundschau*, 2 January 2002.

<sup>390</sup> Cited in "Deutscher geht nicht" (Could Not Be More German), *Frankfurter Rundschau*, 2 January 2002.

than in the case of the other minorities with a more compact form of grouped settlement.”<sup>391</sup> However, Romani leaders have asserted that Sinti and Roma “are citizens of the countries they are living in, and it is this fact that obliges these countries (including Germany) to let Roma participate equally in the community.”<sup>392</sup>

The State FCNM Report indicates that there are no known Sinti or Roma representatives in either the Federal or state legislatures, although it asserts that a number of Sinti have been elected to municipal/parish councils.<sup>393</sup> No Sinti or Roma are known to hold executive or judiciary offices.

The Advisory Committee in this regard noted that “[n]umerous institutional means of participation have been set up for [other minorities] but this is not yet the case for the Roma/Sinti, although one of their organisations receives Federal funding,”<sup>394</sup> and recommended that the authorities “should review this matter and consider how to set up much more appropriate structures by which the Roma/Sinti can be regularly consulted in all parts of [Germany] on matters concerning them.”<sup>395</sup>

### *Citizenship*

Lack of citizenship prevents access to minority rights – including to the right of political participation – for over half of all Roma in Germany.<sup>396</sup> In turn, lack of voting rights provides little incentive for political parties and leaders to take into consideration the issues faced by Roma, as well as other long-term “foreign” residents.

The requirement of citizenship as a prerequisite for enjoying minority protection has a particular impact on Roma, as a stateless minority. Yet though Germany is a country

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<sup>391</sup> State FCNM Report, p. 115.

<sup>392</sup> R. Kawczynski, “Report on the Condition of Roma in Europe,” submitted to the OSCE, October 2000, p. 12.

<sup>393</sup> State FCNM Report, p. 115.

<sup>394</sup> Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 66.

<sup>395</sup> Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 90.

<sup>396</sup> Advisory Committee on the FCNM considers that the “lack of citizenship may constitute a real obstacle to fuller integration, including participation in political life.” See Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 40.



with a particular responsibility towards Sinti and Roma, it has not made allowances for Roma immigration or asylum-seekers.<sup>397</sup>

Until very recently the overwhelming majority of “foreigners,” including Roma, who arrived in Germany from the 1950s onwards and their descendants did not have citizenship, and thus were barred from political participation. According to the figures compiled by the Federal Ministry of Interior, as of 31 December 1999 (the day before the new Citizenship Law would enter into force), of over seven million officially registered foreigners, over 50 percent had been living in Germany for at least ten years, and approximately 32 percent had been living there for 20 years or more. About 20 percent had been living in Germany for between six and ten years, and approximately 28 percent had been living there for less than six years. Specific figures for Roma are not available.<sup>398</sup>

As of 1 January 2000, many foreigners who were born in Germany or were long-term legal residents have become eligible for citizenship, and thus voting rights, *inter alia*. However, the rate of naturalisation remains slow. In practice, the process of acquiring citizenship, particularly in the absence of ties with Germany (i.e. German ethnic origin or marriage), is both cumbersome and expensive.<sup>399</sup>

The new law stipulates the following naturalisation requirements, to be fulfilled after eight years of continuous legal residence: German language proficiency, commitment to the Basic Law, a clean criminal record, and financial self-sufficiency; in addition, applicants are required to renounce all previous nationalities. Minors eligible for double or multiple citizenship are required to make a declaration on choosing German nationality by the age of 23; should no such declaration be made, German citizenship may be taken away. ECRI noted that current “[naturalisation] criteria although not in themselves discriminatory might potentially lend themselves to arbitrary and discriminatory application” and encouraged the authorities “to give consideration to these potential problems.”<sup>400</sup>

<sup>397</sup> Prior to 1989, Germany set annual immigration quotas for Jewish refugees and asylum seekers from the Communist bloc countries. No such measures were provided for Roma, who have become victims of violent attacks *after* the collapse of Communist regimes in many former Communist bloc countries. See, e.g. “Monitoring the EU Accession Process: Minority Protection 2001,” available at: <<http://www.eumap.org>>, (accessed 8 September 2002).

<sup>398</sup> Federal Ministry of Interior, see: <<http://www.bmi.bund.de>>, (accessed 1 July 2002).

<sup>399</sup> Even with the new law Germany has one of the most stringent citizenship procedures in the EU, hence the relatively high percentage of “foreigners” in Germany. The FCNM Advisory Committee further notes in its Opinion that “naturalisation rates remain significantly less than expected,” para. 40.

<sup>400</sup> ECRI Report 2000, p. 6.

## 4. INSTITUTIONS FOR MINORITY PROTECTION

### 4.1 Official Bodies

Point 10 of the Coalition Agreement of 20 October 1998 of the current Government stated:<sup>401</sup>

The new Federal Government wants to protect minorities and wants to achieve their equal treatment and social participation. No one must be discriminated against on grounds of his disability, origin, colour, ethnic origin or sexual orientation as gay or lesbian. We will put on track a law prohibiting discrimination and supporting equal treatment.<sup>402</sup>

As of August 2002, there was neither comprehensive anti-discrimination legislation nor a statutory body with adequate powers for minority protection or enforcement of anti-discrimination,<sup>403</sup> as required by the Race Equality Directive (see Section 3.1).

The Government has planned to ensure implementation of the EU Race Directive through four new institutions (so-called “national focal points”): the European Office for Monitoring Racism and Xenophobia (EBRF), the German Human Rights Institute, the National Monitoring Office, and the Office for Promoting Implementation of Ethnic Guidelines under Article 13.<sup>404</sup> Two of these bodies have already been created: the EBRF was established on 2 June 1997, and the Human Rights Institute was established on 7 December 2000. Both are meant to function independently from the Government.

The EBRF receives funding from the Vienna-based EU Monitoring Centre (EUMC). Its mandate includes: developing strategies on fighting intolerance, generating a database of “good practices,” conducting national and EU roundtables, and serving as an information centre on issues of racism, xenophobia and anti-Semitism; anti-Gypsyism is not mentioned specifically.

The Human Rights Institute is intended to work on behalf of civil society, in close cooperation with domestic and international NGOs as well as official institutions. The mandate of the Institute includes: gathering information on the human rights situation in Germany and abroad, preventing human rights violations and fostering rights protection, academic research, and advising the Government on policy. Funding for the Institute is provided by the Federal Government, presenting a clear conflict of

<sup>401</sup> At the recent election the coalition attained the necessary majority to stay in power.

<sup>402</sup> EUMC, *Anti-discrimination Legislation in EU Member States – Germany*, Vienna, 2002, p. 27.

<sup>403</sup> EUMC, *Anti-discrimination Legislation in EU Member States – Germany*, Vienna, 2002, p. 29.

<sup>404</sup> Information from the Alliance for Democracy and Tolerance, Berlin, 27 November 2001.

interest; as noted by the HCNM with regard to State-funded NGOs (in Spain), NGO representatives “cannot be expected to dispense fully disinterested advice” when this is likely to affect their own funding.<sup>405</sup>

The other two institutions have yet to be established. The Office for Promoting Implementation of Ethnic Guidelines under Article 13 is to fulfil the requirement of the EU Race Directive for a national body with powers to initiate proceedings in cases of alleged discrimination, gather information and perform a political function of communicating with the Government.<sup>406</sup> The National Monitoring Office is to work in cooperation with the EBRF by gathering information and analysing data on right-wing extremist tendencies, writing shadow reports on right-wing violence, and advising on legislative policies and strategies to counter right-wing extremism. However, there have been proposals in the Federal Parliament calling for the discontinuation of plans to establish these bodies, on the grounds that they are unnecessary.<sup>407</sup>

The main coordinating body for all human rights initiatives is the Alliance for Democracy and Tolerance, specially established at the Federal Ministry of the Interior in 2000.<sup>408</sup>

There are no Sinti or Roma representatives employed at the EBRF, the Human Rights Institute, or the Alliance for Democracy and Tolerance.

### *Combating discrimination*

Unlike fighting intolerance and racially motivated violence, fighting discrimination is a relatively novel concept in Germany.<sup>409</sup> The Federal Government generally does not provide funding for anti-discrimination initiatives, and there are very few projects to provide information and training to public officials regarding their constitutional duty not to discriminate.<sup>410</sup> Civil society organisations usually receive support for anti-discrimination projects from their respective states, international institutions (particularly the European Commission and European Social Fund) or other international bodies or

<sup>405</sup> *Report on the Situation of Roma and Sinti in the OSCE Area*, p. 145.

<sup>406</sup> The absence of a national body to accept individual complaints of discrimination and to assist victims in pursuing such complaints has been noted critically by ECRI. See ECRI Report 2000, p. 8.

<sup>407</sup> Letter from the Federal Commission for Foreigners' Affairs commenting on an earlier draft of this report; on file with EUMAP.

<sup>408</sup> See: <<http://www.buendnis-toleranz.de>>, (accessed 1 July 2002).

<sup>409</sup> See D. Clayton, *Antidiskriminierungsarbeit in Nordrhein-Westfalen* (Anti-Discrimination Work in North Rhine-Westphalia), and OPAS Final Report.

<sup>410</sup> EUMC, *Anti-discrimination Legislation in EU Member States – Germany*, Vienna, 2002, p. 28.

private foundations. However, these projects are rarely institutionalised, and cease to function when the funding ends.

One such project, the “Open Access to Private Services” (OPAS) – a joint German, French and Austrian project, was financed by the European Commission to survey discriminatory practices and promote free, i.e. non-discriminatory, access of all persons to private goods and services in these countries. The project did not focus on discrimination against any specific minority group, such as for example Sinti and Roma, but rather on discrimination in access to goods and services in general. In Germany, the OPAS project, which was finalised in February 2002, was undertaken by the anti-discrimination bureau in the state of Brandenburg.

There are presently only three anti-discrimination bureaux in Germany: in the states of North Rhine-Westphalia and Brandenburg and in the city of Hanover. These bureaux conduct sociological surveys and publicise their findings; receive complaints from the public; communicate with alleged perpetrators of discriminatory acts on behalf of complainants, and in certain instances file lawsuits.

### *Commissions for Foreigner's Affairs*

Commissions for Foreigners' Affairs, by definition created as bodies to attend to matters of concern for non-citizens, have no specific responsibilities related to the protection of minority rights. However, in practice they render assistance to any victim of discrimination, including citizens. Some 200 Commissions for Foreigner's Affairs have been established, in all states as well as at the local level; at the national level there is a Federal Commission for Foreigners' Affairs. Their general functions include: promoting integration, identifying and analysing conflicts between Germans and foreigners, developing measures to encourage tolerance and acceptance through public relations work, and supporting foreigners' self-organisations and local advisory councils for foreigners.<sup>411</sup> As a rule, such bodies do not have sufficient financial or personnel resources to advise on the means of legal recourse or to take legal action on behalf of alleged victims of discrimination.<sup>412</sup>

The Commissions try to involve minority individuals in the implementation of various concrete projects. For example, minority individuals are often called upon to help communicate between alleged victims and perpetrators of discrimination (e.g. between minority individuals and flat-owners, employers, school administrations, teachers,

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<sup>411</sup> State FCNM Report, p. 41.

<sup>412</sup> EUMC, Anti-discrimination Legislation in EU Member States – Germany, Vienna, 2002, p. 29.

etc).<sup>413</sup> However, minority representatives generally do not take an active part in Commission policy and decision-making processes, such as advising on legislation or policy development and implementation.

The new Aliens Act strengthened the rights of the Federal Commissioner for Foreigners' Affairs *vis-à-vis* the relevant Federal ministries. The Commissioner can now request statements from Federal public authorities in case of substantiated allegations of unjustified unequal treatment.<sup>414</sup> The Commissioner, currently Marieluise Beck, reports to the Federal Parliament every two years on the situation of foreigners. The Federal Commission communicates with representatives of Sinti and Roma organisations, through the "Forum against Racism," *inter alia*.

The Forum, established in 1998 and managed by the Federal Ministry of Interior, presents an opportunity for institutionalised dialogue between the Government and civil society organisations on questions of discrimination.<sup>415</sup> The Forum conducts national roundtable meetings two to three times a year, where Sinti and Roma representatives also have an opportunity to make presentations. For example, in 2001 the Central Council of German Sinti and Roma raised issues of continued police profiling of members of the minority in Bavaria, and of persistent racial bias in the media.<sup>416</sup>

### *Governmental policy on minorities*

There is no comprehensive Government policy on minorities, nor a special official body in charge of minority issues.<sup>417</sup> At present, on the Federal level, "Department A" of the Ministry of Interior has competence over "minority matters," including asylum issues, while the Federal Ministry of Justice is responsible for the "human rights aspects" of minority protection.<sup>418</sup>

At the state level, in Berlin the Senate of Youth, Schools and Sport – the equivalent of a Ministry at the state level – addresses issues of concern to Sinti and Roma, both German and foreign;<sup>419</sup> Schleswig-Holstein has established a Commissioner for Minority Matters which deals also with Sinti and Roma issues and reports directly to

<sup>413</sup> Information from the Commission for Foreigners' Affairs of the Berlin Senate, Berlin, 28 November 2001.

<sup>414</sup> Aliens Act, Art. 91, paras. a and c.

<sup>415</sup> EUMC, Anti-discrimination Legislation in EU Member States – Germany, Vienna, 2002, p. 28.

<sup>416</sup> Information from the Federal Commission for Foreigners' Affairs, Berlin, 16 May 2002.

<sup>417</sup> State FCNM Report, p. 36.

<sup>418</sup> State FCNM Report, p. 33.

<sup>419</sup> Berlin Senate website, see: <<http://www.sensjs.berlin.de.>>, (accessed 1 January 2002).

the Prime Minister of the state. There are no other special bodies at the state level,<sup>420</sup> although some states have developed *ad hoc* legislative and policy initiatives with regard to education, employment and integration of Sinti and Roma (see Section 3.1).

The Government often delegates minority protection matters, *inter alia*, to NGOs, as “a realisation of the Federal Government’s guiding principle of an activating State that makes suggestions and sets framework conditions but does not do everything itself.”<sup>421</sup> Accordingly, initiatives concerning Sinti and Roma have also been passed onto NGOs. The State FCNM Report explains that “in line with the federal structure of the Federal Republic of Germany, [Sinti and Roma organisations] are grouped in State Associations. The Central Council of German Sinti and Roma serves as the umbrella organisation for the total of 16 state, regional and local associations and institutions.”<sup>422</sup>

Competences of the Central Council include: representing the interests of German Sinti and Roma, calling for legislative proposals and political initiatives, enforcing minority rights, dealing with the issues of Holocaust, cooperating with other German Sinti and Roma Associations and with international minority and human rights organisations, and supporting Sinti and Roma abroad.<sup>423</sup>

Since 2002 the Federal Ministry for Cultural Matters and Media is in charge of providing allocated funding to the Central Council. State Associations of German Sinti and Roma usually receive funding from their respective state governments. At the same time, the leaders of independent Romani organisations which do not belong to the Council’ umbrella claim difficulties in obtaining state funding for their projects (see below).<sup>424</sup>

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<sup>420</sup> The Government mentions that state Chancelleries or Ministries of Culture or Science may have competence dealing with minorities; see State FCNM Report p. 33.

<sup>421</sup> CERD/C/338/Add.14, 10 August 2000, para. 121.

<sup>422</sup> Alliance for Democracy and Tolerance, see: <<http://www.buendnis-toleranz.de>>, (accessed 1 July 2002).

<sup>423</sup> State FCNM Report, p. 44.

<sup>424</sup> In this regard, the Advisory Committee recommended that the Government “should make sure that all financial requests made by the different organisations representing persons belonging to this minority group are given careful consideration.” See Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 28.

## 4.2 Civil Society

Civil society organisations have played an important role in raising awareness about racism and intolerance, and there is an ongoing dialogue between the Government and these organisations with regard to such issues.<sup>425</sup>

NGOs' antiracism initiatives often serve as a stop on activities of right-wing organisations by tracking down and exposing hate groups, and preventing and combating racially motivated violence. The Antiracist Information Centre (ARIC) has set up an electronic database of a network of organisations and individuals working against racism and intolerance.<sup>426</sup> Pro-Asyl and the Society for Endangered Peoples actively advocate the rights of refugees and asylum seekers, of whom many are Roma.

The Alliance Against Ethnic Discrimination (BDB) is a network of interest groups of migrants and ethnic minorities. Its activities include: training for minorities, raising public awareness, documenting cases of discrimination, conflict resolution, assistance to victims of discrimination, and policy-oriented research on discrimination and equal opportunities.<sup>427</sup>

Overall, however, there appears to be a distinction between fighting racism, intolerance and violence on the one hand, and fighting daily discrimination and exclusion on the other hand. While many NGOs focus on the former area, much less attention has been devoted to the latter; it cannot be said that civil society presents a united front in combating ethnic and racial discrimination and the exclusion of minorities.

### *Sinti and Roma organisations*

Sinti and Roma organisations began to appear only in the early 1980s.<sup>428</sup> These organisations have sought to position themselves as partners in the development and implementation of policies to ensure equal rights and conditions for Sinti and Roma, as an alternative to policies which treated these communities as objects of either police surveillance or social care. Sinti and Roma organisations have played a crucial role in

<sup>425</sup> EUMC, Anti-discrimination Legislation in EU Member States – Germany, Vienna, 2002, p. 29.

<sup>426</sup> Anti-Racist Information Centre, see: <<http://www.aric.de>>, (accessed 12 November 2001).

<sup>427</sup> EUMC *Raxen Mapping Exercise in Germany: Final Report*, January 2002; see: <<http://www.eumc.org>>, (accessed 22 July 2002).

<sup>428</sup> There were earlier attempts to set up Sinti and Roma organisations, for example the “Committee of German Gypsies” (*Komitee Deutscher Ziguener*) in Munich in 1946, see L. Elber, “*Ich wüßte, es wird schlimm.*” *Die Verfolgung der Sinti und Roma in München in 1933–1945* (‘I Knew It Would Be Bad.’ Persecution of Sinti and Roma in Munich in 1933–1945), Munich: 1993. However these attempts failed, largely because of the lack of support from the majority society. H. Heuss, notes prepared for EUMAP (Part II), p. 1.

the development of greater public awareness about the persecution of their communities, in obtaining recognition as a national minority, and in winning compensation for Romani victims of the Holocaust.<sup>429</sup>

Some Sinti and Roma organisations are currently grouped within State Associations, under the coordination of the Central Council of German Sinti and Roma. The Heidelberg-based Central Council, headed by Romani Rose, is funded entirely by the Federal Government. In addition, the Documentation and Cultural Centre attached to the Council receives 90 percent of its funding (€1,153,000 annually) from the Federal Ministry for Cultural Matters and Media, and ten percent (€115,000) from the state of Baden-Württemberg.<sup>430</sup> The Government regards the Central Council as the main representative of German Sinti and Roma, and Council members have taken part as members of official German delegations at various international fora.

Several organisations not affiliated with the Central Council have formed the Alliance of German Sinti, which is headed by Natascha Winter. Information about their activities was not available for this report;<sup>431</sup> however, since recently the Federal Government and some of state governments have begun to invite Alliance representatives to various political meetings and other events.<sup>432</sup> The State FCNM Report also asserts that the views of this organisation (which is also funded by the Federal Government) regarding issues of education, language and minority status “must be taken into account by the State to the same extent as the position taken by the Central Council.”<sup>433</sup>

A number of other organisations, such as the Association of German Sinti of Lower Saxony, the Rom and Cinti Union in Hamburg, and some Sinti, Sinti/Roma, and German/foreign Roma organisations function independently, collaborating on a number of issues.

The major ideological distinction between Sinti and Roma organisations appears to be the status of the Sinti and Roma minority. The Central Council-led organisations, in

<sup>429</sup> H. Heuss, notes prepared for EUMAP (Part II), pp. 1–2.

<sup>430</sup> *Bundesaushalt, Titel 684 14-193* with reference to the FCNM and CRML. Information provided by the Federal Ministry for Cultural Matters and Media, Berlin, 3 June 2002.

<sup>431</sup> “[T]he members of SAD see themselves as an independent ethnic group whose – social, cultural and political – aims and concerns differ from the Central Council’s positions.” See Comments by the Sinti Alliance Deutschland to the Opinion of the Advisory Committee on the Report on Implementation of the FCNM in the Federal Republic of Germany, Cologne, 25 June 2002. Information from the Federal Ministry of Interior, 29 July 2002.

<sup>432</sup> H. Heuss, notes prepared for EUMAP (Part II), p. 1.

<sup>432</sup> H. Heuss, notes prepared for EUMAP (Part II), p. 4.

<sup>433</sup> State FCNM Report, p. 11.



agreement with the Government, advance the concept of a German national minority, while many independent Romani organisations promote the concept of a transnational minority, assert minority rights for all resident Roma regardless of legal status, demand special protection through European instruments and call for the development of a “Charter of Roma Rights.”<sup>434</sup>

As there is no consolidated official body to which independent Sinti and Roma organisations could legitimately apply for support for their initiatives,<sup>435</sup> some Romani leaders feel that selective and insufficiently transparent mechanisms for allocating public funding have fuelled competition and conflict between some Sinti/Roma organisations. At the same time, lack of unity among Sinti and Roma organisations is often cited as one of the principle reasons for the limited success of programmes to improve their situation.<sup>436</sup>

State support for Sinti and Roma appears inadequate compared with support for other recognised minorities.<sup>437</sup> For example, annual financial support provided by the state of Schleswig-Holstein to the Danish minority (numbering 50,000) has been DM 53,429,900 (c. €26,000,000), while support to the Sinti and Roma minority (numbering 7,000) has been DM 170,700 (c. €85,000): 300 times less for a group that is only seven times smaller.

Another major point of criticism on the part of Romani leaders is that many NGOs that receive Government funding to improve the situation for Sinti and Roma often fail to integrally involve individuals from these communities in their work, or to listen to the issues and demands put forth by a wide range of Sinti and Roma organisations. In fact, many organisations that currently work on Sinti and Roma issues are not run by Sinti or Roma. One Romani leader referred to the “Roma grants Klondike” that has developed as a result of the funding that has been made available by international (e.g. EU) bodies and the Government to finance initiatives for the benefit of Sinti and

<sup>434</sup> H. Heuss, notes prepared for EUMAP (Part II), p. 3. See also, R. Kawczynski, “Report on the Condition of Roma in Europe,” submitted to the OSCE, October 2000, p. 16.

<sup>435</sup> Advisory Committee found that “the present financial support system is perceived as very complicated by representatives of several national minorities because of the large number of authorities it involves” and recommended that “Germany should seek, in cooperation with the national minorities concerned, to simplify and clarify the financial support for minority languages and cultures.” See Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 76.

<sup>436</sup> “The State and the Gypsies,” interim report on the policy research project of the European Migration Centre, Berlin, November 2001; on file with EUMAP.

<sup>437</sup> Advisory Committee notes Germany’s “smaller financial contribution in favour of the Roma/Sinti minority.” See Advisory Committee on the FCNM, Opinion on Germany, adopted on 1 March 2002, para. 26.

Roma. In the opinion of some Romani leaders, instead of addressing problems faced by Roma and Sinti, such projects often “fight Roma and Sinti *as* a problem.”<sup>438</sup>

Finally, many State-sponsored attempts to integrate the Sinti and Roma minority run up against the long-standing and deeply-rooted mistrust of official institutions among these communities. Many Sinti and Roma leaders feel that unless the root causes of these attitudes are honestly confronted and addressed, and a comprehensive policy is elaborated on terms of equal partnership with the full spectrum of Sinti and Roma organisations, most Government-sponsored programmes stand little chance of success.<sup>439</sup>

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<sup>438</sup> “Roma Projects ‘Good Practices’: Possibilities and Limits,” conference organised by the Roma National Congress/Rom and Cinti Union in Hamburg, 19-21 November 2001.

<sup>439</sup> OSI Roundtable Meeting, Hamburg, 8 April 2002.

## 5. RECOMMENDATIONS

### *Recommendations to the Government:*

- recognise the existence of anti-Gypsyism as an independent form of racism, alongside anti-Semitism and xenophobia, which results in discrimination against and exclusion of Sinti and Roma;
- find acceptable ways to generate ethnic data without compromising relevant international rules on data protection and in cooperation with Sinti and Roma organisations, to research patterns of discrimination in various areas and assess the costs of discrimination and exclusion of minority groups;
- take legislative and policy steps to stop, remedy and prevent discrimination, exclusion and racially motivated crime:
  - adopt comprehensive anti-discrimination legislation, meeting the requirements of the Race Directive as a minimum;
  - introduce sentencing enhancements for racially motivated crime by both private and public parties;
  - demand investigation in good faith of incidents of discrimination and racially motivated crime;
- train all categories of public officials, civil servants, law enforcement personnel and others to apply anti-discrimination measures, to refrain from discriminating, and to develop active policies to ensure equality of opportunity in practice
- launch initiatives to educate the majority population on the illegality of discrimination and exclusion in private transactions, such as recruitment, housing and other goods and services;
- pass necessary constitutional amendments to legally guarantee specific minority rights;
- grant citizenship to all individuals who have legally lived in Germany for the pre-requisite number of years for naturalisation, regardless of their heritage;
- build trust among minority communities through confidence building and partnership programmes involving State institutions and Sinti/Roma organisations and by including duly-elected minority representatives in decision-making on the development and implementation of policies that affect them;
- involve Sinti and Roma in the implementation and evaluation of concrete minority projects, which will help the State meet its obligation to promote higher social participation, employment, and the overall integration of minorities into society.

# The Situation of Muslims in Italy

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## 1. EXECUTIVE SUMMARY

The Italian Government in recent years has acknowledged the importance of immigration to satisfy the country's need for labour, and has undertaken a number of positive measures to facilitate the integration of immigrants. Muslims are presently the second largest and fastest growing religious community among immigrants,<sup>1</sup> and in popular perception have become a symbol of and synonym for immigration. At the same time, the integration of Muslims – as a group that is culturally and religiously distinct from the majority population – poses a challenge to a society that has long been largely religiously and culturally homogeneous.

Many of the issues faced by Muslims in various areas of economic, political and social life are shared by immigrants in general. However, there are a number of problems that pertain to Muslims as a group, regardless of the extraordinary internal diversity of the Muslim community. In particular, public attitudes, media coverage and public discourse concerning Muslims indicate that members of this minority are among the least accepted in society. Moreover, the fact that a State agreement has not yet been concluded by Muslim organisations means that there are unresolved issues specifically affecting Muslims in the area of religious rights.

### *Discrimination*

There is a strong legal framework to ensure protection against discrimination, and considerable efforts have been undertaken to ensure full compliance with the EU Race Directive. However, public awareness about the legislative anti-discrimination framework is low, and existing provisions are rarely used by the most vulnerable groups, resulting in a lack of relevant case-law. There have been very few State initiatives to raise public awareness of existing alternatives for fighting discrimination.

Lack of data presents a significant challenge both to identifying the levels of religious and racial discrimination against members of vulnerable groups, and to challenging such discrimination in courts, which are legally empowered to take statistical evidence into consideration in employment cases related to hiring and firing.

There are no legal or political barriers to equal access to public schools for foreign children. As immigration is a relatively new phenomenon, there are still few immigrant children in the educational system, and very little data has been gathered. However, research conducted to date has revealed emerging patterns of lower than average attendance and achievement in school, and high drop-out rates among immigrant

<sup>1</sup> However, increasing immigration from Central-Eastern Europe seems likely to reverse this trend. See Caritas, *Anticipazioni dossier statistico immigrazione*, 2002, at: <<http://www.caritasroma.it>>, (accessed 25 September 2002).

children, which indicates that full and equal access to public education for all children has yet to be achieved in practice.

In the area of employment, there is a sharp divide between citizens, who have access to qualified jobs and enjoy extensive social protection, and immigrants, who most frequently lack qualifications and work in subordinate, unskilled and poorly paid positions, or engage in illegal employment without social protection.

Although the legislative framework guarantees equal access for citizens and legal residents (i.e. immigrants with a residence permit) to adequate housing and other public goods and services, in practice equal access is a serious problem for many immigrants. Housing conditions for many immigrants are extremely poor, as a result of both low economic status tied to employment and discrimination in access to housing.

There is little data on health-related problems among immigrants, either generally or related specifically to Muslims. Illegal immigrants are entitled to basic healthcare protection. However, many immigrants do not benefit from access to healthcare in practice as a result of their failure to register with healthcare services.

Violence against immigrants, including Muslims, by both private actors and law enforcement officials is not uncommon. However, generally no evidence is available to establish racial or religious motivation for such acts, and in practice many such crimes go unpunished. Many more cases are simply not reported, and no data are gathered. Meanwhile, international monitoring bodies have noted that the number of foreigners in prisons is almost ten times higher than their percentage in relation to the population.

### *Minority rights*

The Italian legal system recognises and grants extensive rights to linguistic or traditional minorities, and religious minorities whose rights are regulated by special law and bilateral agreements with the State. As a State agreement has not yet been concluded with Muslims, their group rights are not fully guaranteed or protected. Muslims have experienced difficulties establishing mosques and places of worship, observing religious holidays, and exercising other religious rituals.

Lack of citizenship effectively prevents political participation for the overwhelming majority of immigrants, who do not have the right to vote in local elections. There are some indications that increased participation of Muslims in particular is opposed on the ground that this raises the risk of an “Islamic party” being formed. Such attitudes have also affected the process of negotiating a State agreement with Muslims.

There are a variety of State-supported integration programmes for immigrants, many of which are developed and implemented in cooperation with civil society or religious charitable organisations. However, there is still little dialogue between the State and

Muslim communities to develop a comprehensive policy to overcome the disadvantages faced by this group, or to evaluate the existing integration initiatives.

## 2. BACKGROUND

In the past ten to 20 years, Italy has been transformed from an emigrant country into an immigrant country. Foreign labour has proven indispensable for accelerating and sustaining the rate of economic development – resulting in the appearance of new minority groups, including a substantial number of Muslims.

Muslims constitute the second largest religious community in Italy.<sup>2</sup> They come from different ethnic groups and different parts of the world, speak different languages, and have different social backgrounds and legal status. In fact, religion often is the only link among these diverse communities. This diversity has led to an extensive academic debate as to whether Muslims in Italy should be considered a “community” at all.<sup>3</sup>

While from the legal or sociological point view the existence of a cohesive Muslim community may be open to challenge, there are some indications of a sense of shared identity among Muslims themselves, even though intolerant public attitudes tend to discourage them from openly manifesting that identity.<sup>4</sup> As a result of insufficient awareness of the extraordinary diversity of Muslim communities in Italy, the majority population generally does not distinguish between different Muslim groups in their attitudes towards Islam.<sup>5</sup> Growing Islamophobia may have the unintended and unfortunate result of strengthening Muslim identity around a shared sense of vulnerability, exclusion, and incomprehension from the majority society.

<sup>2</sup> The Muslim population, concentrated mainly in the regions of Lazio, Lombardia, Campania, Sicilia, Veneto, Emilia-Romagna, represents just above one percent of the total population and about 36 percent of the immigrant community. Caritas, *Immigrazione, dossier statistico 2001: Rapporto sull'immigrazione*, Rome: Nuova Anterem, 2002, p. 251.

<sup>3</sup> OSI Roundtable Meeting, Milan, 20 June 2002. Explanatory note: *A roundtable meeting was held in Milan to invite critique of an early draft of this report. Experts present included representatives of the Government, Muslim organisations, journalists, lawyers, academics and civil society organisations. References to this meeting should not be understood as endorsement of any particular point of view by any one participant.*

<sup>4</sup> OSI Roundtable Meeting, Milan, 20 June 2002.

<sup>5</sup> See European Monitoring Centre on Racism and Xenophobia (hereafter, “EUMC”), *Summary Report on Islamophobia in the EU after 11 September 2001*, Vienna, 2002, pp. 23–24.



Presently, the total Muslim population numbers approximately 700,000. About 40,000-50,000 (among them about 10,000 Christians who converted to Islam<sup>6</sup>) are Italian citizens whose rights and obligations are protected and regulated by the same legal provisions that apply to other Italian citizens. However, the majority of Muslims are immigrants who arrived within the past ten to 20 years, and have not obtained Italian citizenship.<sup>7</sup> Of these, approximately 610,000-615,000 persons have obtained “regular status,” and have the legal right to reside and work in Italy. In addition, 80,000-85,000 persons are “illegal migrants” without residency or work permits.<sup>8</sup> According to current estimates, persons coming from traditionally Muslim countries are the fastest growing immigrant group.<sup>9</sup>

### *Public opinion*

Growing intolerance towards non-EU citizens<sup>10</sup> in Italian society has been noted with concern by international monitoring bodies. The European Commission against Racism and Intolerance (hereafter, “ECRI”) has expressed a concern at “the rather negative climate in Italy concerning non-EU citizens,” which it connects to “the

<sup>6</sup> “Roma, un partito alla conquista dei musulmani” (Rome, a Political Party Wants to Win Muslim Support), in *Corriere della Sera*, 6 November 2001, p. 12. These estimates have to be considered with caution. For more information on Italian converts to Islam, see S. Allievi, *I nuovi musulmani (The New Muslims)*, Rome: Edizioni Lavoro, 1999.

<sup>7</sup> Of the total immigrant population living in Italy, 160,000 originate from Morocco, 142,000 from Albania, 50,000 from Tunisia, 40,000 from Senegal, 35,000 from Egypt and 13,000 from Algeria. It is important to note that not all immigrants coming from these countries are Muslims.

<sup>8</sup> Caritas, *Immigrazione, dossier statistico 2001: Rapporto sull'immigrazione*, Rome: Nuova Anterem, 2002, p. 251.

<sup>9</sup> In the period from 1995 to 2000, the Muslim population increased from 30.4 to 36.8 percent of the total immigrant population. In the same period, the percentage of Christians among immigrants decreased from 56.4 percent to 48.2 percent. F. Pittau and A. Colaiacomo, “Appartenenza religiosa degli immigrati” (Religious Affiliation Among Immigrants), available at: <<http://www.caritas.it>>, (accessed 15 August 2002). However, this trend is likely to be reversed by increasing immigration from Central and Eastern Europe. See: Caritas, *Anticipazioni dossier statistico immigrazione, 2002*, at: <<http://www.caritasroma.it>>, (accessed 25 September 2002).

<sup>10</sup> Accurate data regarding intolerant attitudes towards Muslims specifically are not available, but some research shows that Albanian and Moroccan immigrants are viewed less favourably than other immigrants. Consiglio Regionale della Lombardia, Istituto Regionale di Ricerca della Lombardia, *Immigrazione e Integrazione, I*, Milan: Guerini, 1999, p. 107. In a recent poll, in answer to the question “How much confidence do you feel in persons coming from Arab countries?” only 32.7 percent of interviewees answered that they had “a lot” or “sufficient” – a lower percentage than for immigrants from other countries (see *Avvenire*, 20 March 2002).

widespread presence in public debate of stereotypes, misrepresentations and, in some cases, inflammatory speech targeting non-EU citizens.”<sup>11</sup> A recent report of the European Monitoring Centre on Racism and Xenophobia (hereafter, “EUMC”) noted “a marked change in attitude towards immigrants and asylum seekers, as well as those of Arab descent” after September 11, 2001, though a certain level of anti-Muslim prejudice had been present prior to the attacks.<sup>12</sup>

Perhaps due to the fact that Muslims are highly “visible,” Italians tend to overwhelmingly associate immigration with Islam, even though Muslims do not in fact constitute the majority of immigrants.<sup>13</sup> Thus, public discourse about Muslims is often tied to discourse about foreigners and immigration in general.

### *Media*

Negative portrayals of Islam in the media pre-date the events of September 11, and have contributed to growing societal intolerance towards Muslims.<sup>14</sup>

The EUMC concluded that during the 1990s “the mainstream press, with notable exceptions, has reproduced forms of ethnic prejudice in its routine and issue-based reporting, whereas the right-wing press was at times blatantly racist in its selection and

<sup>11</sup> In response to the ECRI findings, the Government pointed out that the negative climate pertains to illegal immigrants rather than immigrants in general. See European Commission against Racism and Intolerance, Second report on Italy, adopted on 22 June 200 and made public on 23 April 2002, para. 39 (hereafter, “ECRI Report 2001”). On the other hand, there are polls that indicate a decrease of intolerant attitudes. To the question: “Are immigrants a danger for our culture and identity 27 percent responded affirmatively in 1999–2000, decreasing to 24 percent in 2002; see: “Gli immigrati fanno meno paura” (Immigrants Cause Less Fear), *La Repubblica*, 20 March 2002, and “Più controlli, meno libertà, il baratto dell'Italia impaurita.” (More Control, Less Liberty, the Barter of Threatened Italy), *La Repubblica*, 21 June 2002. If we compare the results of this poll and the one quoted in the previous footnote, it seems that fear of immigrants in general has decreased, but that Muslim immigrants in particular continue to inspire low levels of confidence.

<sup>12</sup> See EUMC, *Summary Report on Islamophobia*, p. 23.

<sup>13</sup> Christians are the largest group, numbering about 800,000 (48 percent of the immigrant community). See Caritas, *Immigrazione*, p. 251.

<sup>14</sup> See C. Marletti, ed., *Televisione e Islam. Immagini e stereotipi dell'Islam nella comunicazione italiana* (Images and Stereotypes of Islam in Italian Communication), Turin: RAI – Nuova ERI, 1995; I. Siggillino, ed., *I media e l'islam* (The Media and Islam), Bologna: Editrice missionaria italiana, 2001; K. Momanji Kebati, “Il ruolo dei media nella rappresentazione collettiva dell'islam” (The Role of the Media in the Collective Representation of Islam) in R. Gritti and M. Allam, eds., *Islam, Italia. “Chi sono e cosa pensano i musulmani che vivono tra noi?”* (Islam, Italia. “Who Are the Muslims Living Among Us, and What Do They Think?”), Milan: Guerini, 2001 pp. 161–171.

presentation of news and commentaries.” More specifically, the report stated that representations of Islam were frequently “based on stereotypical simplifications:”

...Arabs and Muslims were mentioned without distinction, Islam was depicted as an Arabic tribal religion, and its global dimension was denied. Generalisations were used which did not acknowledge the variety and complexities of situations within and between different Islamic countries...

Islam was portrayed as a religion and ideology “completely extraneous and alternative to the enlightened secularity of the West.”<sup>15</sup>

Since September 11, media coverage has become less favourable still, and some Italian journalists have plainly overstepped the boundaries of balanced and impartial reporting.<sup>16</sup> In an article that had an extraordinary impact on public opinion, journalist Oriana Fallaci wrote that the Italian “cultural identity cannot bear a wave of immigration made up of persons who want to change our lifestyles,” concluding that in Italy “there is no place for muezzins, minarets, fake teetotallers, their fucking middle ages, and their fucking chadors.”<sup>17</sup>

Coverage of Islamic extremist groups has been disproportionate,<sup>18</sup> and on occasion the religious affiliation of Muslims (as well as other minority groups such as Jews and Chinese) has been reported without justification, although recently law enforcement officials have made efforts to communicate information about arrests in a more

<sup>15</sup> EUMC, *Racism and Cultural Diversity in the Mass Media. An Overview for Research and Examples of Good Practice in the EU Member States, 1995–2000*, Vienna, February 2002, pp. 252, 262.

<sup>16</sup> See S. Allievi, *La tentazione della guerra. Dopo l'attacco al World Trade Center. A proposito di Occidente, islam e altri frammenti di conflitto tra culture* (The Temptation of War. After the Attack on the World Trade Centre. About the West, Islam, and Other Fragments of Conflict Among Cultures), Milan: Zelig, 2001. The impact of the events of September 11 on public opinion and on the perception of Muslim immigration is still debated in the press. See e.g. “Italiani malati di razzismo latente” (Italians Suffer from Latent Racism), *Il nuovo*, 29 January 2002, at: <<http://www.ilnuovo.it>>, (accessed 15 August 2002); M. Fini, “Islam e occidente: l'eterno conflitto” (Islam and the West: the Eternal Conflict), *Il giorno*, 14 April 2002, at: <[http://www.ilgiorno.quotidiano.net/chan/editoriali\\_commenti:3230685:/2002/04/14](http://www.ilgiorno.quotidiano.net/chan/editoriali_commenti:3230685:/2002/04/14)>, (accessed 15 August 2002).

<sup>17</sup> O. Fallaci, “La rabbia e l'orgoglio” (Anger and Pride), *Il Corriere della Sera*, 29 September 2001. The article was later developed into a book, which has been translated into French, English, Spanish and a number of other languages.

<sup>18</sup> EUMC, *Summary Report on Islamophobia*, p. 23.

responsible manner.<sup>19</sup> The regular publication of negative information has had a cumulative effect, breeding widespread suspicion and distrust towards Muslims among the public.

The increase in attention has undoubtedly broadened coverage of Islamic and Arab issues. Numerous books and articles on Islam have been published, and some newspapers have printed balanced articles,<sup>20</sup> which have contributed to growing public awareness of internal differences within the Islamic community. However, the EUMC notes that the increase in attention has been “at best, ambivalent,” and at worst has “merely reaffirm[ed] Islamophobic stereotypes.”<sup>21</sup>

### *Public discourse*

Certain mainstream political elements have sought to build political capital by manifesting anti-immigrant and anti-Muslim attitudes. Since June 2001, the Government coalition has included the Lega Nord, some representatives of which have not refrained from utilising racist and xenophobic propaganda.<sup>22</sup> Leading Lega representatives have publicly supported the idea that immigrants (and specifically Muslims) represent a threat to the preservation of national identity and are collectively responsible for a deterioration in public security.<sup>23</sup> While the need for stricter regulations to curb illegal immigration (and more effective enforcement of these regulations) is widely acknowledged in Italian political circles,<sup>24</sup> the Lega has also called

<sup>19</sup> For example, the police spoke publicly about the arrest of four Muslims and an Italian on suspicion of preparing an attack against a Catholic Church; the day after, the five detainees were set free because the indictment was found to be without grounds and the Ministry of the Interior criticised the “haste” of the police officials in releasing the news about the arrest to the press. See *Corriere della Sera*, “Preparavano un attentato nella basilica” (They Were Preparing an Attack in the Basilica), 21 August 2001; and “S. Petronio, cade l'accusa in liberta' I cinque fermati (S. Petronio, the Indictment Falls. The Five Detainees Are Set Free), 22 August 2002.

<sup>20</sup> OSI Roundtable Meeting, Milan, 20 June 2002. See, e.g. articles by Tiziano Terzani in *Corriere della Sera*.

<sup>21</sup> EUMC, *Summary Report on Islamophobia*, p. 23.

<sup>22</sup> ECRI explicitly identified the Lega Nord as a political party willing to resort to racist and xenophobic propaganda. See ECRI Report 2001, para. 73.

<sup>23</sup> See “Immigrati nel mirino, Europa e centristi i nemici” (Immigrants in Sight – Europe and Centrists [Identified] as Enemies), *Corriere della Sera*, 24 June 2002.

<sup>24</sup> The new law on immigration, adopted on 11 July 2002, makes it easier and quicker to expel illegal immigrants.

specifically for preventing further Muslim immigration,<sup>25</sup> and for an amendment to the Criminal Code to criminalise illegal immigration.

The other parties of the governing coalition have maintained a more cautious attitude, and some have openly disassociated themselves from Lega's anti-immigration stance.<sup>26</sup> This internal dissent has conferred an occasionally ambivalent character to the political line of the Government. For example, the President of the Italian Senate sought to set a positive tone following September 11 by visiting the principal mosque (as well as the synagogue) in Rome and by stressing the great value of Muslim culture and religion. On the other hand, Prime Minister Berlusconi – a member of the same political party (Forza Italia) – provoked great national and international controversy when he declared that Western civilisation was “superior” to Islamic civilisation.<sup>27</sup>

Since the Vatican II Council, the Catholic Church has maintained a very open attitude towards immigrants, including Muslims.<sup>28</sup> One expression of this openness was the December 2001 invitation by John Paul II to share a day of fasting and prayer with Muslims at the end of Ramadan.<sup>29</sup>

At the same time, a number of important representatives of the Church hierarchy have publicly and strongly affirmed the need to establish a relationship based on the concept of “reciprocity” with majority Muslim countries. This concept has been interpreted differently within Catholic circles. On some occasions, the limitations that prevent Christians from enjoying full religious liberty in some Muslim countries have been recalled in order to invoke the application of similar limitations to Muslims living in

<sup>25</sup> EUMC, *Anti-Islamic Reactions in the EU after the Terrorist Acts against the USA. A Collection of Country Reports from RAXEN National Focal Points (NFPs), 12 September to 31 December 2001*, ITALY, Vienna 2002, p. 6.

<sup>26</sup> EUMC, *Anti-Islamic Reactions*, pp. 11–12.

<sup>27</sup> Mr. Berlusconi's statement was widely reported in the newspapers. See *Il Giornale*, 27 September 2001. Later Mr. Berlusconi claimed that his words had been taken “out of context” and also paid a visit to the principal mosque in Rome. On other occasions, Mr. Berlusconi has expressed a great appreciation for Islamic civilisation. See, e.g. *Il Giornale*, “Berlusconi: profondo rispetto per l'Islam” (Berlusconi: Profound Respect for Islam), citing statements made by Berlusconi in a meeting with ambassadors of several Islamic countries in Italy, 3 October 2001.

<sup>28</sup> Catholic non-profit institutions, particularly Caritas, have played a leading role in providing shelter and support to immigrants, including Muslims.

<sup>29</sup> Pope John Paul's invitation is particularly significant because it was extended in December 2001, that is, after the events of September 11. See EUMC, *Anti-Islamic Reactions*, p. 15.

Italy.<sup>30</sup> In other instances, though no limitation to Muslim religious rights have been advocated, a pressing demand for more religious liberty for Christians in Muslim countries has been put forward.<sup>31</sup> However, many Catholic leaders have suggested that preference should be given to immigrants from Catholic countries, allegedly due to the “difficulty” of integrating Muslims.<sup>32</sup> A provision in the recently amended Immigration Law favouring domestic workers has been interpreted by some as an attempt to put these ideas into practice: domestic workers are mainly Christian women from Latin America, the Philippines and Eastern Europe; Muslim immigrants are more often males who are unlikely to engage in domestic work.<sup>33</sup>

It is clear that cultural and religious differences between Muslims and the majority population present integration challenges. However, a small but influential group of political and intellectual leaders have frequently chosen to emphasise Muslim “distinctness” as a way of suggesting that Muslims “cannot” be integrated into the Italian society.<sup>34</sup>

A number of public figures have spoken out against the “demonisation” of immigrants,<sup>35</sup> and emphasised immigration as a potential source of cultural and social enrichment. Financial and economic experts in particular have highlighted the need for immigration in light of Italy’s demographic situation and labour-hungry economy,

<sup>30</sup> For example, explaining his opposition to the allocation of public funding for the construction of a mosque, one parish priest from Naples recently explained: “It’s not a question of intolerance... [P]eople here wonder why, if Italy can host mosques, why can’t Saudi Arabia host churches. It’s a question of reciprocity.” See D. Williams, “Public Funding for New Mosque Splits Naples,” *International Herald Tribune*, 13 May 2002, p. 7.

<sup>31</sup> For example, see recent statements by Cardinal Martini, “Martini: libertà per i cristiani in terra islamica” (Martini: Freedom for Christians on Islamic Turf), *Corriere della Sera*, 19 June 2002.

<sup>32</sup> These ideas have been advanced repeatedly by the Archbishop of Bologna and the Bishop of Como, among others. See *La Repubblica*, 14 September 2000 and *Il Resto del Carlino*, 30 September 2000.

<sup>33</sup> Women make up less than 20 percent of the North African immigrant population and 30 percent among those from Albania. However, more recently the number of residence permits granted for the purpose of family reunification has increased, particularly with regard to immigrants from North Africa.

<sup>34</sup> See G. Sartori, *Pluralismo, multiculturalismo e estranei: saggio sulla società multi-etnica* (Pluralism, Multi-Culturalism and Foreigners: Essay on Multiethnic Society), Milan: Rizzoli, 2000.

<sup>35</sup> See, e.g. statements by Nobel prize winner Dario Fo and novelist Dacia Maraini, deploring the vilification of Islamic culture and the violent tone of Fallaci’s article, in “Il ritorno della Fallaci entusiasma e divide” (The Return of Fallaci Generates Enthusiasm and Divides), *Corriere della Sera*, 30 September 2001, p. 11. Among Catholic Church representatives, see statement by Cardinal Achille Silvestrini in “Sbagliato criminalizzare i musulmani” (It Is Wrong to Criminalise Muslims), *La Stampa*, 21 September 2001.

pointing out that immigrants often perform jobs that Italians are not willing to do themselves.<sup>36</sup>

Although this report focuses on the situation of Muslims, many of the problems faced by members of Muslim communities are indicative of problems faced by immigrants in general, and therefore the following issues are placed within the broader context of the relevant laws and institutions to protect citizens as well as immigrants from discrimination and to promote tolerance and diversity in society as a whole.

### 3. MINORITY PROTECTION: LAW AND PRACTICE

Italy has ratified the principal international legal instruments for combating discrimination and protecting minority rights.<sup>37</sup> It has signed but not yet ratified Protocol No. 12 to the European Convention on Human Rights and the European Charter for Regional or Minority Languages. International treaties become part of Italian domestic law upon ratification, and in case of conflict provisions of international law take precedence over domestic law.<sup>38</sup>

The rights of Muslims who are Italian citizens are regulated by the legislation that applies to all citizens. The legal status of immigrants who do not have Italian citizenship is regulated by the Law on Immigration and the Legal Status of Foreigners

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<sup>36</sup> Consiglio dei Ministri, Documento programmatico relativo alla politica dell'immigrazione e degli stranieri nel territorio dello Stato, a norma dell'art. 3 della legge 6 marzo 1998, n. 10, 2001–2003 (approved on 15 March, 2001), pp. 4–5. See also “En Italie, la nouvelle loi sur l'immigration inquiète le PME” (In Italy, the New Law on Immigration Disquiets the PM), *Le Monde*, 22 June 2002; “Duri contro i clandestini ma chi lavora va tutelato” (Hard on Illegals, But Workers Will Be Protected), *Corriere della Sera*, 16 May 2002.

<sup>37</sup> For full overview, see ECRI Report 2001, para. 1.

<sup>38</sup> Costituzione della Repubblica Italiana, approved by the Constitutional Assembly 22 December 1947 and published in the *Official Gazette* of 27 December 1947, N. 298, Art. 80. (Hereafter, “Constitution.”) In some cases, more favourable treatment of immigrants has been justified on the basis of international treaty. For example, recently the Supreme Court ruled that Syrian dentists are permitted to set up practice on the basis of an old international agreement between Italy and the former United Arab Republic; the agreement, which provides for reciprocity of treatment for citizens from both countries in the medical professions, is still considered binding. See Cass., 22 November 2000, n. 15078, in *Riv. dir. int. priv. proc.*, 2002, p. 716.

(hereafter “Law 286/98”).<sup>39</sup> On 11 July 2002, Law 286/98 was amended, introducing a number of significant and controversial changes.<sup>40</sup>

### 3.1 Protection from Discrimination

The Constitution stipulates equality under the law and equal social status without distinction as to sex, race, language, religion, political opinions, and personal or social conditions for all citizens.<sup>41</sup> Moreover, the Constitutional Court has confirmed that “equality under the law” applies to non-citizens (including illegal immigrants) as well.<sup>42</sup> Italian courts have proven willing to apply anti-discrimination provisions in practice.

Constitutional anti-discrimination provisions are complemented by Law 286/98, which contains a detailed definition of direct and indirect discrimination,<sup>43</sup> and provides for a simplified procedure for filing complaints.<sup>44</sup> In cases involving allegations of discrimination against employers by employees, the complainant may use statistical data attesting a difference in the hiring or firing of workers to prove discrimination. Courts have imposed sanctions on public authorities and private individuals found guilty of discrimination. The anti-discrimination provisions of Law

<sup>39</sup> *Decreto legislativo 25 luglio 1998, n. 286 Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero*, Chapter IV (hereafter, “Law 286/1998”). The Law is a consolidated text that is the main source of statutory law on immigration.

<sup>40</sup> Some of the new provisions have been criticised by opposition parties and a number of non-governmental organisations as restrictive and discriminatory. Particular criticism was provoked by a provision requiring all immigrants who apply for a residence permit to be finger-printed. In response, the Government proposed to extend this requirement to include citizens as well. Other controversial provisions include: reduction of the period of validity for residency permits from three to two years; the exclusion of those over 18 from the family reunification program; and withdrawal of the residency permit in case of loss of ones job. The debates concerning the amendments have been widely reported by the press. See e.g. *Corriere della Sera*, 12 July 2002, pp. 1–3.

<sup>41</sup> Constitution, Art. 3.

<sup>42</sup> See ECRI Report 2001, para. 5.

<sup>43</sup> The 2001 “Concluding observations” of the UN Committee on the Elimination of Racial Discrimination (hereafter, CERD) expressed satisfaction with the comprehensive definition of racial discrimination contained in Italian legislation. UN document A/56/18, (30 July – 17 August 2001), paras. 312 and 313.

<sup>44</sup> Law 286/98, Art. 42.



286/98 (which otherwise applies primarily to immigrants) are explicitly extended to Italian citizens as well.<sup>45</sup>

However, the effectiveness of the legal framework is apparently limited by low public awareness of its existence, particularly among immigrant communities.<sup>46</sup> Although no scientific research has been carried out among Muslims in particular, ECRI has noted “reports that the cases brought before the courts do not reflect the actual numbers of racist acts occurring in Italy.”<sup>47</sup>

In February 2002, Parliament approved the EU Directives 2000/43/CE on Equal Treatment of Persons Irrespective of their Racial and Ethnic Origin (hereafter, “the EU Race Directive”) and 2000/78/CE, regarding equal treatment in the workplace, and delegated the Government to implement them within a year.<sup>48</sup>

### *Lack of data*

Italy is on track to achieve full compliance with the EU Race Directive in the near future. However, the lack of reliable and comprehensive data presents a significant obstacle to identifying levels of discrimination and exclusion faced by the members of the most vulnerable groups, including ethnic minorities such as the Roma as well as immigrant groups, including Muslims. In the absence of such data, existing anti-discrimination provisions – which *inter alia* allow the use of statistical evidence in employment cases related to hiring and firing to prove discrimination in courts – are difficult to implement.

While there is a growing amount of sociological research on various aspects of the situation of Muslims, little data exists on their situation at the national level. Moreover,

<sup>45</sup> The extension of the application of the anti-discriminatory provisions to Italian and EU-nationals is explicitly stated in Art. 41, para. 3.

<sup>46</sup> See I. Schincaglia, *Lo straniero quale vittima del reato* (The Foreigner as a Victim of Crime), research report funded by CPII, DAS, Office of the President of the Council of Ministers, 1999.

<sup>47</sup> ECRI Report 2001, para. 12. A number of organisations have identified discrimination against Roma as a serious problem. See ECRI Report 2001, paras. 60-70. See also *ERRC Country Report on Italy: Campland. Racial Segregation of Roma in Italy*, at: <<http://www.errc.org>>, (accessed 17 September 2002). *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Italy*, A/56/18, 8 August 2001, paras. 309–311.

<sup>48</sup> Art. 29 l. n. 39/02 in *Suppl. ord. N. 54/L alla Gazz. Uff. 26/3/2002 n. 72*. Details and comments are available in *Guida al diritto*, n. 14, 13 April 2002.

the 1996 Data Protection Law specifically imposes restrictions on the collection of ethnic or other such personal data.<sup>49</sup>

Accordingly, most available statistics, legal provisions and policy directives regarding immigration and the situation of the immigrant community are framed in general terms, making it difficult to extrapolate data or information pertaining to specific groups, such as Muslims. Data referring to Muslim immigrants on the basis of geographical area or country of origin are far from being satisfactory.<sup>50</sup>

Many of the issues and challenges faced by most Muslims are similar to those faced by immigrants generally.<sup>51</sup> However, there are also a number of issues specifically faced by members of the Muslim community in various areas of social, economic and political life.

### 3.1.1 Education

There are neither legal nor political obstacles to full and equal access to education for all children, regardless of their citizenship, national or religious status.<sup>52</sup> The Constitution sets forth a general policy of full integration through the educational system, stating that “schools shall be open to everyone.”<sup>53</sup> Foreign children, regardless of their legal status, have the same right to education (and the same compulsory education requirement) as Italian children.<sup>54</sup> Foreign children as well as Italian nationals may apply for enrolment at any time during the school year.

<sup>49</sup> Law 675 (31 December 1996), *Tutela delle persone e di altri soggetti rispetto al trattamento dei dati personali*, Art. 22. The Article requires the written consent of the interested person and the authorisation of the special State data protection authority for the collection of data on the basis of, *inter alia*, “religious belief.”

<sup>50</sup> For example, Eastern European countries (that is, countries which are popularly considered to be Christian) such as Bulgaria, Bosnia and particularly Albania have significant – but not exclusively – Muslim populations. Similarly, a significant number of immigrants originating from what are commonly considered Muslim countries, such as Egypt, are Christians.

<sup>51</sup> This statement does not apply to some components of the Muslim community (Italians who converted to Islam, individuals working in diplomatic missions, etc.).

<sup>52</sup> See G. Zincone, ed., *Secondo rapporto sull'integrazione degli immigrati in Italia* (Second Report on the Integration of Immigrants in Italy), Commissione per le Politiche di Integrazione degli Immigrati, Bologna: Il Mulino, 2001. For information on access to religious instruction for Muslims in the public school system, see Section 3.3.

<sup>53</sup> Constitution, Art. 34.1.

<sup>54</sup> Legislative Decree 286/98, Art. 38; Executive Code of the Decree, Art. 45.

However, emerging patterns of lower than average attendance and achievement, and higher drop-out rates among immigrant children, indicate that full and equal access to public education for all children in practice has yet to be achieved.<sup>55</sup>

### *Attendance*

As immigration is a relatively new phenomenon, there are still relatively few immigrant (including Muslim) children in the educational system.<sup>56</sup> Furthermore, there are no comprehensive data concerning school attendance specifically for Muslim pupils.

The number of immigrant children attending school has dramatically increased over the past ten years, from 25,756 enrolled at the beginning of the 1990s to 162,774 in 2001 (with an annual growth of more than 28,000 students). Among these, 20 percent attend kindergarten, 44 percent elementary school, 24 percent middle school, and 12 percent high school. African and Asian children represent 45 percent of immigrant schoolchildren.<sup>57</sup>

In some regions the levels of integration of immigrants, including Muslim children, in schools have been very high. For example, in the province of Turin almost 95 percent of immigrant children who are enrolled in elementary, middle and high schools (irrespective of religious affiliation) regularly attend, although attendance decreases slightly at the higher level of school (from 96.6 percent attendance in elementary schools to about 93 percent in middle schools and in high schools).<sup>58</sup> However, official reports show that only a slight majority of foreign minors in the country as a whole attend school.<sup>59</sup>

<sup>55</sup> See ECRI Report 2001, para. 63. See also *ERRC Country Report on Italy: Campland. Racial Segregation of Roma in Italy*, at: <<http://www.errc.org>>, (accessed 22 July 2002).

<sup>56</sup> Available figures for the province of Turin indicate that the majority (60.6 percent) of immigrant kindergarten children in the years 1997-1999 were born in Italy, with the remaining 39.4 percent born in their countries of origin. Among elementary school pupils, only slightly above 30 percent were born in Italy, compared to eight percent of middle school pupils, and just under four percent of secondary school pupils. These data were collected on the basis of the country of birth. See CIDISS, p. 9.

<sup>57</sup> Data are collected concerning pupils who are non-citizens. Ministero dell'Istruzione dell'Università e della Ricerca, *Il chi è della scuola italiana: gli studenti*, MIUR, Rome, 2001, see: <<http://www.istruzione.it>>, (accessed 17 September 2002).

<sup>58</sup> The majority (95-98 percent) attend public schools. See CIDISS, p. 9.

<sup>59</sup> See *Documento programmatico relativo alla politica dell'immigrazione e degli stranieri nel territorio dello Stato*, on the basis of Article 3 of Law 40, 6 March 1998: 2001-2003, p. 50.

### *Achievement*

According to official reports, in comparison with that of their Italian schoolmates, the level of scholastic achievement among immigrant students is quite low, and the drop-out rate is quite high.<sup>60</sup> There is little data regarding levels of achievement specifically among Muslim children; most available data refer to the immigrant community in general, or to the geographical area or country of origin.

A recent three-year study in the province of Turin revealed that the percentage of immigrant students who fail to be promoted from one grade to the next is higher than that for Italian students, and increases from elementary to high school. During the period from 1997 to 1999, an average of 8.6 percent of all immigrant students were not promoted to the next grade, with 2.1 percent failing in primary school grades, 15.6 percent in middle school and 22.1 percent in high school. Separate figures are available demonstrating failure rates among Moroccans (0.7 percent, 19.6 percent and 24.7 percent), and Albanians (1.1 percent, 9.8 percent and 22.9 percent).<sup>61</sup>

Language problems, poverty, and an insufficiently inter-cultural environment in schools may negatively affect levels scholastic achievement among Muslim students and other immigrant children. For example, studies in Genoa, as well as in Turin, have shown that cultural and linguistic barriers deeply influence levels of scholastic achievement among immigrant children. 43.8 percent of North African and Middle Eastern students registered low and middle-to-low levels of achievement.<sup>62</sup> The authorities have identified a number of other factors that may also contribute to relatively low levels of scholastic achievement among immigrant students, including difficulties associated with assigning these children to the grade that matches both their age and education level and the mobility of immigrant families.<sup>63</sup>

Another study carried out in Turin revealed a considerable achievement gap between foreign pupils belonging to less socially integrated, lower-income families (mainly from North Africa and Asia), and Italians of the same social class.<sup>64</sup> At the same time, according to this study, immigrant students from socially integrated families with

<sup>60</sup> See *Documento programmatico*, p. 53.

<sup>61</sup> See CIDISS Study, p. 76.

<sup>62</sup> G. Giovannini, L. Q. Palmas, eds., "Una scuola in comune: esperienze scolastiche in contesti multi-etnici Italian" (A School in Common: Scholastic Experiences in Italian Multiethnic Contexts), *Contributi di Ricerca*, Turin: Fondazione Giovanni Agnelli, 2002.

<sup>63</sup> See CIDISS Study, pp. 4–5.

<sup>64</sup> L. Fischer, M. G. Fischer, "Scuola e società multi-etnica: modelli teorici di integrazione e studenti immigrati a Torino e Genova," in *Contributi di Ricerca*, Turin: Fondazione Giovanni Agnelli, 2002.

higher incomes (principally from Western and Eastern Europe) achieve similar results as their Italian peers from similar social background and income brackets.

There are no known studies or statistics about Italian language proficiency among Muslims, or among immigrants more generally.

### *Integration*

There is little research on the problems experienced by individual Muslim students in schools, although there is some evidence that they experience certain discomfort *vis-à-vis* State educational establishments, with a negative impact on attendance and academic progress.

For example, according to studies conducted in Modena, Turin, Brescia, Bologna, Genoa, Bari, Padova, Arezzo, and Ravenna, about one third of immigrant pupils expressed a wish to have separate education for members of the same group. Among pupils of North African origin, 71.4 percent of girls prefer an open school, but 46.5 percent of boys are said to feel uncomfortable in the “free climate” of Italian schools.<sup>65</sup>

School curricula do not provide for specific courses on the culture of the countries of origin or elective classes in the native languages of immigrant children.<sup>66</sup> Some Muslim representatives asserted during interviews that State schools do not manifest a sufficiently inter-cultural approach: while Catholic religious education is a mandatory part of the curriculum, little information is provided about other religions; moreover, images of Islam in text books are reportedly distorted and sometimes inaccurate<sup>67</sup> (see Section 3.3.3). The specific needs of Muslim students are not always taken into consideration.<sup>68</sup>

<sup>65</sup> About 1000 students took part in the survey. See G. Giovannini, L. Queirolo Palmas, eds., *Una scuola in comune. Esperienze scolastiche in contesti multietnici italiani*.

<sup>66</sup> See P. Falteri, *L'immagine del mondo non occidentale nei libri di testo della scuola dell'obbligo* (The Image of the non-Western World in Required School Textbooks), Florence: Quaderni Euridyce, Bdp, 1993.

<sup>67</sup> Interview with Professor Salem El Sheikh, University of Florence, 26 April 2002. Also, interviews with Muslim representatives in Rome, 28 April – 1 May 2002.

<sup>68</sup> *Inter alia*, school cafeterias often do not take into consideration the dietary requirements of Muslim pupils.

Further, there have been reports that occasionally parents and even teachers display intolerant attitudes towards Muslim pupils; such attitudes became more noticeable following the events of September 11.<sup>69</sup>

### *Government response*

Italian institutions are highly concerned with the soaring rate of foreigners not accomplishing schooling requirements (*evasione dell'obbligo scolastico*),<sup>70</sup> and have taken a number of steps to facilitate equal access to education in practice.

State, regional and local governments are required to facilitate equal access to education by setting up language classes and other activities for foreign students to learn Italian, so that they may fully participate in classroom work.<sup>71</sup>

The Government has sponsored the employment of “cultural and linguistic mediators” to assist and support teachers working with large numbers of foreign children.<sup>72</sup> The “linguistic mediator” is usually an adult of the same nationality as foreign students, who has the task of helping them adjust to school and easing relations between the school and the family. Cultural mediators assist teachers of publicly funded literacy and integration classes for foreign adults.<sup>73</sup> Usually, mediators are called upon by schools to assist in the process of enrolment, when there are linguistic barriers to

<sup>69</sup> Muslim representatives reported that after September 11 some parents and even teachers verbally harassed Muslim students, calling them “terrorists” and “friends of Bin Laden.” Interview with Muslim representatives in Rome, 28 April – 1 May 2002. This trend has been noted throughout Europe. See Report “Anti-Islamic reaction within the European Union after the recent attacks on the USA”, 3 October 2001, at: <<http://www.eumc.eu.int>>, (accessed 28 April 2002).

<sup>70</sup> See *Documento programmatico relativo alla politica dell'immigrazione e degli stranieri nel territorio dello Stato*, on the basis of Article 3 of Law 40, 6 March 1998: 2001–2003, p. 50.

<sup>71</sup> See C. Traficante, ed., *La presenza degli alunni stranieri nelle scuole materne, elementari, medie e superiori di Milano* (The Presence of Foreign Students in Kindergartens, Elementary, Middle, and High Schools in Milan), Quaderno 1, Milan: Fondazione Cariplo-ISMU, 1995; CIDISS, *Allievi stranieri a scuola con noi: Rapporto sulle presenze e sulle caratteristiche degli allievi stranieri nelle scuole materne, elementari, medie e superiori di Torino e Provincia nel triennio 1997–1998–1999* (Foreign Students at School with Us: Report on the Presence and Characteristics of Foreign Students in Kindergartens, Elementary, Middle, and High Schools in Milan), Secondo Rapporto 1999, pp. 3–5.

<sup>72</sup> *Programmatic Document regarding state policy towards immigration and foreigners in the territory of the state*, on the basis of Art. 3 of Law 1998/40: 2001–2003, p. 50.

<sup>73</sup> These classes are offered at specially established *Centri Territoriali Permanenti* (Permanent Territorial Centres) for the education and training of adult immigrants. The Centres are established and receive State funding on the basis of O.M. 455/97.

communication.<sup>74</sup> A special register of qualified assistants is maintained by the Provincial Education Offices, which also organise regular classes and training sessions for the assistants.<sup>75</sup>

Government efforts are complemented by the work of private institutions (mainly Catholic charitable organisations) and NGOs, which offer a wide range of literacy and language classes<sup>76</sup> to facilitate the access of foreign minors to the educational system.<sup>77</sup> There are no data concerning the involvement of minority NGOs in such projects.

### 3.1.2 Employment

The Constitution stipulates equal treatment for citizens and foreigners in the field of employment.<sup>78</sup> Law 286/98 prohibits various forms of discrimination against citizens or immigrant workers,<sup>79</sup> and provides for a partial reversal of the burden of proof in cases involving discrimination against workers by employers.

<sup>74</sup> M. Tarozzi, *La mediazione educativa. Mediatori culturali tra uguaglianze e differenze* (Educational Mediation: Cultural Mediators Between Equalities and Differences), Bologna: Clueb, 1998.

<sup>75</sup> F. Cicardi, *Atteggiamenti verso alunni extracomunitari* (Attitudes Towards non-EU Students), Milan: Irsae Lombardia, 1994.

<sup>76</sup> G. Favaro, ed., *Imparare l'italiano. Alunni stranieri e apprendimento della seconda lingua* (Learning Italian: Foreign Students and Acquiring the Second Language), Milan: Guerini Associati, 1999; A. Tosi, *Dalla madrelingua all'italiano* (From the Mother Tongue to Italian), Florence: La Nuova Italia, 1995.

<sup>77</sup> G. Favaro, "Per una politica della formazione dei migranti. L'alfabetizzazione e l'istruzione degli adulti e l'inserimento scolastico dei minori" (Towards an Educational Policy for Migrants: Literacy and Education of Adults and Scholastic Integration of Minors), in E. Granaglia, M. Magnaghi, eds., *Immigrazione: quali politiche pubbliche* (Immigration: Which Public Policies?), Milan: Franco Angeli, 1993.

<sup>78</sup> The Constitution, Art. 1, lists labour among the country's founding values, and Italy has also ratified the most significant international agreements guaranteeing protection to immigrant workers, with the exception of the UN Convention of 1990 on the Protection of all Immigrant Workers and their Families. Italy has ratified ILO Conventions 92, 133 and 143, the ILO Convention on Discrimination in Employment and Professions, and the European Convention on Immigrant Workers.

<sup>79</sup> As noted above, Law 286/98, Art. 43.3, extends protection from discrimination to Italian and EU citizens as well as immigrants. Further, Law 300/1970, Art. 15, punishes any discrimination in the workplace based on religion and race, *inter alia*.

There is still insufficient case-law to demonstrate whether the provision is effective in practice.<sup>80</sup> Experts further note that:

...partial easing of the burden of proof is probably insufficient to comply with the requirements on the reversal or easing of the burden of proof of the [EU] Directives, since these requirements go beyond the simple possibility to produce special evidentiary materials, and the partial easing ... applies only in the field of discrimination by employers.<sup>81</sup>

Although the situation of Muslim immigrants varies substantially, with some private entrepreneurs in particular attaining considerable economic success, Muslims, as well as other immigrants, do appear to face certain disadvantages with respect to promotion and in gaining access to higher-level professional positions. The many immigrant workers who take up seasonal employment (*lavoro stagionale*) are entitled only to some employment benefits, and the significant numbers who either engage in irregular or “black market” employment or are unemployed are excluded entirely.

On the other hand, the existence of a sharp divide between citizens – who generally obtain qualified and management positions – and immigrants, who most frequently work in subordinate positions, for lesser pay, is not always the result of discrimination. The connection between education and employment must be taken into consideration; non-EU immigrants often lack the level of education required for more qualified jobs. Therefore, the quality of education provided to immigrant families will be key to improving their access to qualified jobs in the future.

### *Recruitment*

The Government has declared immigrant workers a fundamental resource for the national economy,<sup>82</sup> and has sought to regulate immigration according to the needs of the market.<sup>83</sup> Immigrants have been recruited successfully, although mainly for low-

<sup>80</sup> Law 268/98, Art. 42.9. The complainant can rely on statistical data regarding recruitment, dismissal, etc., to prove the discrimination suffered.

<sup>81</sup> EUMC, *Anti-discrimination Legislation in EU Member States – Italy*, Vienna, 2002, p. 19. For full report, see: <<http://www.eumc.eu.int>>, (accessed 1 October 2002).

<sup>82</sup> For general immigration policy, see: <[http://www.governo.it/sez\\_newsletter/indice\\_tematico/immigrazione.html](http://www.governo.it/sez_newsletter/indice_tematico/immigrazione.html)>, (accessed 17 September 2002).

<sup>83</sup> Law 286/98, Art. 21. Provisions for Year 2001, in D.P.C.M. 9 April 2001, in *G.U.* n. 113, 17 May 2001; provisions for 2002 available at: <[http://www.minlavoro.it/norme/dm\\_04022002.htm](http://www.minlavoro.it/norme/dm_04022002.htm)>, (accessed 15 August 2002) and <[http://www.minlavoro.it/norme/DM\\_12032002.htm](http://www.minlavoro.it/norme/DM_12032002.htm)>, (accessed 15 August 2002).



skilled positions,<sup>84</sup> for jobs which Italian workers (especially the younger generations) are often unwilling to accept.<sup>85</sup> In 2000, Government quotas created positions for 6,000 Albanians, 3,000 Tunisians and 3,000 Moroccans.<sup>86</sup>

There are no data to establish whether or not religious affiliation constitutes a disadvantage in recruitment for the low-skilled positions for which immigrants are typically hired. However, although there is also a need and market for qualified foreign professionals (from skilled workers to engineers), the very complex and bureaucratic procedures employed by job agencies often discourage otherwise qualified foreign applicants.<sup>87</sup>

In addition, educational and professional qualifications obtained in foreign countries are rarely recognised, and that makes it difficult even for highly qualified immigrant workers to find a skilled job.

### *Access to public employment*

There is some evidence of discrimination against legal immigrants in access to public employment; in many instances, regulations defining eligibility for public service positions stipulate the possession of Italian or EU citizenship as a requirement.<sup>88</sup>

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<sup>84</sup> National Economic and Employment Council (CNEL), *Le iniziative per contrastare il razzismo, l'intolleranza, la xenofobia, la discriminazione nel mondo del lavoro. Le attività delle forze sociali in Italia. Rapporto preliminare dell'indagine* (Initiatives to Counter Racism, Intolerance, Xenophobia and Discrimination in Labour. Preliminary Report on the Inquiry), Rome, 21 June 2001.

<sup>85</sup> Younger generations of Italians are generally reluctant to take up jobs involving manual labour or to which a lower social status is attached, such as cleaning houses and washing dishes in restaurants. See Ministry of Welfare, Department of Social Affairs, Commission for Policies for the Integration of Immigrants, *Second Report on the Integration of Immigrants in Italy*, p. 40. See also *EUMC Newsletter*, Issue 11, March 2002, p. 2.

<sup>86</sup> These data pertain to the year 2000. See Documento programmatico in materia di immigrazione per il triennio 2001–2003, approved with D.P.R., 30 March 2001, p. 13.

<sup>87</sup> Rete d'urgenza contro il razzismo, rapporto annuale 2000, p. 43. These procedures are often the outcome of Government regulations that apply both to immigrants and non-immigrant workers.

<sup>88</sup> See University of Bari, *Concorso Pubblico per esami, ad un posto di categoria C, categoria economica C1, area tecnica, tecnico scientifica, ed elaborazione dati presso il dipartimento di farmacologia e e fisiologia umana*, see: <<http://www.gazzettaufficiale.it/index.jsp>>, (accessed 17 September 2002).

The administrative court in the district of Genoa recently invalidated one such regulation, affirming legal immigrants' right to equal access to public employment<sup>89</sup> on the basis of the provisions of Law 268/98.<sup>90</sup> Nevertheless, Law 286/98 expressly admits the possibility that access to certain professions might be reserved to Italian or EU citizens,<sup>91</sup> which seems to contradict the general principle of equal treatment for resident aliens.

### *Self-employment*

Reciprocity requirements long posed problems for immigrants wishing to establish a private business; immigrants were required to prove that their countries of origin provided equivalent opportunity for Italian citizens to establish private businesses.<sup>92</sup> Inability to prove reciprocity often provided grounds for rejection of applications for business permits from non-EU citizens – including those with regular legal status and valid work permits.

The adoption of Law 286/98 removed this obstacle, and there has been a sharp increase in the number of private businesses since 1998.<sup>93</sup> Egyptians, Moroccans, Tunisians and Senegalese immigrants in particular have been extremely active in establishing private enterprises.

There have been some reports of attacks on businesses owned by Muslims since 11 September 2001.<sup>94</sup>

<sup>89</sup> T.A.R. Liguria, sez. II, 13 April 2001, in the case *Rebhal Oudghough v. Ente Opere Riunite Devoto Marini Sivori*, published in *D&L- Rivista critica di diritto del lavoro*, 2001, p. 643, with comment by A. Guariso, *Un passo (forse) decisivo verso la parità tra europei ed extracomunitari nell'accesso al pubblico impiego* (A (Possibly) Decisive Step Towards Equal Treatment Between Europeans and Foreigners in Access to Public Employment).

<sup>90</sup> D.P.R. n. 487/ 1994, Art. 2. The Constitutional Court recently declared that equal treatment for immigrants is obligatory also with regard to other specially-protected categories of citizens, such as the disabled. Constitutional Court Decision n. 454, 30 December 1998, in *D&L, Rivista critica di diritto del lavoro*, with comment by A. Guariso, *Sul principio di parità di trattamento tra lavoratori italiani ed extracomunitari* (About the Principle of Equal Treatment between Italian and non-European Workers), 1999, p. 277.

<sup>91</sup> Law 286/98, Art. 26.1.

<sup>92</sup> Preliminary dispositions to the Civil Code, Art. 16.

<sup>93</sup> In Milan, for example, as of 2000, 1153 Egyptians were running a private business, up from 631 in 1993 and 966 in 1999 – a percentage increase of more than 80 percent. Among Moroccan immigrants the increase in privately-run businesses was even more dramatic; from 1993 to 2000 there was a percentage increase of 364.3 percent. Data provided by ISMU and the Chamber of Commerce (*Camera di Commercio*).

<sup>94</sup> EUMC, *Summary Report on Islamophobia*, p. 23.

*Illegal employment*

Large numbers of immigrants are unemployed or engage in illegal employment, raising concerns that these workers lack social protection normally guaranteed by State employment insurance and trade unions.<sup>95</sup> Statistics from the year 2000 showed that 48.3 percent of Albanians, 27.3 percent of immigrants from Morocco and 31 percent from Tunisia were unemployed.<sup>96</sup>

Employers often hire illegal immigrants to avoid the high economic costs of labour;<sup>97</sup> immigrants accept illegal employment out of need and ignorance of their rights. In a vicious circle, lack of a regular job makes it impossible to apply for a residence permit (*permesso di soggiorno*), and the lack of a residence permit means that illegal employment is the only option for many immigrants.

The recent amendments to Law 286/98 provide for the immediate expulsion of illegal immigrants and punish with imprisonment those who facilitate the entry of persons without valid immigration documents.<sup>98</sup> The amendments will also limit legal immigration to persons who can prove that they have a job waiting. Employers will be required to provide recruits with housing and a return ticket to the worker's country of origin, to ensure that the workers go back once their work has been completed.<sup>99</sup>

<sup>95</sup> Fondazione Lelio Basso, "Il lavoro servile e le forme di sfruttamento paraschiavistico" (Servile Employment and Forms of Exploiting Quasi-Slavery), see: <<http://www.minwelfare.it/main/Areaimmigrazione/puzzle/working19.doc>>, (accessed 15 April 2002).

<sup>96</sup> For more detailed analysis see M. Ambrosini, *La fatica di integrarsi, Immigrati e lavoro in Italia* (The Effort to Integrate, Immigrants and Work in Italy), Bologna: Il Mulino, 2001; L. Zanfini "La discriminazione nel mercato del lavoro" (Discrimination in the Field of Employment), in Fondazione Cariplo Ismu, *Fifth Report on Immigration, 1999*, Angeli, 2000; M. Vitiello, "Gli immigrati tra lavoro e devianza" (Immigrants Between Work and Deviance) in E. Pugliese, *Rapporto immigrazione. Lavoro, sindacato, società*, Rome: Ediesse, 2000.

<sup>97</sup> Large numbers of Italian citizens are engaged in irregular employment as well. According to one recent report, of a total of 3.5 million cases of irregular employment, 350-400,000 cases involve immigrants. Thus, the percentage of immigrants engaged in irregular employment is much higher than the corresponding percentage of the Italian population. Caritas Italiana, *Dossier statistico sull'immigrazione, 2001, XI rapporto Caritas sull'immigrazione*, on file with EUMAP.

<sup>98</sup> Art. 12 and 13 of Law 286/98, as modified by Art. 11 and 12 of the Law approved on July 11, 2002.

<sup>99</sup> Law 286/98, Art. 5bis. This Article has been added to the Law 286/98 by the Law approved on 11 July 2002. See *EUMC Newsletter*, Issue 11, March 2002, p. 2, at: <<http://www.senato.it/parlam/leggi/elelenum.htm>>, (accessed 17 September 2002).

The Supreme Court recently affirmed the legal obligation of employers to hire only immigrants with regular legal status, and to guarantee them equal working conditions, as important aspects of the right to full equality of treatment in employment.<sup>100</sup>

### *Islam in the workplace*

The religious needs of Muslim workers can be accommodated in different ways, for example through an agreement between the State and a representative organisation of the Muslim community, or through collective negotiation at the regional or local level. In several regions Muslim workers have succeeded in negotiating special agreements with employers to permit observance of religious holidays and rituals (e.g. prayers and serving *halal* food).

For example, the “Collective contract for agricultural workers in the province of Ragusa,” Sicily, allows Muslim workers to request special agreements with employers to facilitate observance of holidays, particularly Ramadan.<sup>101</sup>

In the north-eastern industrial region, a number of agreements have been concluded between factory owners and Muslim employees; the management provides spaces for praying and other religious activities, and Muslim workers are permitted to furnish prayer rooms as they wish.<sup>102</sup> In many cases, workers are also allowed to take prayer breaks during the workday.

Trade unions have been active in assisting in such negotiations and in addressing other problems faced by immigrants at the work place. Unions have taken concrete steps to inform immigrants about their rights, to prevent discriminatory treatment, and to promote integration.<sup>103</sup> Moreover, collective agreements have been concluded with trade unions in a number of countries from which many immigrants come, notably Morocco, Tunisia and Senegal.

Employers and Italian co-workers in general have been tolerant of differences in dress, such the *chador* or *hijab*. Muslim women wishing to wear these items at work have not

<sup>100</sup> See Cass. Civ., Sez. Un., 30 March 2000, n. 62, in *D&G*, 2000, 13, (Bellocchi).

<sup>101</sup> See. L. Musselli, “Rilevanza civile delle festività islamiche” (Civil Relevance of Muslim Festivities) in Ferrari, p. 193.

<sup>102</sup> See report, “Il Veneto assume” (Veneto Hires), *Dialogo*, 2001, p. 18ff.. Also see, in general, CESPI Report, *Immigrazione e processi di internazionalizzazione dei processi produttivi locali italiani*, at: <<http://www.minwelfare.it>>, (accessed 25 September 2002).

<sup>103</sup> For example, CISL created and supports ANOLF (*Associazione nazionale oltre le frontiere*), which registers an extremely large immigrant membership, see: <<http://www.anolf.it>>, (accessed 17 September 2002).

been prevented from doing so, and the potential for conflict on this point seems remote.<sup>104</sup>

### 3.1.3 Housing and other public goods and services

Law 286/98 guarantees equal treatment of citizens and legal non-citizen residents in access to housing and other public services (particular reference is made to access to hospitals and schools). Implementation rests with regional and local authorities;<sup>105</sup> however, not all of them have incorporated these principles into local legislation.<sup>106</sup>

There has been at least one court ruling against municipal governments that have failed to amend local legislation to comply with the provisions of Law 286/98; however, that ruling was almost immediately appealed.<sup>107</sup> Moreover, in one known case municipal regulations have been passed limiting the access of non-Christian immigrants (specifically Muslims) to churches and surrounding areas, in clear violation of the Constitution; the regulation has been repealed.<sup>108</sup>

In several recent cases, courts have applied the equal treatment principle to protect legal immigrants against discriminatory procedures and practices at the local level.

<sup>104</sup> See S. Carmignani Caridi, “Libertà di abbigliamento e velo islamico” (Freedom of Dress and Muslim Veil), in *Musulmani in Italia*, p. 233.

<sup>105</sup> Law 286/1998, Art. 40 (as amended by Law of July 11, 2002) and Art. 41.

<sup>106</sup> Different local regulations adopted before 1998 required reciprocity for access to public housing (i.e. a guarantee that Italian citizens living in the immigrant’s country of origin have access to public housing). In some cases, these local regulations have not yet been rescinded. See L.R. Veneto n. 10, 2 April 1996, L. R. Abruzzo n. 96, 25 October 1996 and L.R. Umbria n. 33, 23 December 1996.

<sup>107</sup> The Government has acknowledged delays in the implementation of Law 296/98 at the local level. See *Documento programmatico, per il triennio 2001–2003, relativo alla politica in materia di immigrazione e degli stranieri nel territorio dello Stato, a norma dell’art. 3 l. 6 marzo 1998, in materia di immigrazione*, approved by a Decree of the President of the Republic, 30 March 2001.

<sup>108</sup> EUMC, *Anti-discrimination Legislation in EU Member States – Italy*, Vienna, 2002, p. 9.

However, in practice access to adequate housing and other public goods and services remains a serious problem.<sup>109</sup>

### *Living conditions*

The living conditions of Muslims vary and cannot be easily generalised. Though there are also affluent and well-integrated Muslim professionals from Middle Eastern or African countries, an estimated majority of immigrants, including Muslims, belong to the lower economic strata, and many live in conditions of actual or potential poverty.

The degrading living conditions of many immigrants living and working in the large urban and industrial centres of the North have been exposed more often by the media; however, these problems exist across Italy.<sup>110</sup>

There are no data concerning segregation of Muslim residents, but in fact, segregation does not appear to be a common problem; barring a few exceptions, the trend is towards cohabitation with non-citizen immigrants, including both Muslims and citizens.<sup>111</sup> As a consequence, the standard of public services available to Muslims is generally equal to that available to citizens, with particular reference to access to hospitals and schools.

Within neighbourhoods, however, foreigners often inhabit lower-quality housing and are often regarded with suspicion and mistrust by their Italian neighbours.<sup>112</sup> In Milan, for instance, while housing prices have been rising continuously across the city, including in poorer areas, they have decreased in the area in which the Institute of Islamic culture is located and where a large number of Muslims live. This seems to

<sup>109</sup> Caritas Italiana, *Dossier statistico immigrazione, 2001, XI rapporto Caritas sull'immigrazione*, see: <<http://www.caritasroma.it>>, (accessed 17 September 2002); Ministry of Welfare, Department of Social Affairs, Commissione per le politiche di integrazione degli immigrati, *Primo rapporto sull'integrazione degli immigrati in Italia, 2000*, see: <<http://www.provincia.bologna.it/portici/ottobre01/immigrazione4.html>>, (accessed 17 September 2002); see also: <<http://www.provincia.torino.it/xatlante/legis/lecas01.htm#L9>>, (accessed 17 September 2002) and ECRI Report 2001.

<sup>110</sup> M.T. Marino, "Per gli immigrati trovare casa resta un miraggio. I dati nel rapporto Ares" (To Find Housing is Still a Dream for Immigrants, Data from the Ares Report), *La gazzetta del mezzogiorno*, 16 March 2001. See also A. Sciotto, "Dopo il lavoro una casa" (After Employment – a House), *Il Manifesto*, 19 July 2001.

<sup>111</sup> A significant exception is the Roma/Sinti community. Approximately one third of the total Roma/Sinti population of approximately 120,000 (2/3 of which are Italian citizens) live in segregated camps, under extremely poor and precarious conditions. See ECRI 2001, paras. 60-61. See also European Roma Rights Centre, *Campland*.

<sup>112</sup> On the perception of urban reality by immigrants, see M. Pendenza, *Noi visti da loro* (Us as Seen by Them), 1999, at <<http://www.minwelfare.it>>, (accessed 25 September 2002).

signal diffidence, if not fear, of investing in an area which is largely populated by immigrants and which has recently been described as a possible shelter for individuals connected to fundamentalist organisations.<sup>113</sup> At the same time, in Mazara del Vallo (Sicily), the peaceful cohabitation of large number of Tunisian workers in the fishing industry with local inhabitants provides a positive example of successful integration.<sup>114</sup>

Housing issues are closely connected to employment. In many cases, immigrants are involved in “black market” work, which yields low wages, clearly insufficient to pay high rental rates.<sup>115</sup> In many cases, owners require that immigrants provide a deposit as a guarantee for the payment of rental fees, and charge much higher prices than those asked of citizens for the same level of housing.<sup>116</sup> High rents often force immigrants to accept unsuitable living conditions, such as living in groups in single-room flats or even in cars.

### *Equal access*

Statistics from recent research demonstrate that although the quota of public housing made available to immigrants from 1995-2000 increased steadily, it is still very low compared to the amount of public housing made available to Italian and EU citizens.<sup>117</sup> Moreover, throughout the country, the private housing available to non-citizens and non-EU immigrants is often of inferior quality to that available to

<sup>113</sup> G. Meroni, “Milano, crollano i prezzi vicino alla moschea” (In Milan Prices Fall in the Vicinity of the Mosque), 18 January 2001, see: <<http://web.vita.it/home>>, (accessed 17 September 2002), also on file with EUMAP. Some observers have suggested that decreases in housing prices can not be attributed to fear of fundamentalism, as prices have decreased in other areas inhabited by Chinese and non-Muslim immigrants as well. OSI Roundtable Meeting, Milan, 20 June 2002.

<sup>114</sup> See for details, A. Cusumano, “Cittadini senza cittadinanza” (Citizens without Citizenship), 2000, see: <<http://www.cresm.it/it/pubblicazioni/libri/rappimm/cittpag22.html>>, (accessed 18 September 2002). Some observers have contested references to Mazara as a positive example of integration, suggesting that the large Tunisian community in that city actually lives largely separately from the Italian population.

<sup>115</sup> High rents are legally permitted, and citizens and immigrants alike encounter housing problems, especially in the northern regions. In fact, high rents in northern Italy have significantly limited internal migration from the less prosperous regions of the south. See *Primo rapporto sull'integrazione degli immigrati in Italia*, note 50, at: <<http://www.minwelfare.it>>, (accessed 25 September 2002).

<sup>116</sup> Ares Report 2000, “Il colore delle case” (The Colour of Houses), September 2000, see: <<http://www.casaconsumi.it/files/home1.html>>, (accessed 25 September 2002).

<sup>117</sup> See Rete d'urgenza contro il razzismo, *Annual Report 2000*, pp. 16–21, at: <<http://www.unimondo.org/reteurg/ra00it.zip>>, (accessed 18 September 2002).

citizens.<sup>118</sup> Little data has been collected to record, substantiate and challenge those allegations, or to show the extent to which they affect Muslims specifically.

There is nevertheless some evidence of discrimination in access to public housing for immigrants. In one such case, a municipal law regulating the assignation of public housing in Milan provided for citizens to be granted a more positive evaluation than immigrants of the same age, family status, employment, etc., and allocated public housing on this basis.<sup>119</sup> The practice was challenged in court, on the basis of the provision of Law 286/98 expressly forbidding discriminatory treatment based on racial, ethnic, national or religious differences,<sup>120</sup> and the regulation was declared illegal. The municipality of Milan was ordered to discontinue the practice, and to pay pecuniary and non-pecuniary damages as well as court expenses.

In addition, there have been possible instances of indirect discrimination by authorities in providing access to public housing. For example, the local government of Pordenone (Friuli Venezia Giulia) was recently reported as requiring immigrants to provide certain documents that are in fact impossible for them to obtain within the prescribed time (such as certificates of family status and other administrative documents obtainable only from local administration in the immigrants' country of origin) as a condition for being assigned public housing.<sup>121</sup>

There is also evidence of discrimination in access to private housing. In the worst cases, the refusal of housing to immigrants is clearly determined by racism: in a recent case in Parma, a man placed a notice on his door stating that his apartment would not be rented to black immigrants.<sup>122</sup> There are widespread allegations that landlords and real estate agents refuse to rent to non-EU immigrants, including Muslims. According to the EUMC, seasonal Muslim workers have stated that property owners have been increasingly reluctant to rent them accommodation.<sup>123</sup>

Courts have proven willing to rule against discrimination in the private housing market as well. In a recent case in Milan, a real estate agent was found guilty of discrimination because he had refused to conclude an agreement with immigrants from Africa.

<sup>118</sup> See Rete d'urgenza contro il razzismo, *Annual Report 2000*, pp. 8–36, at: <<http://www.unimondo.org/reteurg/ra00it.zip>>, (accessed 18 September 2002).

<sup>119</sup> Trib. Milano, 20 marzo 2002, Dr.ssa Paola Gandolfi, in the case *El Houssein, El Mouden, Zerai v. the Comune di Milano*, unpublished. On file with EUMAP.

<sup>120</sup> Law 286/98, Art. 43 and 44.

<sup>121</sup> See F. Longo, "Case agli italiani" (Houses to Italians), *Il Manifesto*, 5 April 2000.

<sup>122</sup> He was charged with racial discrimination in court. See "Non affitto agli immigrati" (I Don't Rent to Immigrants), *La Repubblica*, 30 May 2000.

<sup>123</sup> EUMC, *Summary Report on Islamophobia*, p. 23.



Witnesses testified that the agent had stated that the owners would not allow immigrants into the house. The guilty party was ordered to discontinue discriminatory behaviour and ordered to pay pecuniary and non-pecuniary damages.<sup>124</sup>

A similar ruling was handed down by a court in Bologna against the creators of a website that offered houses to non-EU nationals on worse conditions than to Italian citizens.<sup>125</sup>

### *Government response*

The recent amendments to Law 268/98 require employers to provide recruited immigrant workers with housing and to communicate details of their accommodation to immigration offices (*sportello unico per l'immigrazione*).<sup>126</sup> This measure is intended to reduce the risk of assigning immigrants to inadequate private accommodation.

Employers who provide immigrants with housing are entitled to retain one-third of the immigrant worker's salary as reimbursement of the expenses for providing accommodations.<sup>127</sup>

Private organisations, too, have sought to address housing issues faced by immigrants. For example, one private institution in Alisei, Umbria, has sponsored a project to reduce housing prices for immigrants. The project arranges agreements with local governments by which immigrants may construct their own houses, with assistance and guidance from technicians and experts.<sup>128</sup>

<sup>124</sup> Trib. Milano, 30 March 2000, in *Quaderni di diritto e politica ecclesiastica*, 2001, n. 3, p. 875.

<sup>125</sup> Trib. Bologna, 22 February 200, in *Diritto, immigrazione e cittadinanza*, 2001, n. 1 pp. 101–103.

<sup>126</sup> Law 286/98, Art. 22, para. 8 (as amended by Law of 11 July 2002, Art. 18).

<sup>127</sup> See “Una casa ai dipendenti stranieri, verra trattenuto un terzo dello stipendio” (A House for Foreign Employees, One-third of the Salary Will Be Retained), *Corriere della Sera*, 9 September 2002. The provision is included in the decree approved by the Council of Ministers on 6 September 2002.

<sup>128</sup> For details, see: <<http://www.alisei.org/focus2001/autocostruzione.htm>>, (accessed 18 September 2002).

### 3.1.4 Healthcare and other forms of social protection

The Constitution guarantees public healthcare to Italian citizens.<sup>129</sup> Law 286/98 devotes several articles to healthcare,<sup>130</sup> and additional healthcare legislation has been adopted in individual regions.<sup>131</sup> These provisions guarantee legal immigrants equal access to the national healthcare system, provided they register with the *Servizio Sanitario Nazionale* (“National healthcare service,” hereafter “SSN”).<sup>132</sup> Full medical assistance is granted to immigrant minors regardless of their parents’ legal position.<sup>133</sup>

Illegal immigrants are entitled to basic healthcare protection (including preventive care) for all illnesses or accidents that may affect individual or public health, including pre-natal and maternity care, healthcare protection for minors, vaccination and prevention, diagnosis and treatment of contagious illnesses. A circular of the Ministry of Health provides an expanded definition of the forms of medical treatment considered “basic.”<sup>134</sup>

#### *Health conditions*

Data on hospitalisation of immigrants shows evidence of the so-called “healthy migrant effect” (i.e. those who emigrate are usually the healthiest members of the community).<sup>135</sup> However, the same data also reveals the “social fragility” of immigrants, who are

<sup>129</sup> Constitution, Art. 32.

<sup>130</sup> See A. Passaleva, “Politiche sanitarie e socio-sanitarie,” *Stati generali sull’immigrazione: politiche locali e percorsi di immigrazione*, Vicenza, 12 January 2001.

<sup>131</sup> Constitution, Section 5.

<sup>132</sup> Law 286/98, Art. 34. Those who are not in the country for work (employed, self-employed, or registered in the public employment agency lists), for family matters, asylum, or citizenship, must be insured. However, they may satisfy this requirement by registering with the SSN. See also G. Baglio, M. Loiudice, S. Geraci, “Immigrazione e salute: aspetti normative,” *Annali di Igiene, Medicina preventiva e di Comunità*, n. 7, pp. 165–177; S. Geraci, ed., *Immigrazione e salute: un diritto di carta? Viaggio nella normativa internazionale, italiana e regionale*, Rome: Caritas ROMA, Anterem, 1996. See also G. Zincone, ed., *Secondo rapporto sull’integrazione degli immigrati in Italia*, p. 273.

<sup>133</sup> Law 286/98, Art. 35.

<sup>134</sup> Circular of Ministry of Health No. DPS/40/98/1010, 22 April 1998, which specifies the contents of Legislative Decree 286/98.

<sup>135</sup> Hospitalisation of immigrants represents two percent of all hospitalisations, which is consistent with the proportion of immigrants in the population as a whole. See S. Geraci, *Argomenti di medicina delle migrazioni*, Scuola superiore di scienze biomediche, Rome: Peri Tecnes, 1995.

frequently hospitalised for voluntary abortions and work-related accidents.<sup>136</sup> Moreover, the likelihood that immigrants will be injured during work-related accidents is higher, as they often take up potentially dangerous and insufficiently regulated work.

There are no differentiated data to demonstrate health conditions among Muslims specifically or levels of access to healthcare among Muslims as compared to other groups, and there are no recorded complaints of discrimination. However, many immigrants (an estimated 30 percent) do not register with the SSN, and thus do not enjoy in practice the healthcare to which they are legally entitled.

The Government has begun to take measures to address healthcare issues for immigrant communities.<sup>137</sup> The National Healthcare Plan for 1998-2000 focused on the need to strengthen the protection of vulnerable groups, including immigrants,<sup>138</sup> and the Government has made efforts to raise awareness of healthcare issues among immigrants as well as public health service workers.<sup>139</sup>

### 3.1.5 Access to justice

Citizens and non-citizen residents of Italy are guaranteed equal access to the court system.<sup>140</sup>

Access to justice for immigrants has been facilitated by the simplified procedure set in place by Law 268/98, according to which cases of alleged discrimination may be filed in person (thus avoiding the costs of hiring a lawyer), and the requirement for legal representation may be waived. In addition, such cases may be filed at the plaintiff's

<sup>136</sup> See Caritas, *Immigrazione, dossier statistico 2001: Rapporto sull'immigrazione*, Rome: Nuova Anterem, 2002, pp. 241–250; P. Lemma, G. Costa, L. Bandera, P. Borgia, “Stranieri in Italia: lo stato di salute e il sistema sanitario” (Foreigners in Italy: the State of Health and the Health System), in M. Geddes, ed., *La salute degli italiani* (Health of Italians), Rome: La Nuova Italia Scientifica, 1999.

<sup>137</sup> See *Documento programmatico relativo alla politica dell'immigrazione e degli stranieri nel territorio dello Stato*, a norma dell'articolo 3 della legge 6 marzo 1998, n.40: 2001–2003, p. 50.

<sup>138</sup> *Objective 4*; a special ministerial Commission for the drafting of “Immigrants’ Healthcare” was established with D.M. 2 November 1998. See also, C.M. 24 March 2000, published in *Gazzetta Ufficiale*, n. 126, 1 June 2000.

<sup>139</sup> ECRI Report 2001, para. 42.

<sup>140</sup> “Everybody can apply to courts for the protection of his/her rights and lawful interests” (*interessi legittimi*). Constitution, Art. 24. See also G. Zincone, p. 401.

place of residence and simplified procedures are prescribed during the course of the hearing as well.<sup>141</sup>

There is no data regarding discriminatory treatment against Muslims within the justice system.<sup>142</sup> At the same time, there is a popular belief that magistrates are not severe enough with delinquent immigrants of all backgrounds, and “let them off” too easily. In the absence of statistical data, complaints and reports of discrimination against immigrants or Muslims specifically in the justice system cannot be substantiated (or disproved). ECRI has “encourage[d] the Italian authorities to carry out research on these issues.”<sup>143</sup>

### *Immigrants in the penitentiary system*

Data compiled by the Department of Penitentiary Administration (hereafter “DAP”), shows that immigrants are clearly over-represented in the prison system. Among the 55,383 prisoners in the penitentiary system as of 31 May 2001, 16,330 were foreigners; thus, foreigners, who make up approximately three percent of the total population, constitute 29.5 percent of the prison population.<sup>144</sup> Although there are no data on the religious affiliation of inmates,<sup>145</sup> six of the ten groups most represented in prisons are from majority Muslim countries.<sup>146</sup>

Among the prison population, 9,751 persons (48.8 percent) are being held in custody without a conviction. Allegedly, immigrants are more often held in custody on the grounds that there is a risk that they would not appear in court to answer the charges against them,<sup>147</sup> and because of difficulties associated with their frequent lack of

<sup>141</sup> EUMC, *Anti-discrimination Legislation in EU Member States – Italy*, Vienna, 2002, p. 17.

<sup>142</sup> No statistical data are available, and no complaints of discrimination against immigrants in this area have been recorded. ECRI makes reference to “complaints of imbalances between the sentences handed down to [...] foreigners and those handed down to Italian defendants convicted of comparable crimes.” See ECRI Report 2001, para. 18.

<sup>143</sup> ECRI Report 2001, para. 18.

<sup>144</sup> Data compiled by the Department of Penitentiary Administration, see: <<http://www.giustizia.it>>, (accessed 18 September 2002).

<sup>145</sup> See M. Barbagli, *Immigrazione e criminalità in Italia* (Immigration and Criminality in Italy), Bologna: Il Mulino, 1998; M. Pastore, “Lo straniero e la legge penale” (The Foreigner and the Penal Code), in *Produzione normativa e costruzione sociale della devianza e criminalità tra gli immigrati* (Normative Production and Social Construction of Deviance and Criminality among Immigrants), Quaderni ISMU, n. 9, 1995.

<sup>146</sup> Morocco ranked 1<sup>st</sup>, Tunisia 2<sup>nd</sup>, Albania 3<sup>rd</sup>, Algeria 5<sup>th</sup>, Egypt 9<sup>th</sup> and Senegal 10<sup>th</sup>, with a total of almost 10,000 individuals jailed. DAP data, see: <<http://www.giustizia.it>>, (accessed 18 September 2002).

<sup>147</sup> Permissible according to the Code of Criminal Procedure, Art. 274(a).

permanent registered residence or identification. In fact, the overwhelming majority of immigrants who are not imprisoned while awaiting trial never appear in court, and are judged by default.<sup>148</sup> Similarly, alternative sentencing regimes are very rarely applied to immigrants.

Recent data show that the percentage of immigrants convicted is higher than the percentage of convictions among Italians of the same age and sex.<sup>149</sup> This represents a dramatic change since the late 1980s, when Italians were convicted more often than immigrants.

Italian authorities contend that the high proportion of immigrants (especially illegal immigrants) in prisons is “due to the fact that many illegal immigrants are more easily involved in criminal activities” and insist that “there could not be any difference in a sentence concerning an Italian or a non-Italian citizen for the same offence.”<sup>150</sup>

To improve awareness of their rights among immigrants in prison, DAP has funded the translation into a number of languages commonly spoken by immigrants of some excerpts from prison rules and regulations and a booklet regarding the principal rights of the prisoner. DAP has also initiated cooperation with CIES (an NGO providing linguistic-cultural mediation and services in support of integration) aimed at facilitating the process of integration for foreigners, particularly those from outside the EU.<sup>151</sup>

### *Dietary restrictions*

In addition to recent attempts to accommodate the religious needs of workers (see Section 3.1.2), a new regulation on religious observance in prisons was adopted in 2000. The regulation states that religious precepts should be taken into account as much as possible when preparing food for inmates, that suitable rooms should be made available for worship and religious instruction, and that visits of religious representatives are to be permitted upon an inmate’s request.<sup>152</sup>

<sup>148</sup> DAP data, see: <<http://www.giustizia.it>>, (accessed 18 September 2002).

<sup>149</sup> Local data also show that immigrants resident in central and northern Italy have higher rates of conviction than those in the south. See M. Barbagli, *Immigrazione e criminalità in Italia* (Immigration and Criminality in Italy), p. 117.

<sup>150</sup> According to the Government, this follows from the provisions of the Criminal Code, Art. 133, which specifies that “the punishment has to be proportionate to the seriousness of the act and has to take into account the offender’s capability to commit a crime.” Appendix to the ECRI Report 2001, para. 18.

<sup>151</sup> Observations provided by the Italian authorities concerning ECRI Report 2001, para. 56.

<sup>152</sup> D.P.R. 230, 30 June 2000, Art. 11, 58 and 116.

### *Legal aid*

Legal aid for indigents at the expense of the State (the so-called '*Gratuito Patrocinio per i non abbienti*') is available on the basis of a simple affidavit/sworn statement endorsed by the Consular Authority, without discrimination on the basis of religious or ethnic affiliation, sex or language.<sup>153</sup> However, the EUMC notes that "the protection afforded by the 1998 Act is relatively unknown even among lawyers."<sup>154</sup>

There are no legal aid programmes especially for Muslim citizens or members of religious minority groups; this is not considered necessary, as the Italian civil, criminal and administrative law system is secular.

However, in light of the constitutional right to legal defense at every stage of judicial proceedings,<sup>155</sup> defendants who do not speak Italian have the right to an interpreter free of charge.<sup>156</sup> All persons have the right to be informed of their rights in a language they know, and the Court of Cassation has declared that any judicial act that has *not* been translated into the mother tongue of the suspect (*indagato*) or the accused (*imputato*) shall be null and void.<sup>157</sup> In civil proceedings, individuals who do not speak Italian may be assisted by an interpreter, and the judge determines which party will undertake the expenses.<sup>158</sup> However, the Italian Helsinki Federation recently noted that immigrants still receive insufficient legal assistance, "also for linguistic reasons."<sup>159</sup>

Moreover, as noted by ECRI, the authorities have initiated a number of programmes to improve the situation of foreigners in prisons, including the employment of cultural mediators, training of prison staff in the languages, culture and general situation of foreign detainees; initiatives to guarantee the free exercise of religion, and the maintenance of registers with judicial authorities to prevent ill-treatment of detainees.<sup>160</sup>

A recent study has shown that over the past ten years there has been a shift in the attitude of Italian lawyers towards immigrant clients.<sup>161</sup> In the early 1990s, the defence

<sup>153</sup> In the case of non-citizens who cannot show a tax statement, an affidavit is required. Law 217/90 (as integrated by Law 134/01), cited in ECRI 2001, para. 19.

<sup>154</sup> EUMC, *Anti-discrimination Legislation in EU Member States – Italy*, Vienna, 2002, p. 20.

<sup>155</sup> Constitution, Art. 24, para. 2.

<sup>156</sup> Code of Criminal Procedure, Art. 143.

<sup>157</sup> Reference to the Constitution, Art. 111, and a recent ruling of the Court of Cassation. See ECRI Report 2001, Appendix to the ECRI Report 2001, para. 17.

<sup>158</sup> Code of Civil Procedure 319/80, Art. 11 and 122.

<sup>159</sup> International Helsinki Federation, *Annual Report 2002*.

<sup>160</sup> ECRI Report 2001, para. 56.

<sup>161</sup> M. Cossa, T. Ferrari, I. Osmani, C. Boccazzi Varotto, eds., *Giustizia: lingua, ruoli e attori* (Justice: Language, Roles and Actors), Turin: IRES, 2000.

of immigrants was regarded as low-status work, but has since become an integral part of many lawyers' practices, and many young lawyers work principally with the immigrant community.

### 3.2 Protection from Racially and Religiously Motivated Violence

The legal system prohibits violence and incitement to violence on racial, ethnic, national or religious grounds, as well as the dissemination of ideas based on racial superiority and racial or ethnic hatred.<sup>162</sup> Enhanced sentencing is stipulated in cases in which incitement to commit (or commission of) violent acts and other crimes is proven to have a racial, ethnic, national or religious motivation.<sup>163</sup>

Public association with organisations inciting to discrimination or violence for racial, ethnic, national or religious reasons may be punished, particularly at sporting events or in other public spaces. For example, persons carrying racist symbols or emblems may be banned from stadiums.<sup>164</sup>

Public officials investigating crimes allegedly committed with racial, ethnic or religious motivation are granted special powers of inspection and acquisition, and such charges are prosecuted *ex officio*.<sup>165</sup>

However, generally no evidence is available to establish whether religion has been the motivation for violent acts.<sup>166</sup> Although reversal of the burden of proof is possible in civil trials, it would be unacceptable in criminal cases, leading some commentators to

<sup>162</sup> Law 205 of 25 June 1993, *Misure urgenti in materia di discriminazione razziale, etnica e religiosa* (Urgent measures regarding racial, ethnic and religious discrimination) integrating Law 654 of 13 October 1975, ratifying the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), *Official Gazette* n. 148, 26 June 1993.

<sup>163</sup> See Law 205/93, Art. 3. Racially, ethnically, or religiously motivated crimes are sanctioned with imprisonment. Courts may also award supplementary sanctions, such as compulsory public service, a curfew for up to a year, suspension of a driving licence or passport or travel documents for up to a year, prohibition to own weapons or participation in political activities for up to three years.

<sup>164</sup> Law 205/93, Art. 2.2. See also ECRI Report 2001, para 11.

<sup>165</sup> D.L., Art. 5 of 26 April 1993 n. 122 as amended by Law 205/93.

<sup>166</sup> See recent ECRI recommendation against attacks against Muslims in Europe after September 11<sup>th</sup>, at: [http://www.coe.int/T/E/Communication\\_and\\_Research/Press/Themes\\_files/Combating\\_racism/e\\_ECRI\\_Rec5.asp#TopOfPage](http://www.coe.int/T/E/Communication_and_Research/Press/Themes_files/Combating_racism/e_ECRI_Rec5.asp#TopOfPage), (accessed 18 September 2002).

the conclusion that adequate protection cannot be provided through criminal law.<sup>167</sup> In practice, in many cases such crimes go unpunished, even if they are reported.

### 3.2.1 Violence by private actors

Statistics on violent crime are not disaggregated according to type of crime, and there are no figures concerning the number of racially or religiously motivated violent acts. There are no data concerning crimes against Muslims specifically.

There have been numerous reports of racially motivated harassment and violence, especially at sporting events. The UN Committee on the Elimination of Racial Discrimination (hereafter, "CERD") has expressed concern about incidents of racist violence occurring during football matches in particular.<sup>168</sup>

There are also widespread concerns that racism by individuals and organisations is not properly punished;<sup>169</sup> ECRI "feels that the implementation of the provisions establishing the racist motivation as an aggravating circumstance and of those concerning incitement to discrimination and violence for racial, ethnic, national or religious reasons should be improved."<sup>170</sup>

However, there is usually no evidence to establish racial or religious motivation for a violent act. For example, in a case brought before the Supreme Court in 1998, the prosecutor's request for enhanced sentencing for racially motivated violence was denied. Two native Italians were convicted for having beaten a North African person; however, the court was not able to establish a racial or ethnic motivation for the beating.<sup>171</sup>

Furthermore, minority representatives and some experts assert that many cases of racially, ethnically or religiously motivated violence are simply never reported. Illegal

<sup>167</sup> See L. Fiorino, "Brevi considerazioni sul reato di incitazione a commettere violenza razziale" (Brief Observations on the Crime of Incitement to Racial Violence), *Cassazione penale*, 1999, p. 983.

<sup>168</sup> CERD A/56/18, paras. 312 and 313.

<sup>169</sup> The International Helsinki Federation noted in its 2002 report that "Roma in Italy were commonly the victims of racially motivated police violence. Police abuse of Roma took various forms, ranging from beatings during arrest or in custody, to shootings and the unlawful confiscation of personal belongings under the threat of physical abuse. A common thread, however, was the fact that incidences of abuse took place with full impunity." International Helsinki Federation, *Annual Report 2002*.

<sup>170</sup> ECRI Report 2001, para.12.

<sup>171</sup> Cass. Pen., Section III, 24 November 1998, n. 434, in *Rivista penale*, 1999, n. 266.



residents, who are the likeliest targets of racially motivated violence, also fear that approaching the police could result in their own deportation.<sup>172</sup>

### 3.2.2 Violence by public actors

There have been reports of discriminatory checks, abusive speech, ill-treatment and even violence against immigrants by law enforcement officials.<sup>173</sup> The Amnesty International Report 2001 notes “allegations of law enforcement officers physically assaulting detainees,” with several fatal cases “in disputed circumstances,” adding that “although the allegations related to both Italian and foreign nationals, many of the victims were of African origin or Roma.”<sup>174</sup>

In April 2001, three *carabinieri* officers in Ladispoli allegedly murdered Tunisian national E. I. B. The local residents reported seeing him getting into a police vehicle, and his corpse was discovered on the road half an hour later; the autopsy identified as the cause of death multiple heavy blows on the head, fracturing the skull. The officers were under criminal investigation as of August 2002.<sup>175</sup>

In May 2001, Tunisian national T. A. committed suicide in a prison in Potenza; previously, in 2000, he had protested physical mistreatment by prison staff, and a medical examination showed that his injuries were consistent with his allegations. In February 2002, a total of ten prison and medical staff persons were placed under criminal investigation for inflicting serious bodily harm and falsification of medical certificates.<sup>176</sup>

Many victims of police brutality mistrust law enforcement officers and are hesitant to report cases of discrimination and crimes committed against them, both doubting the successful outcome of charges and out of fear of counter-charges.

CERD recommended “the State party to ensure that the local authorities take more resolute action to prevent and punish racially motivated acts of violence against Roma

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<sup>172</sup> M. Merelli, M. G. Ruggerini, *Le paure degli altri, sicurezza e insicurezza urbana nell'esperienza migratoria* (Immigrants' Fears: Safety and Insecurity in Cities within the Immigration Experience), in the Working Papers published by Commissione per le politiche di integrazione degli immigrati, Dipartimento affari sociali, Presidenza del Consiglio dei Ministri. See: <<http://www.minwelfare.it>>, (accessed 25 September 2002).

<sup>173</sup> ECRI Report 2001, para. 51.

<sup>174</sup> Amnesty International, Annual Report 2001: Italy.

<sup>175</sup> Amnesty International, Annual Report 2001: Italy.

<sup>176</sup> Amnesty International, Annual Report 2001: Italy.

and other persons foreign origin.”<sup>177</sup> ECRI has recommended that the Government should implement stronger measures to prevent racially motivated violence. Specifically, it highlighted the need to raise awareness of “the need to actively counter racially motivated crime and incitement to racial discrimination and violence” among criminal justice officials (particularly the police, judges and prosecutors), and to find ways to encourage victims to file law suits against such crimes.<sup>178</sup>

### 3.3 Minority Rights

Italy has a well-developed system for guaranteeing minority rights to certain recognised national minority groups.<sup>179</sup> These groups enjoy extensive linguistic and educational rights,<sup>180</sup> including the right to use their mother tongue in schools<sup>181</sup> and in communication with public authorities, and to develop minority-language media.<sup>182</sup> There are also special structures to guarantee political representation for these minorities in select regions.<sup>183</sup>

Relations between the State (which is secular) and the majority religion (Roman-Catholic) are regulated by the Concordat of 1984.<sup>184</sup> The recognition and rights of

<sup>177</sup> CERD A/56/18, para. 308.

<sup>178</sup> See <[http://www.coe.int/T/E/Human\\_Rights/Ecri/1-ECRI/2-Country-by-country\\_approach/Italy/CBC2-Italy.asp](http://www.coe.int/T/E/Human_Rights/Ecri/1-ECRI/2-Country-by-country_approach/Italy/CBC2-Italy.asp)>, (accessed 18 September 2002).

<sup>179</sup> As required by Article 6 of the Constitution, Law 482/1999 provides for the adoption of special legislation for the protection and promotion of the language and culture of the Albanian, Catalan, German, Greek, Slovenian and Croat populations, as well as for speakers of French, Franco-Provencal, Friulian, Ladin, Occitan and Sardinian. See ECRI Report 2001, para 6.

<sup>180</sup> Italy has ratified most of the international instruments regarding minority protection in education, and in particular Protocol I to the ECHR (Law 848/1955), the UN Convention on the Rights of the Child (Law 176/1991) and the FCNM (Law 302, 1997, Art. 13).

<sup>181</sup> For example, in the region of Valle d’Aosta, minority schoolchildren are provided with bilingual education in French and Italian. See Vd’A Regional Statute, Art. 39. In the region of Trentino-Alto Adige, minority schoolchildren may choose to be taught in either German or Italian. See Trentino-Alto Adige Statute, Art. 19. See E. Palici di Suni Prat, *Intorno alle minoranze* (About Minorities), Turin: Giappichelli, 1999, pp. 29–50.

<sup>182</sup> See Law 482/1999 and E. Palici di Suni Prat, *Intono alle minoranze* (About Minorities).

<sup>183</sup> See Law 482/1999 and E. Palici di Suni Prat, *Intono alle minoranze* (About Minorities).

<sup>184</sup> The Concordat was ratified by Law 121/ 25 of March 1985, Ratification and execution of the Accord, with additional protocol, signed in Rome, 18 February 1984, with modifications to the Lateran Concordat of 11 February 1929 between the Republic of Italy and the Holy See.

religious minorities are regulated by special law<sup>185</sup> and bilateral agreements (*intesa*) between the State and representative bodies of religious groups. Such agreements have been concluded between the State and several religious minorities.

Muslims have not as yet succeeded in concluding an agreement with the State, although they constitute the second-largest religious group in Italy. In the absence of a special agreement, Muslims' exercise of religious rights is limited in practice. They often have difficulty establishing mosques and educational institutions and observing religious holidays and other rites, in part also due to public opposition. In addition, the great majority of Muslims living in Italy do not have citizenship and do not effectively participate in the political life of the country.

### 3.3.1 Religion

The Constitution grants the right to religious liberty to all and prohibits discrimination on the basis of religion.<sup>186</sup> These constitutional clauses are generally respected; individuals can profess their religion (or no religion at all) without suffering any disadvantage in the enjoyment of their civil and political rights. Freedom of religious expression is limited only when a certain practice is deemed a threat to public order or decency.<sup>187</sup> However, the exercise of collective religious rights is more problematic.

All religious denominations are granted "equal liberty" under the Constitution.<sup>188</sup> However, not all denominations are regulated by the same law. Apart from certain fundamental collective rights (such as the freedom of assembly for religious purposes, the right to constitute religious associations, etc.), legal regulation of religious denominations is largely based on bilateral agreements with the State. For example, a Concordat (1984) regulates the relationship between the Catholic Church and the State,<sup>189</sup> and there are agreements (*intese*) between the State and a number of minority religious groups.<sup>190</sup> There has been no State agreement with the Muslim community to date.

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<sup>185</sup> Law 1159/1929.

<sup>186</sup> Constitution, Art. 19, Art. 3.

<sup>187</sup> Constitution, Art. 19.

<sup>188</sup> Constitution, Art. 8.

<sup>189</sup> The concordat was ratified with Law 121/ 25 March 1985, Ratification and execution of the Accord, with additional protocol, signed in Rome 18 February 1984, with modifications to the Lateran Concordat of 11 February 1929 between the Republic of Italy and the Holy See.

<sup>190</sup> Agreements have been concluded with Valdensians, Adventist, Baptists, Pentecostals, Jews, and Lutherans. Agreements concluded with Buddhists and Jehovah's Witnesses have yet to be approved by the Parliament. The text of these agreements can be found in P. Moneta, *Il codice di diritto ecclesiastico*, Piacenza, La Tribuna, 1999.

Religious groups that have not concluded any agreement are regulated by a 1929 law on minority religions<sup>191</sup> or by the common law of associations.<sup>192</sup> A draft law to replace the 1929 law is under discussion in the Parliament.<sup>193</sup>

There has been no agreement between the Muslim community and the State, and therefore Muslims do not enjoy the benefits such agreements bring. For example, unlike religious groups that have signed an agreement, Muslims cannot allocate a quota of the IRPEF (personal income tax) to the Muslim community, deduct donations to the community from taxes, delegate teachers to public schools to provide religious instruction, legitimately abstain from work on religious holidays,<sup>194</sup> or observe other religious rites.

Different observers suggest different reasons to account for the fact that no agreement has been concluded with Muslims. The most commonly cited factors include the relatively recent appearance of a large Muslim community in Italy,<sup>195</sup> the relatively small number of Muslims who are citizens (non-citizens not being eligible to conclude an agreement with the State), and the multitude of competing Muslim organisations that claim to represent the entire Muslim community (see Section 4.2).

A number of Muslim representatives have asserted that the real problem is not the absence of a State agreement, but the system itself, which tends to stamp a homogeneity on the Muslim community that does not adequately reflect reality. Requiring a single representative reflects State interests rather than the needs of the diverse Muslim communities, and also reinforces the stereotypical notion of a monolithic Islam.<sup>196</sup>

The need for an agreement could become less urgent if already existing legislation and regulations were implemented thoroughly to allow Muslims to satisfy their

<sup>191</sup> Law 1159, 24 June 1929, *Disposizioni sull'esercizio dei culti ammessi nello Stato e sul matrimonio celebrato davanti ai ministri dei culti medesimi* (Provisions regarding the denominations admitted in the State and the marriage performed in front of their ministers).

<sup>192</sup> In particular by Art.14-42 of the Italian Civil Code.

<sup>193</sup> The text of the draft law can be found in the *Quaderni di diritto e politica ecclesiastica* (Journal of Ecclesiastical Law and Policy), 2001/2, pp. 567-75

<sup>194</sup> See R. Aluffi Beck-Peccoz, *Tempo*, "Lavoro e culto nei paesi musulmani", Turin: Fondazione Giovanni Agnelli, 2000.

<sup>195</sup> However, much smaller and equally "new" communities (e.g. the Buddhists) have already signed such agreements with the State.

<sup>196</sup> Under this point of view, the constitutional provision of privileged status to the Catholic religion is incompatible with the notion of a secular State. Interviews with Muslim representatives in Milan, Florence and Rome, 20 April – 1 May 2002. OSI Roundtable Meeting, Milan, 20 June 2002.

fundamental religious needs. This would both meet the most immediate demands of Muslim communities and give the authorities time to consider, discuss and reflect alternative approaches together with Muslim representatives, and thus to negotiate a suitable and mutually acceptable agreement.

There is little political support for the negotiation of a State agreement with the Muslim community, so there is little likelihood that one will be developed or adopted in the near future.<sup>197</sup> Moreover, certain political, religious and intellectual circles strongly oppose an agreement with Muslims on the grounds that it might strengthen the status of the Islamic community or include provisions that are not in line with the fundamental principles of the Italian legal system.<sup>198</sup>

### *Mosques*

There are very few Islamic places of worship in Italy: an estimated 100 for a community of about 700,000 individuals.<sup>199</sup> Most Muslims gather and pray in *ad hoc* locations ranging from basements to garages to private flats, which often lack facilities for accommodating gatherings of large numbers of persons. These gatherings frequently have provoked protests from persons living in the neighbourhood.<sup>200</sup>

There has been considerable opposition to the allocation of public funding for the construction of new mosques (e.g. in Varese and other northern towns). In Lodi, a small town close to Milan, the local administration decided to support the building of a mosque, provoking strong opposition from Lega Nord, which encouraged public demonstrations against the decision. In Naples, plans for the construction of a new publicly-funded mosque have sparked controversy and opposition from members of Parliament, church leaders and local inhabitants.<sup>201</sup> In the meantime, in some places, such as Milan, Muslims pray on sidewalks due to the lack of suitable facilities.

<sup>197</sup> See R. Guolo, "La rappresentanza dell'Islam italiano e la questione delle intese" (Islam's Representation and the Agreement Problem) in S. Ferrari, ed., *Musulmani in Italia, La condizione giuridica delle comunità islamiche*, Bologna, 2000, p. 67.

<sup>198</sup> See R. Guolo, G. Casuscelli in Ferrari, *Musulmani in Italia*, 2000.

<sup>199</sup> Estimate provided by Professor El Sheikh, University of Florence, Stefano Allievi, University of Padova, Ambassador Scialoja of the Islamic Centre of Rome, and by Mostafa El Ayubi of the newspaper *Confronti* in Rome.

<sup>200</sup> See M. El Ayoubi, "Questa moschea non s'ha da fare" (This Mosque Is Not To Be), *Confronti*, February 2002, pp. 36–37. Also R. Botta, "Diritto alla moschea: tra 'intesa islamica' e legislazione regionale sull'edilizia di culto" in Ferrari, pp. 109–130.

<sup>201</sup> D. Williams, "Public Funding for New Mosque Splits Naples," *International Herald Tribune*, 13 May 2002, p. 7.

### 3.3.2 Language

Muslims living in Italy do not share a single language, and there are no specific provisions for the use of any of the languages commonly spoken by Muslims with public authorities.

Public authorities communicate in Italian,<sup>202</sup> but also distribute information in foreign languages and languages common to immigrants (mainly English, French, Arabic, Albanian, Spanish, Romanian and Chinese). Public officials working in offices dealing with immigrants (such as city police) are required to attend lectures and training classes on immigrants' cultural backgrounds and may attend language classes to facilitate communication.

There are no restrictions on the private use of the various languages spoken by Muslims, or on the use of Islamic names and surnames, although names written in Arabic and other non-Latin languages must be transliterated, as registry offices work only with the Latin alphabet.

There are no public signs in the languages spoken by immigrants.<sup>203</sup> However, in neighbourhoods with a higher concentration of immigrants, signs in different languages are common, especially for the advertisement of specialised products such as *halal* meat.

### 3.3.3 Education

Muslim immigrants speak the different languages of their different countries of origin – usually a “neo-Arabic” language – which are quite distinct from classical and literary Arabic. There is no publicly funded education in Arabic for Muslim students coming from Arabic-speaking countries (or in other language for other immigrant groups).<sup>204</sup> No data has been collected concerning the demand for public education (including provision of foreign language classes) in Arabic or other languages spoken by Muslims, and no efforts have been made to develop initiatives in this area.

<sup>202</sup> The right to use the minority language in communication with public authorities of certain recognised historic minorities is regulated by Law 481/1999.

<sup>203</sup> The right to post signs in minority languages is guaranteed to recognised historical minority groups according to Law 481/1999.

<sup>204</sup> However, Arabic is taught as a foreign language in the faculties of many Italian universities, together with other languages spoken by Muslims.

*Religious education*

In accordance with the Constitution, the educational system does not provide separate public funding for religious education.<sup>205</sup> However, schools and “educational institutes” may be established at private expense, provided they guarantee equal access and equal educational treatment for all and observe standard curriculum requirements.<sup>206</sup> Moreover, private schools, including those with a religious orientation, may receive direct or indirect State funding, mainly through regional governments.<sup>207</sup> Numerous private Catholic schools operate on this basis.

However, no legally-accredited Islamic schools have been established.<sup>208</sup> Muslim representatives have asserted that, as a group that is not recognised as a minority, they are at a disadvantage in obtaining State funding to establish and support their own educational establishments.<sup>209</sup>

The curricula of public schools include Catholic religious education, although any pupil has the right to attend or not to attend such classes.<sup>210</sup> In practice, however, no such courses have been organised for Muslims in public schools, despite requests from Muslim representatives and parents.<sup>211</sup>

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<sup>205</sup> Constitution, Arts. 7, 8, 33 and 34.

<sup>206</sup> Constitution, Art. 33, paras. 3-4.

<sup>207</sup> For a description of such initiatives, see A. Ferrari, *Libertà scolastiche e laicità dello Stato in Italia e Francia* (Educational Freedom and State Secularism in Italy and France), Turin: Giappichelli, 2002, Section III, Chapter 1.

<sup>208</sup> Through several *interpellanze parlamentari* during the so-called “question time,” the issue of an “illegal” Muslim school in Cremona was raised by MPs, who alleged poor conditions at the school. Alfredo Mantovano, undersecretary of State for Home Affairs, replied that there were 30 children of school and pre-school age who attended this school in order to obtain a certificate recognised by consular authorities but not by the Italian Ministry of Education. See Resoconto stenografico dell’Assemblea, Seduta n. 98, 14 February 2002, p. 58, at: <[http://www.camera.it/\\_dati/leg14/lavori/stenografici/sed098/s230.htm](http://www.camera.it/_dati/leg14/lavori/stenografici/sed098/s230.htm)>, (accessed 18 September 2002). Some Muslim countries have established schools in Italy: there is an Egyptian-funded school in Milan, a Tunisian-funded school in Mazara del Vallo and two Libyan-funded schools in Rome.

<sup>209</sup> Interview with Professor Salem El Sheikh, Florence, 26 April 2002; interviews with Muslim representatives in Rome, 28 April – 1 May 2002.

<sup>210</sup> Many Catholic as well as non-Catholic students choose to be exempted. Still, some Muslim representatives have expressed dissatisfaction with this solution, as children who choose exemption are left to “loiter” during those class periods. Interviews with Muslim representatives in Milan, Florence and Rome, April-May 2002.

<sup>211</sup> Interviews with Muslim representatives in Milan, Turin, Florence and Rome, 16 April – 1 May 2002. Without an agreement, teaching of the Muslim religion (as well as of other religions) can be provided in the context of the provision on “cultural activities” in Law 517/1977.

The issue of Islamic education in public schools is likely to increase in importance as the number of Muslim students continues to grow. It is almost inevitable that in a short time public school authorities will be confronted with a strong demand for classes in Islam and Arabic as a foreign language, according to the pattern already established for other religious groups and by older Muslim communities in other EU countries. However, there have been no State initiatives in this area as of yet.

### *Minorities in school curricula*

The State educational system does not aim to develop differentiated minority education for non-historical minority groups.<sup>212</sup> Instead, for groups not currently recognised as minorities, the Government has focused attention on promoting the integration of minorities as well as greater awareness of and appreciation for minority culture and identity in mainstream schools.<sup>213</sup>

The first Government circular on this issue, C.M.P.I. 301/89 (“On the adjustment of foreigners to compulsory schooling”) mainly aimed to promote the right to education (*diritto allo studio*), while the second, C.M.P.I. 205/90 (“Compulsory schooling and foreign pupils. Intercultural Education”), introduced the concepts of “intercultural education” and mediation for the promotion of a multicultural society.<sup>214</sup> A few years later, C.M.P.I. 122/92 reiterated the importance of education to the integration of immigrants. In 1994, C.M.P.I. 73/94 (“Intercultural dialogue and democratic cohabitation. The projected engagement of school”) introduced concepts such as *clima relazionale* (“relational climate”) and *attivazione del dialogo* (“dialogue activation”). Decree of the President of the Republic 275/99, affirming school autonomy, has

<sup>212</sup> For a specific approach to Muslim and Arabic cultures, see L. Operti, ed., *Cultura araba e società multiethnica. Per un'educazione multiculturale* (Arab Culture and Multiethnic Society: in Favour of Multicultural Education), Turin: Irrsae Piemonte, Bollati Boringhieri, 1998; I. Sigillino, *L'Islam nella scuola* (Islam in School), Milan: Franco Angeli, 1999.

<sup>213</sup> See also E. Besozzi, “Insegnare in una società multiethnica: tra accoglienza, indifferenza e rifiuto” (Teaching in a Multiethnic Society: Between Acceptance, Indifference and Rejection), in G. Giovannini, ed., *Allievi in classe stranieri in città. Una ricerca sugli insegnanti di scuola elementare di fronte all'immigrazione* (Pupils in Classes for Foreigners in the City. Research on School Enrolment Before Immigration), ISMU, Milan: Franco Angeli, 1998; E. Camilletti, A. Castelnovo, *L'identità multicolore. I codici di comunicazione interculturale nella scuola dell'infanzia*, Milan: Franco Angeli, 1994; F. Poletti, *L'educazione interculturale*, Florence: La Nuova Italia, 1992; G. Tassinari et al., eds., *Scuole e società multiculturale*, Florence: La Nuova Italia, 1992; G. Zincone, ed., *Secondo rapporto sull'integrazione degli immigrati in Italia*.

<sup>214</sup> See Ministry of Education, *Migrazioni e società multiculturale: il ruolo della scuola* (Migration and Multicultural Society: The Role of School), Seminar of Punta Ala, 5–7 December 1991.



allowed some freedom to schools in the organisation of curricular and extracurricular activities offered to pupils.<sup>215</sup>

Many official bodies<sup>216</sup> and organisations<sup>217</sup> receive Government support to support for projects related to integration. Government efforts are complemented by the work of private institutions (mainly Catholic charitable organisations) and NGOs, which offer a wide range of literacy and language classes<sup>218</sup> to facilitate access to the Italian educational system for foreign minors.<sup>219</sup> However, few Muslim NGOs are represented among these organisations, and Muslim representatives have asserted that there is still a lack of a truly inter-cultural approach in State schools, and that it would be important to ensure a more accurate and textured portrayal of Islam in textbooks.<sup>220</sup>

The Government has also provided support for the employment of “cultural and linguistic mediators” to promote the integration of foreign children (See Section 3.1.1).

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<sup>215</sup> See D. Demetrio and G. Favaro, *Immigrazione e pedagogia interculturale* (Immigration and Intercultural Education), Florence: La Nuova Italia, 1992.

<sup>216</sup> For example, the Committee for Foreign Children; the Commission for Integration Policies for Immigrants; and the Council for the Problems of Foreign Immigrants and their Families.

<sup>217</sup> For example, the Fondazione per le Iniziative e lo Studio sulla Multiethnicità (ISMU) of Milan, the Centro Informazione Documentazione inserimento scolastico stranieri (CIDISS) of Turin, *inter alia*.

<sup>218</sup> G. Favaro, ed., *Imparare l'italiano. Alunni stranieri e apprendimento della seconda lingua* (Learning Italian: Foreign Students and Acquisition of a Second Language), Milan: Guerini Associati, 1999; A. Tosi, *Dalla madrelingua all'italiano* (From the Mother Tongue to Italian), Florence: La Nuova Italia, 1995.

<sup>219</sup> G. Favaro, “Per una politica della formazione dei migranti. L’alfabetizzazione e l’istruzione degli adulti e l’inserimento scolastico dei minori” (Towards a Policy for the Education of Migrants: Literacy and Education of Adults and Scholastic Integration of Minors), in E. Granaglia, M. Magnaghi, eds., *Immigrazione: quali politiche pubbliche?* (Immigration: Which Public Policies?), Milan: Franco Angeli, 1993.

<sup>220</sup> Interview with Professor Salem El Sheikh, Florence, 26 April 2002. Also, interviews with Muslim representatives in Rome, 28 April – 1 May 2002.

### 3.3.4 Media

Freedom of expression is guaranteed by international treaties<sup>221</sup> and domestic legislation,<sup>222</sup> and court rulings have affirmed that freedom of expression is to be enjoyed by everyone.<sup>223</sup>

A large number of Muslim publications have been launched within the past decade.<sup>224</sup> Some are limited to particular groups and institutions and are published on an *ad hoc* basis. Other publications are issued more regularly and distributed throughout Italy.<sup>225</sup> As a rule, these publications do not receive State funding.

Many Muslim publications are in Italian. However, there are some periodicals in Arabic and other national languages of the predominantly Muslim countries. Several publishers that produce specialised Muslim publications operate in Italy.<sup>226</sup>

<sup>221</sup> CEDU, Art. 10, *Official Gazette*, n. 221, 24 September 1955.

<sup>222</sup> A general overview of legislation in force on media regulation is available at the website of the Comune di Bologna. A. Lallini, E. Fronza, "Libertà di stampa e discriminazione razziale" (Free Press and Racial Discrimination), see: <<http://www2.comune.bologna.it/bologna/immigra/ar/liberta.htm>>, (accessed 18 September 2002).

<sup>223</sup> Constitution, Art. 21. In an important decision, the Tribunale di Milano stated that freedom of expression as guaranteed by Art. 21 of the Constitution must be granted to everyone, according to other general principles and legal provisions in force, with particular reference to Article 3 of the Constitution, providing for equal treatment regardless of race. *Diritto, informazione e informatica*, 1992, 856, 30 March 1992.

<sup>224</sup> See D. Filesi, "La comunicazione musulmana in Italia", in R. Gritti, M. Allam, eds., *Islam, Italia*, pp. 11–51.

<sup>225</sup> For the most notable media sources, see *Il Messaggero dell'Islam*, published by the Centro Islamico di Milano e Lombardia; *Islamica*, edited by Lega Musulmana. Two issues available for review at: <[http://www.lega-musulmana.it/Rivista\\_Islamica/Islamica1/Islamica.html](http://www.lega-musulmana.it/Rivista_Islamica/Islamica1/Islamica.html)>, (accessed 18 September 2002) and <[http://www.lega-musulmana.it/Rivista\\_Islamica/Islamica2/Islamica.html](http://www.lega-musulmana.it/Rivista_Islamica/Islamica2/Islamica.html)>, (accessed 18 September 2002). See also, *Assadakah* which is owned by the Arab League and published monthly by the Centro Italiano-Arabo e mediterraneo in Rome at: <<http://www.assadakah.it>>, (accessed 18 September 2002). The journal *Il puro islam* (Pure Islam), which is edited by the Naples-based Shi'ia organisation *Ahl al Bait*, is an example of a publication which has developed quite rapidly. See: <<http://digilander.iol.it/ahlalibait/ilpuroislam-menu1.htm>>, (accessed 18 September 2002)

<sup>226</sup> Istituto culturale islamico romano (I.C.I.R.) in Rome specialises in Islamic law and religious publications in which other religions (particularly Christian religion) are critiqued and discussed. Centro editoriale studi islamici in Italia (C.E.S.I.), Rome, publishes books on language and religious prophecy; Società Italiana Testi Islamici (S.I.T.I.) in Trieste, specialises in classical Muslim literature. Further indications in D. Filesi, *La comunicazione*, pp. 150–151.

Due to the relatively low costs of publishing and the growing number of users, the Internet has become an increasingly important means of communication and dissemination of ideas. Muslim culture and religion is well represented on the web, both by sites initiated and based in Italy as well as by sites based abroad. A recent study identified 15 Muslim web-sites.<sup>227</sup> Site promoters are generally cultural and religious centres,<sup>228</sup> but often religious assistance and information is provided directly from sites belonging to the embassies of Muslim States, such as Saudi Arabia.<sup>229</sup>

The public radio and television system does not include regular programming prepared by representatives of Muslim communities.<sup>230</sup> The same is true for national private television, though some Muslim communities and organisations have access to local radio and television stations, on which they occasionally broadcast their own programmes.<sup>231</sup>

### 3.3.5 Participation in public life

The overwhelming majority of Muslim residents of Italy do not have citizenship, and thus do not enjoy full participation in the political life of the country.

Critics claim that the process of acquiring Italian citizenship, based on the principle of *jus sanguinis*,<sup>232</sup> is anachronistic – still suited to a country that is a net exporter rather than a net recipient of immigrants.<sup>233</sup> While Law 286/98 is oriented towards opening Italy to legal immigration, the current citizenship law restricts access to citizenship, effectively penalising permanent residents.<sup>234</sup> Thus, although obtaining citizenship is

<sup>227</sup> See C. Sebastiani, “Lo spazio di internet” (Internet Space), in I. Sigillino, *I media*, pp. 14–50.

<sup>228</sup> See, for example, Unione delle Comunità e Organizzazioni Islamiche in Italia (UCOII), <<http://www.islam-ucioi.it>>, (accessed 18 September 2002); Associazione islamica Ahl al Bait <<http://www.shia-islam.org>>, (accessed 18 September 2002) and Lega Musulmana Mondiale-Italia, <<http://www.lega-musulmana.it>>, (accessed 18 September 2002). Also, Centro Islamico di Milano e della Lombardia, see <<http://www.islam.it>>, (accessed 18 September 2002).

<sup>229</sup> See: <<http://www.arabia-saudita.it/Ambasciata/index.html>>, (accessed 18 September 2002).

<sup>230</sup> However, the Catholic Church and other religious denominations have regular access to the mass media.

<sup>231</sup> D. Filesi, *La comunicazione*, pp. 157–159. These broadcasting programmes do not receive State financial support.

<sup>232</sup> Law 91/1992, *Official Gazette* n. 38, 15 February 1992.

<sup>233</sup> “Riformare la legge sulla cittadinanza” (Reforming the Law on Citizenship), Rome, 22 February 1999, see: <<http://www.minwelfare.it>>, (accessed 25 September 2002).

<sup>234</sup> See also ECRI Report 2001.

logically a final step in the integration process, many studies reveal the existence of a different trend: the number of new citizens is not increasing in proportion to the rising number of immigrants.<sup>235</sup>

According to current regulations, naturalisation requires ten years of continuous residence. No language test is required. Children born in Italy to non-citizen immigrant parents may obtain citizenship when they reach the age of eighteen, on the basis of a declaration, provided that they have maintained continuous residence.<sup>236</sup>

The provisions of Law 286/98 regarding participation in local elections allow non-citizens with a residence permit to vote in administrative elections. However, this right has not yet been exercised, as there are still no procedural guidelines to regulate foreigners' participation in elections. Thus, even permanent residents do not take part in local elections.<sup>237</sup>

In several towns, immigrants have been allowed to vote in the election of additional local councillors (or members of local consultative bodies) who have the task to deal with immigration matters.<sup>238</sup> However, limited awareness of the right to vote among immigrants appears to have contributed to a disappointingly low turnout.

Muslims representation in public office is minimal.

<sup>235</sup> Caritas, *Dossier statistico immigrazione, 2001, XI rapporto Caritas sull'immigrazione*, see: <<http://www.caritasroma.it>>, (accessed 25 September 2002). According to additional research conducted by Caritas, in 1999 immigrants from Algeria, Morocco and Tunisia amounted to 18.7 percent of all immigrants while immigrants from these countries who had acquired Italian citizenship amounted only to 12.5 percent of the total number of immigrants who had become citizens. These data seem to indicate that North African immigrants are underrepresented among immigrants who obtain citizenship. See Caritas, *Maghreb: Demografia, sviluppo e migrazioni*, October 2000, p. 25.

<sup>236</sup> Children with at least one parent who is an Italian citizen, or children who do not automatically obtain the citizenship of their parents at birth, obtain Italian citizenship before the age 18. See ECRI Report 2001, para 7.

<sup>237</sup> Law 286/98 refers to the Strasbourg Agreement on the Participation of Immigrants in Public Life, 5 February 1992, Chapter 3, regulating the right to vote for non-citizens. However, when signing it, Italy made a reservation concerning this provision specifically.

<sup>238</sup> G. Zincone, "Representation and Right to Vote," in *Political Participation and Political Representation of Immigrants in Europe*, Atti del convegno, Rome, 22 June 1999, see: <<http://www.minwelfare.it>>, (accessed 25 September 2002).

## 4. INSTITUTIONS FOR MINORITY PROTECTION

### 4.1 Official Bodies

In line with the Race Directive, the Government has been requested by the Parliament to establish, by February 2003, an Office within the Department for Equal Opportunities of the President of the Council of Ministers to ensure that the principle of equal treatment is observed in practice.<sup>239</sup>

As required by the Race Directive, this Office will be empowered to give independent assistance to victims of discrimination in judicial or administrative proceedings and to conduct independent inquiries into cases of alleged discrimination. Another of its key tasks will be to promote the adoption of special measures against discrimination by other State institutions in order to eliminate or compensate for discriminatory treatment on racial or ethnic grounds. It will also have the responsibility to advise the Government and other public bodies on ways of improving implementation of existing legislation and regulations, and to disseminate information about existing provisions on equal treatment. To facilitate the implementation of these tasks, the Office may cooperate with external experts from other branches of public administration, consultants or professionals, as required.

Some experts have questioned the independence of this body because of its appointment procedures.<sup>240</sup>

#### *Integration of immigrants*

Official State policy is to promote the integration of immigrants into the society. Accordingly, Law 286/98 explicitly encourages the development of programmes and policies to encourage cultural exchange.<sup>241</sup> Law 286/98 also provided for the establishment of a number of official bodies to facilitate the integration of immigrants.

For example, the Commission for the Integration of Immigrants was a consultative body, which advised the Government on the development and implementation of policies on integration, inter-cultural communication and anti-racism.<sup>242</sup> The Commission was composed of academics, experts in immigration issues and of representatives of the State administration involved developing and implementing

<sup>239</sup> Art. 29 l. n. 39/02 in *Suppl. ord. N. 54/L alla Gazz. Uff.* n. 72, 26 March 2002. Details and comments are available in *Guida al diritto*, n. 14, 13 April 2002.

<sup>240</sup> Interview with Chiara Favilli, lawyer, Arezzo, 24 April 2002. Also, at OSI Roundtable Meeting, Milan, 20 June 2002.

<sup>241</sup> Law 286/98, Art. 38.

<sup>242</sup> Law 286/98, Art. 46.

policies for the integration of immigrants. A number of Muslim representatives and experts on Islam were members of this Commission.

The Commission presented annual reports to the Parliament on the current state of implementation of integration policies, elaborating proposals for the improvement of these policies and answering to the Government's questions on matters within its competence. The working papers of the Commission, some of which concerned Muslims directly,<sup>243</sup> are available on the Commission's web-site.<sup>244</sup> The Commission published a "Decalogo contro il razzismo" – ten fundamental rules and principles against racism.<sup>245</sup>

ECRI welcomed the institution of the Commission and encouraged the Government to continue to support its activities and to work for the implementation of the recommendations formulated in its annual reports.<sup>246</sup> However, the Commission was dissolved on 6 July 2001 and has not been reconstituted.

The National Coordination Unit for local policies for the social integration of foreign citizens is housed within the National Council of Economy and Labour (CNEL).<sup>247</sup> Its primary tasks are: research on local initiatives and experiences related to the social integration of foreigners, and identifying and promoting good practices in this area. The Unit is composed of representatives of the local (municipal, provincial as well as regional) administrations, trade unions and employers' associations, as well as associations working with immigration-related issues and associations of immigrants.

### *The Department of Civil Liberties and Immigration*

The recent reorganisation of the Ministry of Interior led to the establishment of a Department of Civil Liberties and Immigration, with a mandate to encourage and support the activities of the territorial councils for immigration which have been established in all of the local *prefetture*; territorial councils work together with local institutions and civil society organisations to tackle various issues related to immigration.<sup>248</sup>

<sup>243</sup> On the perception of Islam in the media, see G. Soravia, "L'immagine dell'Islam nei media italiani" (Images of Islam in the Italian Media), at: <<http://www.minwelfare.it>>, (accessed 25 September 2002).

<sup>244</sup> See: <<http://www.minwelfare.it>>, (accessed 25 September 2002).

<sup>245</sup> See: <<http://www.minwelfare.it>>, (accessed 25 September 2002).

<sup>246</sup> ECRI Report 2001, para. 21.

<sup>247</sup> Art. 42.3.

<sup>248</sup> See: <[http://www.interno.it/sezioni/organizzazione/dipartimenti/s\\_000000218.htm](http://www.interno.it/sezioni/organizzazione/dipartimenti/s_000000218.htm)>, (accessed 18 September 2002).

*Governmental bodies on religious minorities*

The Government is in charge of concluding agreements with religious communities. It is assisted in this task by two technical commissions, one composed of experts on Church-State affairs, and the second by representatives of the ministries with an interest in the conclusion of an agreement. Negotiations are conducted between this second commission and the representatives of each religious group seeking an agreement.

*Local authorities*

In addition to the Government's activities at the national level, local public authorities at all levels are active in facilitating the integration of immigrants living in their communities.

Many local administrations provide immigrants with free advising, consulting and other services. Turin and Bologna provide some of the best examples of municipal administrations which are deeply concerned with immigration, and which provide a wide range of services to immigrants,<sup>249</sup> including employment advice, assistance in accessing public goods and services such as housing and health care, and Italian language lessons.

Most of the public information made available to immigrants is distributed through the Agencies for Foreigners (*Uffici Stranieri*) that are located in all local, regional and State administrations. These agencies serve as the point of exchange between the immigrant community and public authorities; they regularly organise events and campaigns to promote awareness of civil rights among immigrants.

## 4.2 Civil Society

The efforts of national and local public authorities to facilitate the integration of Muslim and non-Muslim immigrants are complemented by the activities of a wide range of civil society organisations. In fact, in many cases it is civil society organisations that are best positioned to provide immediate and concrete solutions to the practical problems commonly experienced by immigrants.<sup>250</sup>

<sup>249</sup> See: <<http://www2.comune.bologna.it/bologna/immigra/servimm.htm>>, (accessed 18 September 2002); <<http://www.comune.torino.it/stranieri-nomadi/stranieri.htm>>, (accessed 18 September 2002).

<sup>250</sup> For example, Cooperativa la Casa in Verona that works on housing issues. See: <<http://www.cestim.net/cooplacasa.htm>>, (accessed 18 September 2002).

There is frequent and effective cooperation between governmental institutions and civil society organisations concerning integration initiatives. Particularly at the local level, it is common for public administration offices and civil society organisations to collaborate closely in facilitating various aspects of the integration process. This collaboration is encouraged by the fact that NGOs that meet certain specified criteria may apply to the State for public financing. For example, the Province of Turin coordinates and provides funding for the *Progetto Atlante* – a network of public and private entities that collaborate to provide necessary social services to immigrants. The public administration in Florence also offers a coordination service and funding for civil society organisations providing services to immigrants.<sup>251</sup>

Government offices frequently call upon experts from civil society to produce research, studies and recommendations regarding the development of integration policies.

A number of associations, charities and foundations are operated by the Catholic Church,<sup>252</sup> trade union organisations or the cultural centres of fraternities; others are independently-operated. These organisations provide a wide range of services aimed at promoting integration and improving living conditions for immigrants and other vulnerable groups.

However experts note that, despite the wealth of NGO initiatives, the civil sector as yet does not present a united front in combating discrimination against Muslims, *inter alia*.<sup>253</sup>

### *Muslim organisations*

There are also a number of Muslim organisations that are becoming increasingly active in articulating the concerns and demands of their communities. Muslims who identify themselves primarily as a religious community have articulated claims regarding the right to free practice of their religion. On the local level, they have requested permission to open mosques; on the national level, they have sought a State agreement

<sup>251</sup> For information on the situation in Turin, see: <<http://www.provincia.torino.it/xatlante/index.htm>> and on the situation in Florence see: <[http://www.comune.firenze.it/servizi\\_publici/stranieri/meetingpoint.htm](http://www.comune.firenze.it/servizi_publici/stranieri/meetingpoint.htm)>, (accessed 18 September 2002).

<sup>252</sup> Caritas is one of the most important Catholic organisations which is involved in providing assistance to immigrants. See: <<http://www.caritas.it/>>.

<sup>253</sup> Interview with Chiara Favilli, lawyer, Arezzo, 24 April 2002. Also, OSI Roundtable Meeting, Milan, 20 June 2002.



(*intesa*) with the Muslim community, which many other smaller religious minorities have already achieved.<sup>254</sup>

The largest Muslim organisation is UCOII (Union of Islamic Communities in Italy), a federation of about 50 mosques across the country. The UCOII has a network all over Europe and supports an “international Muslim brotherhood.” It has sought recognition from the European Parliament as a confessional minority in Europe that supports “not individual but collective integration.”<sup>255</sup>

The *Centro Culturale Islamico* (Islamic Cultural Centre) is based in Rome. The Centre has played a leading role in the construction of the most important mosque in Italy. Its Board is largely composed of the ambassadors of Islamic States. Besides serving as a spiritual and social focal point, organising celebrations of religious holidays and observance of other religious rites, the Centre plays an important educational role. It provides Arabic language classes and religious instruction and has an extensive library on Islamic history, culture and contemporary affairs.

The Association of Italian Muslims (AMI) and Coreis are smaller organisations, composed predominantly of Italian citizens who have converted to Islam; both have pledged to guarantee non-fundamentalism if a State agreement were to be concluded with them. Both organisations are self-financed, and actively promote inter-culturalism and tolerance.

These organisations have competed with each other and with other organisations for the right to represent the Muslim community.

There are also a number of independent groups centred around local mosques which have neither claimed representativeness, nor allied with other larger organisations.

The problem of proper representation is cited as the chief cause for the lack of recognition of Muslims as a religious community in a State agreement. The dilemma for the State is that once it recognises one of the groups as representing the entire Islamic community, with powers to appoint Imams, administer money contributed to religious denominations, etc., other groups may refuse to recognise that group’s representativeness. At the same time, unlike in some other countries such as Spain, where concordats can be

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<sup>254</sup> Between 1990 and 1996, there were four requests for a State agreement from four different Muslim organisations. There have been no new developments. For more information, see *Quaderni di diritto e politica ecclesiastica*, 1996/1, pp. 287–303. For the text of the draft agreements prepared by Muslim organisations, see A. Cilaro, *Il diritto Islamico e il sistema giuridico Italiano* (Islamic Rights and the Italian Justice System), Naples, ESI, 2002, pp. 305–347.

<sup>255</sup> See UCOII, Istituto culturale Islamico in Milan, and Unione islamica in Occidente. Further information in V. Palanca, *Guida*, p. 105.

amended and even abolished, in Italy concordats, once concluded, are irreversible. The State's position is that it is "too early to conclude such an agreement with Muslims," until the Muslim community is rooted and proper representation emerges.

Experts note that there are "rudiments" of dialogue between the State and Muslims, but that further efforts are necessary.<sup>256</sup>

It has become increasingly clear that the transformation of Italy into a culturally and religiously pluralistic country will not occur automatically, as many previously assumed, but will require long-term effort and political commitment to work together with minority groups to identify ways of reducing societal tensions. It has also become increasingly evident that this process is inevitable.

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<sup>256</sup> OSI Roundtable Meeting, Milan, 20 June 2002.

## 5. RECOMMENDATIONS

- Monitor implementation of existing laws and programmes, including through the creation of new institutions for minority protection and the strengthening of existing institutions.
- Re-constitute an independent monitoring body that could advise the Government about the development and implementation of policies on integration, inter-cultural communication and anti-racism.
- Generate data to facilitate differentiated assessment of levels of discrimination and exclusion against different ethnic and religious groups.
- Raise awareness among minority groups about the existing legal and institutional framework for protection against discrimination.
- Train and sensitise law enforcement personnel to prevent the occurrence of violence and to ensure that adequate sanctions are applied when it does occur.
- Involve minority groups as partners in policy development, implementation and evaluation.
- Along with already-existing programmes to provide immigrant children with the knowledge and skills required to integrate into Italian society, develop curricula for optional or alternative programmes to facilitate greater awareness of immigrant cultures and languages.
- Develop means to encourage and facilitate the process of obtaining citizenship, and to increase access to political participation for long-term residents, including by according them the right to vote in local elections.
- Create the conditions for Muslims to enjoy fully their religious and cultural rights by facilitating the conclusion of a State agreement or series of agreements with Muslim communities.

# The Situation of Roma in Spain

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## 1. EXECUTIVE SUMMARY

Despite a 600 year history in Spain, Roma/gitanos are treated less favourably than other peoples of Spain in various spheres of social, economic and political life.

There are no reliable, nation-wide statistics about the situation of Roma/gitanos, a gap which international human rights bodies have encouraged State authorities to fill, highlighting that the lack of official socio-economic data about the Roma/gitano population hinders the development of effective policies to improve their situation.<sup>1</sup>

### *Discrimination*

Spain is a party to most international instruments for minority protection. However, legislation does not provide comprehensive protection against discrimination, and little has been achieved to transpose the requirements of the EU Race Equality Directive into domestic law.

Roma/gitano children face disadvantages in gaining equal access to education, as well as discrimination and segregation within the educational system. Roma/gitanos have lower than average levels of education, and the adult illiteracy rate is at the level of some of the poorest countries in the world. There has been some progress in increasing school enrolment over the past decade, but difficulties in accessing pre-school education, maintaining school attendance and improving academic performance have persisted.

There are significant barriers against the entry of Roma/gitanos into the legal job market. In addition to the handicap of generally lower levels of education and training, they face strong prejudices and discriminatory practices. Roma as well as immigrants are more likely to accept low-paying jobs considered undesirable by the majority population, to be employed in the “black” economy, and to work in unsafe and unhealthy conditions.<sup>2</sup> Few strategic policy responses to the reality of discrimination have been developed.

The living conditions of Roma/gitanos vary significantly. However up to 30 percent live in substandard housing,<sup>3</sup> and up to 90 percent of the inhabitants of shanty-towns

<sup>1</sup> CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Spain*, CERD/C/304/Add.8, 28 March 1996, paras. 11 and 18. Also, ECRI, *Country by Country Approach – Spain*, Vol. IV, Strasbourg, 26 January 1999, para. 19 (hereafter, “ECRI Report 1999”).

<sup>2</sup> EUMC, *Annual Report 1999 – Summary*, p. 6.

<sup>3</sup> CESCR, *Summary Record of the Sixth Session: Spain*, E/C.12/1996/SR.5, 9 December 1996, para. 13.

are Roma/gitanos.<sup>4</sup> Government-sponsored transitional housing programmes have been criticised domestically and internationally as perpetuating ghettoisation rather than alleviating marginalisation.<sup>5</sup> At the same time, access to private housing for many Roma/gitanos is obstructed by both poverty and discrimination, and evictions are a common problem. A pattern of discriminatory practices against Roma/gitanos has been documented in access to other public goods and services as well, and public and law enforcement officials have been unable to deal with the problem effectively.

There are no statistics or studies of the health situation of Roma/gitanos at the national level. However, data gathered at the regional and local levels suggest that the Romani community suffers from lower life expectancy, worse health conditions and greater difficulty in accessing health services than the majority.<sup>6</sup>

There is an increasing body of evidence of discriminatory practices against Roma/gitanos within the criminal justice system, including arbitrary searches, detention and breaches of due process guarantees. Recent research shows that Romani women are severely overrepresented in the prison population.<sup>7</sup>

### *Violence*

Community violence against immigrants and Roma/gitanos has reached alarming proportions, and has become a source of concern for specialised international bodies.<sup>8</sup> At the same time, there is no reliable statistical information on the number of racially motivated attacks,<sup>9</sup> and human rights organisations maintain that the number of cases is underreported by the authorities.<sup>10</sup> Security forces have been criticised for brutality, abusing detainees and ill-treating foreigners and immigrants,<sup>11</sup> often with impunity.

<sup>4</sup> National Ombudsman, *Report to the Parliament 1999*, paras. 14.2.5.

<sup>5</sup> CERD/C/304/Add.8, para. 14. Also, A. C. Méndez López, "Hidden Journeys. Hidden Opportunity for the Romani Families," Cáceres City Hall, 2001. "Active Access to Housing Policies for the Disadvantaged," at the 1997 conference "Housing and Habitat – Determinants of Social Exclusion," organised by the Ministry of Labour and Social Affairs.

<sup>6</sup> See J. F. Gamella, *The Roma Population in Andalucía*, Junta de Andalucía, Sevilla, 1996, p. 171.

<sup>7</sup> Barañi Team, *Romani Women and Criminal Justice*, Ediciones Metyel, Madrid 2001.

<sup>8</sup> CERD, *Summary Record of the 1384th Meeting: Spain, Tonga*. CERD/C/SR.1384, 15 June 2000, para. 64. ECRI Report 1999, paras. 27–29.

<sup>9</sup> International bodies have noted that such statistics should be gathered. See, e.g. CERD, *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Spain*, CERD/C/304/Add.95, 19 April 2000.

<sup>10</sup> EUMC, *Diversity and Equality for Europe – Annual Report 2000*, p. 20.

<sup>11</sup> CAT, *Concluding Observations: Spain*, CAT/C/ SPA.10, 21 November 1997, paras. 10–11.

*Minority rights*

Roma/gitanos are not recognised either as an ethnic minority, or as one of the “peoples of Spain,” and there has been no response to Romani requests for political recognition.<sup>12</sup> Thus, there is no legal protection of their identity, culture, language and other minority rights.

In the last 20 years Romani organisations have slowly attained a measure of participation on the international, national and local levels, generally in a consultative capacity. However, their involvement in mainstream politics and in the elaboration and implementation of the policies that affect them directly has been extremely limited.

*Institutions*

There is no State or Government institution or agency responsible for minorities, nor a body for the promotion of equal treatment that could provide independent assistance to victims of discrimination, conduct independent surveys, and publish reports, as required by the EU’s Race Directive.

The Government’s national policy towards Roma – the Roma Development Programme – has been criticised by Romani leaders as a scheme for delivering social assistance rather than a strategic plan to protect and promote their rights and identity.<sup>13</sup> There has been almost no Roma participation in designing, implementing or evaluating the RDP. As a consequence, the Programme fails to reflect some of the principal concerns of the Roma community, such as protection and recognition of their identity, participation in political life, and protection from discrimination.

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<sup>12</sup> *Manifesto for the Constitution of Platform for the Statute of the Roma Nation – Romipen*, Toledo, 12 February 2000, see: <<http://www.cenfor.com/romipen/manifiesto.htm>>, (accessed 20 August 2002).

<sup>13</sup> See also M. Padilla, “Roma Organisations Ask for Recognition of the Roma Contribution to the Society,” *El País*, 27 October 2001.



## 2. BACKGROUND

Roma/gitano communities,<sup>14</sup> present in Spain for over 600 years,<sup>15</sup> are by and large *olvidados*, the “forgotten” citizens. An estimated 500,000 – 800,000 Roma/gitanos<sup>16</sup> are settled throughout the country, with the largest communities in the provinces of Andalucía (more than 40 percent), Valencia and Murcia, and in major cities such as Madrid, Barcelona, Sevilla, Granada, Valencia and Zaragoza.

The Roma/gitano population is highly heterogeneous. Though preserving their common roots and identity, there are many variations in lifestyles, customs and beliefs, levels of education, and social and economic status among communities in different parts of the country.

Over the centuries, Roma/gitanos have been subjected to various forms of social exclusion and persecution, sometimes as a matter of State policy.<sup>17</sup> Their customs, dress and language were banned in a succession of legislative acts that increasingly penalised the “gitano way of life” and either forced their assimilation, or condemned them to

<sup>14</sup> The Spanish Roma belong, together with the Roma from the south of France, to the group known as “calé,” which has generally adopted the language, customs and religion of the majority populations among which they live. They speak Caló, a language that preserved the basic vocabulary of Romanes but adopted the grammatical structure of Castilian Spanish. This report uses the terminology recommended by the Romani Union of Spain: “Roma” as a general term, “Romani” for the singular feminine genitive form, meaning “of the Roma” or “characteristic of the Roma community” and “Roma/gitanos” or “Roma” when referring to the Spanish Roma. When no additional explanation is provided, “Roma from the East” refers to the Roma from Central and Eastern European countries.

<sup>15</sup> The arrival of Roma in Spain was first recorded in 1425, in Zaragoza. For additional readings on Romani history, see for example, A. Fraser, *The Gypsies*, Blackwell, Cambridge, 1992; J. Yoors, *The Gypsies of Spain*, Macmillan, 1974; M. F. McLane, *Proud Outcasts: The Gypsies of Spain*, Carderock Press, 1987; J. P. Liégeois, *Gypsies, An Illustrated History*, Al Saqi Books, London, 1986; I. Hancock, *The Pariah Syndrome: An Account of Gypsy Slavery and Persecution*, Karoma, Ann Arbor, 1987. G. Puxon, *Roma: Europe's Gypsies*, Minority Rights Group, London, 1987; B. Leblon, Bernard, S. Shuinear, *Gypsies and Flamenco: the Emergence of the Art of Flamenco in Andalucía*, Hertfordshire Press, 1998 (Part II deals with the history of forced settlements of gitanos); B. B. Quintana, L. Gray Floyd, *Qué Gitano! Gypsies of Southern Spain*, Waveland Press, 1986.

<sup>16</sup> The Government estimates a Roma/gitano population of between 600,000 and 650,000, of a total national population of approximately 40 million. See Report submitted by Spain pursuant to Article 25 of the Framework Convention for the Protection of National Minorities, 19 December 2002, p. 3 (hereafter, “State FCNM Report.”). In addition, there are an unknown number of illegal and largely undocumented Romani immigrants and asylum-seekers from Central Eastern Europe and Balkan countries.

<sup>17</sup> See A. G. Alfaro, *The Great Gypsy Roundup*, Editorial Presencia Gitana, 1995.

exile or even death;<sup>18</sup> as a result, the Caló language has almost been lost. Roma/gitanos were acknowledged as fully-fledged members of the broader Spanish community only in the late 1970s, when the new Constitution recognised them as citizens and guaranteed their fundamental rights and freedoms.<sup>19</sup>

The legacy of this past can be felt today. Relations between Roma/gitanos and the rest of the population are marked by segregation in all areas of life – a “coexistence without togetherness.”

### *Public opinion*

Public opinion surveys show that Spaniards are tolerant of differences in nationality, race or religion compared to other European Union countries, while demands that minorities should assimilate into the majority culture are below the EU average.<sup>20</sup> Spaniards also display a relatively high level of acceptance of immigrants compared to other EU countries.<sup>21</sup>

By contrast, there is little support for the prohibition of discrimination against minority groups as a means of improving relations between people of different races, religions and cultures,<sup>22</sup> at a time when levels of support for such initiatives in other parts of Europe are rising.<sup>23</sup> There is a marked resistance to promoting increased political participation for minority groups.<sup>24</sup>

The common perception of Roma is negative and widely shared: they are seen as a group that is resistant to integration, and that consistently seeks advantages at the expense of the majority – whether by abusing the social welfare system or through aggression, cheating, and robbery. Roma are believed to have “ugly habits” that make

<sup>18</sup> See Alfaro, p. 24. Also, Hancock, *The Pariah Syndrome*, p. 53.

<sup>19</sup> State FCNM Report, p. 3.

<sup>20</sup> 12 percent of respondents supported the statement that people from minority groups, if they want to be accepted, must abandon their own culture (the EU average is 22 percent). Institute for Social Research and Analysis SORA, “Attitudes towards minority groups in the European Union – A special analysis of the Eurobarometer 2000 survey on behalf of the European Monitoring Centre on Racism and Xenophobia,” Vienna, March 2001, pp. 48–49 (hereafter, “SORA Analysis”).

<sup>21</sup> SORA Analysis, p. 13.

<sup>22</sup> 27 percent of respondents agreed that discrimination against minority groups should be outlawed, compared to the EU average of 31 percent. SORA Analysis, p. 27.

<sup>23</sup> Research indicates deterioration in the level of support for the promotion of equality principle. In the period 1997–2000, a decrease of five percent was recorded in Spain, as opposed to an average increase of two percent in the same period in the EU. See SORA Analysis, p. 51.

<sup>24</sup> Only 16 percent of respondents agreed with the statement that political participation of minority groups should be encouraged. The EU average was 21 percent. SORA Analysis, p. 30.

coexistence impossible.<sup>25</sup> Sociological research has suggests that Roma are the ethnic group most consistently rejected by teachers and pupils in schools: 49 percent of professors surveyed responded that they would not like to be friends, live in the same neighbourhood, or work with Roma;<sup>26</sup> 70 percent would be upset if one of their children married a gitana/o.<sup>27</sup> A similar pattern was revealed among teenagers: 27 percent strongly preferred not to accept Romani children as classmates,<sup>28</sup> 49 percent rejected the idea of marrying a gitana/o,<sup>29</sup> 13 percent were in favour of expelling them from the country,<sup>30</sup> and 43 percent believed that the Roma are responsible for their poverty and marginalisation.<sup>31</sup> These powerful negative stereotypes have been used to justify the segregation and isolation of Romani communities.<sup>32</sup>

In some cases, negative attitudes spill over into violence. In recent years there has been a marked increase of racially motivated violence,<sup>33</sup> anti-Semitic attacks and racist threats and intimidation. The number of racist crimes committed by neo-Nazi organisations and similar groups has also increased,<sup>34</sup> as has membership in such organisations<sup>35</sup> and the use of Internet to organise attacks.

<sup>25</sup> J. F. Gamella, *The Roma Population in Andalusia*, Junta de Andalusia, Sevilla, 1996, p. 324.

<sup>26</sup> T. C. Buezas, citing research conducted in 1986 and 1988; there is no more recent comparative data. In the same survey, 41 percent gave the same answer with regard to Arabs, 30 percent with Africans, 22 percent with Jewish people, and 18 percent with Russians.

<sup>27</sup> As compared to 64 percent giving the same answer in relation to Arabs, 57 percent with Africans, 41 percent with Jewish people, 37 percent with Japanese, etc.

<sup>28</sup> T. C. Buezas, p. 35.

<sup>29</sup> T. C. Buezas, p. 78.

<sup>30</sup> T. C. Buezas, p. 107.

<sup>31</sup> T. C. Buezas, p. 148.

<sup>32</sup> According to one commentator, the negative image of Roma/gitanos forms part of the core collective representations of the Spanish cultural tradition. See T. C. Buezas, *Is Spain Racist? Non-Roma Voices about Roma*, Anthropos, Madrid 2000, p. 22.

<sup>33</sup> See *El Ejido: Racism and Labour Exploitation. Report on the Racist Attacks*, February 2000, El Ejido, Almería, Federation of the SOS Racismo Associations in Spain, Barcelona, February 2001.

<sup>34</sup> EUMC, *Diversity and Equality for Europe – Annual Report 2000*, Vienna 2001, p. 12.

<sup>35</sup> Movement against Intolerance, in collaboration with the Ministry of Labour and Social Affairs, reported that the number of people involved in 55 active neo-Nazi or far-right groups has more than quadrupled since 1995, from 2,300 violent, extremist skinheads up to 10,400 known members. See EUMC, *Diversity and Equality for Europe – Annual Report 2000*, Vienna 2001, p. 28.

### *Media*

Studies carried by the Romani Union indicate that media coverage of Roma and Romani issues is superficial, heavy on stereotypes, and predominantly negative.<sup>36</sup> Roma/gitanos are most commonly depicted in the media either as artists or criminals, accompanied by images of shantytowns and dirty children. The issues facing Romani communities are most often framed as social problems rather than as human rights issues.

Journalists commonly refer to Romani families as “clans,” which suggests an association with crime and drug-dealing; conflicts in Romani neighbourhoods or involving Roma/gitanos have been referred to as *reyerta* (fight) so consistently that the word is now commonly understood to mean “a fight among Roma,” even if this is not the case. Some Roma groups such as Sinti, Kalderash and Lovari are referred to as “tribes,”<sup>37</sup> while the words “Rom,” “Roma,” and “Romanes” are never used in the newspapers, despite repeated calls from Romani organisations that these terms should be introduced. Roma/gitanos and their organisations are rarely used as a source of information; journalists who write about “gitanos” rarely report their opinion.

As a rule, editorial policies permit journalists to identify the ethnic origin of the subject,<sup>38</sup> and the print media abounds with references to “gitanos,” “persons belonging to the gitano ethnic group,” and “gitano-like” suspects. Individual journalists and professional organisations have attempted to alleviate the negative impact of these practices on ethnic

<sup>36</sup> One commentator notes the widespread belief that “delinquency, violence, artistic talent, begging and shanty-towns are for the gitanos what the islands, the language of Shakespeare, black humour and tea are for the British people.” Union Romani, *Journalists against Racism? The Spanish Press about Roma in 1995 and 1996*, Barcelona, 1997, p. 339.

<sup>37</sup> Union Romani, *Journalists against Racism? The Spanish Press about Roma in 1998 and 1999*, pp. 366–367.

<sup>38</sup> For example, the Style Book of the daily newspaper *El País* prohibits journalists from using certain phrases (such as *engañar como un chino* – to cheat like a Chinese person; *hacer una judiada* – to play a Jewish trick; or *eso es una gitaneria* – this is a gypsy trick) which might be offensive for the entire community, but permits them to mention a person’s ethnicity, nationality or race. According to the Defender of the Reader of *El País*, the policy of the newspaper is to avoid, whenever possible, ethnic identification in headlines, but to permit it in the text, particularly when this will contribute to a better understanding of the reported incident. Interview with the Defender of the Reader, *El País*, Madrid, 23 October 2001.

and cultural minorities by adopting codes of ethics,<sup>39</sup> and introducing mechanisms such as “the defender of the reader” (*defensor del lector*) in the editorial policies of the most important newspapers in the country.<sup>40</sup> Romani NGOs, too, frequently have collaborated with State authorities to organise conferences, workshops and seminars about the role of the mass media in fomenting racism and discrimination.

In 1994, the Ministry of Labour and Social Affairs signed an agreement with several Autonomous Communities (ACs) to cooperate with local press and television to improve the image of Roma/gitanos in the mass media.<sup>41</sup> These agreements, which were applauded upon their adoption by the UN Committee for the Elimination of Racial Discrimination (CERD) as “original and positive,”<sup>42</sup> have proven to be of symbolic rather than practical value; they appear to have had little perceptible impact.<sup>43</sup>

### *Public discourse*

Romani problems and perspectives are largely absent from the political agenda. The issues of minority rights, racial discrimination, xenophobia and multiculturalism have become subjects of public debate only with the recent arrival of large numbers of immigrants. Increasingly, Roma/gitanos who are Spanish citizens are perceived and treated as foreigners, and discussion of ethnicity and cultural differences takes place largely in the context of immigration:

In this context, the political discourse on Roma is changing radically: for years, the State invested in their development and they did not want to progress, now the time has come [for them] to take care of themselves, as do all other citizens. The concept of ethnic and cultural difference among the

<sup>39</sup> See, for example, the Code of Ethics of the Professional Association of Catalan Journalists, Art. 12: “[the journalist should] act with particular responsibility and rigour reporting news or opinions with statements that may give rise to discrimination on sexual, racial, religious, social or cultural ground. The same should apply to news or opinions that may incite violence. Journalists should avoid expressions or testimonies offensive or harmful for the personal situation of the individual, physical and moral integrity.”

<sup>40</sup> The Defender of the Reader is usually a journalist employed by the newspaper to answer readers’ complaints and letters.

<sup>41</sup> The Government of Spain, *Thirteenth Periodic Reports of State Parties Due in 1994: Spain*, CERD/C/263/Add.5, 3 May 1995, paras. 58–59.

<sup>42</sup> CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Spain*, CERD/C/304/Add.8, 28 March 1996.

<sup>43</sup> J. M. Fresno García, Director of FSGG, “The situation of Roma Rights in Spain,” communication presented during the European Roma Rights Centre’s “Workshop on Human Rights Litigation on Behalf of Roma,” held in Granada, 6–8 May 1999.

marginalised and the poor [in one's own country] is disappearing. From now on, cultural and ethnic differences come from abroad.<sup>44</sup>

Top public officials rarely refer to Roma/gitanos; when they do, it is usually either neutral or in reference to *flamenco* dancing or *corrida* (bullfighting). However, the royal family has made a number of important symbolic gestures. For example, Prince Felipe, when presiding over the Roma Youth Congress in Barcelona, sent a message of integration and acceptance by opening his speech with the traditional greeting, "brothers and sisters."<sup>45</sup>

There have been some cases in which State officials have stated publicly or acted upon prejudices against Roma. In a number of cases, mayors have provided support to or even led participants in anti-Roma demonstrations.<sup>46</sup> In other cases, they have made openly racist statements: for example, in Spring 2001, the mayor of Pego (Alicante) stated, during a radio interview: "I prefer having Roma/gitanos close to me instead of policemen; at least I know that the gitanos would only steal my wallet."<sup>47</sup> A Romani organisation, Alicante Kali, supported by a local trade union, filed a criminal complaint against the mayor, and the case was pending as of August 2002.<sup>48</sup> On the other hand, some public figures, such as famous writers Francisco Umbral<sup>49</sup> and Juan Goytisolo,<sup>50</sup> have spoken out publicly to denounce discrimination against Roma.

On the whole, racism is most often equated with xenophobia in public discourse, and the fight against racism is identified with efforts to protect immigrants and to support their integration. In the process, the problems of Roma/gitano citizens have been forgotten.

<sup>44</sup> R. Llopis I Llor, "The Invisibility of the Roma Nation," in *Annual Report 2001 on Racism in Spain*, SOS Racismo, Icaria Editorial, Barcelona, 2001, p. 33.

<sup>45</sup> "First European Congress of the Gypsy Youth," Romani Institute, Barcelona 1999, pp. 35–36.

<sup>46</sup> For example, *Albaladejo* case, see Section 3.2.

<sup>47</sup> As cited by S. Navarro, "The Prosecutor Considers that the Comments of the Mayor of Pego against the Gitanos Constitute a Criminal Offence," *El País*, 20 April 2001.

<sup>48</sup> S. Navarro, "The Judge Annuls the Fines Imposed by the Mayor of Pego on Two Local Policemen," *El País*, 11 May 2001.

<sup>49</sup> F. Umbral, "Romani Tradition," *El Mundo*, 1 March 2000; "The Romani Marriage," *El Mundo*, 11 June 2002.

<sup>50</sup> J. Goytisolo, "Spain and its Ejidos," *El País*, 20 March 2000.

### 3. MINORITY PROTECTION: LAW AND PRACTICE

Spain has ratified most of the international instruments relevant for minority protection and protection against discrimination,<sup>51</sup> including the Framework Convention for the Protection of National Minorities (FCNM)<sup>52</sup> and the Charter for Regional or Minority Languages (CRML).<sup>53</sup> However, it has not yet ratified the Revised European Social Charter,<sup>54</sup> nor signed Protocol 12 to the European Convention on Human Rights.

European Community law prevails over domestic law<sup>55</sup> and legally ratified international human rights treaties are part of the domestic legal order.<sup>56</sup> Norms relative to the fundamental rights and freedoms recognised by the Constitution must be interpreted in conformity with the Universal Declaration of Human Rights and ratified international human rights treaties.<sup>57</sup> Some courts – and particularly the Constitutional Court – give consideration to international human rights treaties in their rulings<sup>58</sup> but practicing lawyers point out that international norms are often disregarded in lower courts.<sup>59</sup>

#### 3.1 Protection from Discrimination

Spain is a parliamentary monarchy<sup>60</sup> with a decentralised system of 17 Autonomous Communities (ACs), each having a statutory right to assume partial or exclusive

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<sup>51</sup> ICERD in force since 1969 (with 1998 Declaration under Art. 14 recognising CERD's competence to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation of ICERD), ICCPR and ICESCR in force since 1977, CEDAW in 1984, CAT in 1987 and CRC in 1991.

<sup>52</sup> Ratified on 1 September 1995, in force since 1 February 1998.

<sup>53</sup> Ratified on 9 April 2001, in force since 1 August 2001.

<sup>54</sup> Spain signed the Revised European Social Charter on 23 October 2000.

<sup>55</sup> Constitutional and Supreme Court jurisprudence recognise the prevalence of Community law over domestic legislation: STC 28/1991 from 14 February 1991, STS from 25 September 1990, Art. 6888.

<sup>56</sup> Constitution of Spain (1978), BOE no. 311, 20 December 1978 (hereafter, "Constitution"), Art. 96(1).

<sup>57</sup> Constitution, Art. 10(2).

<sup>58</sup> CCPR, *Concluding Observations of the Human Rights Committee: Spain*, CCPR/C/79/Add.61, 4 March 1996, para. 9.

<sup>59</sup> D. L. Fernández Jiménez, "Juridical Aspects," in Working Documents 43, "Debate on Romani People," p.177.

<sup>60</sup> Constitution, Art. 1(3).

competence in certain areas established by the Constitution.<sup>61</sup> Thus, legislative and executive powers are divided between the State and the ACs, but the State has exclusive competence over regulations that guarantee the equality of all Spaniards.<sup>62</sup>

Article 14 of the Constitution explicitly prohibits racial discrimination,<sup>63</sup> but it applies to citizens only, while aliens enjoy “public freedoms ... under the terms which treaties or laws may establish.”<sup>64</sup> The right of non-citizens to equal treatment has been the subject of extensive debate and has been raised repeatedly before the Constitutional Court;<sup>65</sup> the failure to secure equality for all individuals under Spanish jurisdiction has drawn criticism from the European Commission against Racism and Intolerance (ECRI).<sup>66</sup>

Article 14 is binding on all public authorities,<sup>67</sup> and citizens may claim enforcement before regular courts and the Constitutional Court through a preferential, speedy procedure: before regular courts through the “ordinary recourse of *amparo*,” and before the Constitutional Court through the “constitutional recourse of *amparo*.”<sup>68</sup> There is abundant jurisprudence on equality from the Constitutional Court; in 1999 one of every five constitutional recourses of *amparo* alleged a violation of the equality clause,<sup>69</sup> and by 2000 the rate had increased to almost one of every four cases.<sup>70</sup> However, virtually none of these cases address discrimination on grounds of race or ethnicity.

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<sup>61</sup> Constitution, Art. 148 and 149.

<sup>62</sup> Constitution, Art. 149(1).

<sup>63</sup> Constitution, Art. 14: “Spaniards are equal before law, without any discrimination on the basis of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.”

<sup>64</sup> Constitution, Art. 13.

<sup>65</sup> See STC 107/84, 115/87, 28/1991, 24/1993, 94/1993, 291/1994.

<sup>66</sup> See ECRI Report 1999, para. 2.

<sup>67</sup> Constitution, Art. 53(1).

<sup>68</sup> Constitution, Art. 53(2).

<sup>69</sup> Constitutional Court’s Annual Report 1999, Section. V.1.a.

<sup>70</sup> Constitutional Court’s Annual Report 2000, Section V.1.a.



Affirmative action is permitted, both by the Constitution<sup>71</sup> and the Worker's Statute.<sup>72</sup> The Roma Development Programme and the introduction of a compensatory education system for Roma in schools are often cited as examples of affirmative action programmes (See Section 3.1.1).<sup>73</sup>

There is no specific anti-discrimination law, either at the national level or in the ACs. Several working groups have been established within ministries to review legislation and formulate proposals for the transposition of the EU Race Equality Directive,<sup>74</sup> but no draft legislation had been submitted as of August 2002.

At present, protection against racial discrimination is ensured by provisions scattered throughout the civil, labour, criminal and administrative codes, which vary greatly from area to area and among ACs. The Workers' Statute prohibits discrimination<sup>75</sup> on all the grounds mentioned in Article 13 of the Amsterdam Treaty.<sup>76</sup> The burden of proof is reversed in gender discrimination cases only, and provided the complainant establishes a *prima facie* case of discrimination.<sup>77</sup> In gender cases, the Constitutional Court has confirmed that statistics are not only acceptable, but also necessary to argue indirect discrimination.<sup>78</sup>

<sup>71</sup> Constitution, Art. 9(2) provides: "It is the responsibility of the public authorities to promote conditions so that the liberty and equality of the individual and the groups he joins will be real and effective; to remove those obstacles which impede or make difficult their full implementation, and to facilitate participation of all citizens in the political, economic, cultural, and social life."

<sup>72</sup> Workers' Statute. Revised text. Royal Legislative Decree No 1/1995 of 24 March 1995 (hereafter, "Workers' Statute"), Art. 17 (2) and (3). "Exclusions, quotas and preferences affecting freedom of employment may be established by law" and "[...] the Government may specify quotas, periods or preferences as regards employment in order to facilitate the placement of job seekers. Similarly, the Government may grant subsidies or allowances or take other measures to encourage the employment of specific groups of workers with particular difficulties in finding work."

<sup>73</sup> *Implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination*, E/CN.4/1996/72/Add.3, 18 November 1996, para. 157.

<sup>74</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, published in the Official Journal of the European Communities, 19 July 2000, L 180/22.

<sup>75</sup> Workers' Statute, Art. 4(2)(c).

<sup>76</sup> Art. 13 lists protected grounds: sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

<sup>77</sup> In such cases, the employer must prove that the measures adopted respect the principle of proportionality and have an objective, reasonable and sufficiently proved justification. The Royal Decree 2/1995 of 7 April 1995, approving the amended text of the Labour Code, Art. 96.

<sup>78</sup> Constitutional Court Decision, STC 240/1999, 20 December 1999.

The Penal Code stipulates that racial or ethnic motivation constitutes an aggravating circumstance<sup>79</sup> and criminalises discrimination in employment<sup>80</sup> and denial of services on racial or ethnic grounds by public officials, *inter alia*.<sup>81</sup>

The Law on Foreigners provides a definition of both direct and indirect discrimination and a list of actions considered discriminatory.<sup>82</sup> The law uses various terms to qualify discrimination (e.g. serious, very serious, favourable, unfavourable, or adverse) but does not provide any clear procedure for determining how these categories should be applied.<sup>83</sup> Moreover, the concept of indirect discrimination is applicable with regard to the employment of foreign workers only.<sup>84</sup>

Transposition of the EU Race Equality Directive<sup>85</sup> by July 2003 will require a significant legislative effort, as current legislation does not meet the Directive's requirements with regard to definition of direct and indirect discrimination, racial harassment and victimisation, the scope of anti-discrimination provisions, reversal of burden of proof in cases of ethnic and racial discrimination, effective remedies or the creation of a specialised body for the promotion of equal treatment.<sup>86</sup>

Labour inspectorates monitor implementation of legislation in their area of competence, but there is no specialised body to deal with human rights issues generally<sup>87</sup> or racial discrimination in particular.<sup>88</sup> There is no institution to provide

<sup>79</sup> Penal Code, Art. 22.4 (Organic Law 10/1995 of 23 November 1995; hereafter, "Penal Code").

<sup>80</sup> Penal Code, Art. 314.

<sup>81</sup> Penal Code, Art. 511.

<sup>82</sup> It prohibits direct discrimination against legally resident foreigners by public servants or private persons in accessing public services, employment, housing, education, professional training, social services and social assistance, or in exercising a legitimate economic activity. Law 8/2000, Art. 23.1, points a) to d).

<sup>83</sup> M. M. Sierra, "Anti-discrimination Legislation in EU Member States – Spain," EUMC, Vienna, 2002, p. 16.

<sup>84</sup> C. Esplugues Mota, M. De Lorenzo Segrelles, *The New Juridical Regime of Immigration in Spain*, Tirant lo Blanc, Valencia 2001, pp. 51–58.

<sup>85</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, published in the Official Journal of the European Communities, 19 July 2000, L 180/22.

<sup>86</sup> For a detailed comparison of Spanish law and the minimum standards set by Council Directive 2000/43/EC, see M.M. Sierra, "Anti-discrimination Legislation in EU Member States – Spain," EUMC, Vienna, 2002.

<sup>87</sup> There is no institute, centre or commission financed by the Government systematically to monitor and research human rights issues, although NGOs such as the Human Rights League have called for the establishment of such a body.

<sup>88</sup> EUMC, *Annual Report 1999*, p. 59.

assistance to victims of discrimination or to deal with complaints, as recommended by ECRI.<sup>89</sup> In fact, in its 1998 response to CERD, the Government asserted that such a body is unnecessary given the broad civil, criminal and administrative guarantees for the judicial protection of fundamental rights and the possibility of instituting *amparo* proceedings before the Constitutional Court.<sup>90</sup>

### *Lack of data*

There are no nation-wide, reliable statistics about the situation of Roma/gitanos, a gap which specialised human rights bodies such as the UN Committee on Economic, Social and Cultural Rights (ECOSOC)<sup>91</sup> and ECRI<sup>92</sup> have encouraged the authorities to fill. CERD has highlighted that the lack of official socio-economic data on the Roma/gitano population may impair the effectiveness of policies to improve their situation.<sup>93</sup>

The Government maintains that legal norms on gathering ethnically sensitive data make systematic data collection impossible.<sup>94</sup> In fact, legislation does not prevent the collection of sensitive data, provided that respondents are properly informed and that legal provisions on the processing of data are respected.<sup>95</sup> Moreover, according to the Data Protection Agency, as of 2000 there were 85 public and 60 legally registered private databases collecting and processing information related to the race/ethnicity of subjects.<sup>96</sup> Further, the Law on Statistics explicitly allows for the collection of data on ethnicity, with the previous and informed consent of the individuals concerned,<sup>97</sup> while

<sup>89</sup> ECRI Report 1999, para. 7.

<sup>90</sup> *Fifteenth Periodic Reports of States Parties Due in 1998: Spain*, CERD/C/338/Add.6, 12 October 1998, para. 51.

<sup>91</sup> CESCR, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Spain*, E/C.12/1/Add.2, 28 May 1996, paras. 11 and 18.

<sup>92</sup> ECRI Report 1999, para. 19.

<sup>93</sup> CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Spain*, CERD/C/304/Add.8, 28 March 1996.

<sup>94</sup> "One important point must be made before we say anything on the question of social and economic data on the Roma. Information on a person's membership of a given ethnic, religious, economic or social group is protected by the Constitution, and so it does not appear in official statistics on population, employment, education, social protection, family structures, etc." State FCNM Report, p. 5.

<sup>95</sup> *Ethnic Monitoring and Data Protection – the European Context*, Central European University Press – INDOK, Budapest, 2001, pp. 200–227.

<sup>96</sup> "Distribution of files containing sensitive data, registered in the General Register for Data Protection," *Catalogue of Files 2000*, CD-ROM issued by the Data Protection Agency.

<sup>97</sup> Public Statistics Function Law No. 12/1989.

the laws on elaboration of statistics for community purposes contain few or no limitations on collecting racial or ethnic data.<sup>98</sup>

Romani leaders point out that Roma/gitanos are treated differently than other “peoples of Spain” (see also Section 3.3):

[T]he National Statistics Institute systematically makes comparisons between the people of Andalucia, Galicia or Extremadura and the majority. These results are used to design policies to address disparities between various regions. This is never done for gitanos, anywhere, in any community.<sup>99</sup>

The lack of statistical data on Roma/gitanos appears to be due to lack of political will rather than legal obstacles, and constitutes a serious impediment to the development of targeted public policies to address serious issues of discrimination and exclusion, as detailed below.

### 3.1.1 Education

The Constitution proclaims the equal right to education,<sup>100</sup> and Spain is a party to the major international human rights instruments relevant for the right to education.<sup>101</sup> The Law on Legal Protection of Minors expressly incorporates the Convention on the Rights of the Child into the legal system.<sup>102</sup> In practice, Roma/gitano children face disadvantages in gaining equal access to education, as well as discrimination and segregation within the educational system.

Regulations governing the functioning of the educational system vary across Spain. Some regions regulate education according to the national framework legislation,<sup>103</sup> while those ACs which have assumed competences in pre-university education have adopted local norms which respect the spirit of but are not identical with the national

<sup>98</sup> *Ethnic Monitoring and Data Protection – the European Context*, Central European University Press – INDOK, pp. 212–213.

<sup>99</sup> Interview with Diego Luis Fernández Jiménez, Cordoba, 6 November 2001.

<sup>100</sup> Constitution, Art. 27(1).

<sup>101</sup> The UNESCO Convention against Discrimination in Education of 14 December 1960, to which Spain has been a party since 20 August 1969, the ILO Paid Educational Leave Convention (No. 140) of 24 June 1974, in force since 18 September 1979, the 1966 International Covenant on Economic, Social and Cultural Rights.

<sup>102</sup> The Legal Protection of Minors Act, No 1/1996 of 15 January 1996, Art. 3.

<sup>103</sup> The national framework legislation is formed by the National Education Act No. 8/1985 of 3 July 1985 (hereafter, “LOGSE”), The General Education Act No. 1/1990 of 3 October 1990 (hereafter, “LODE”), and Organic Law no 91/1995 on Participation, Evaluation and Control of the Education Centres of 20 November 1995 (hereafter, “LOPEG”).

framework legislation.<sup>104</sup> Within this framework, all children are guaranteed equal and free access to education (including those with irregular legal status)<sup>105</sup> through the first four years of secondary school,<sup>106</sup> and competent public authorities have a legal obligation to ensure the enrolment and attendance of all children.<sup>107</sup> Curricula are established by decree for each stage of education.<sup>108</sup>

The Preamble of the National Education Act (LOGSE) further establishes the State obligation to ensure *de facto* equality of opportunity.<sup>109</sup> The 1995 Royal Decree<sup>110</sup> provides for equality of rights of all pupils and prohibits discrimination on grounds of birth, race, sex, economic capacity, social status, political, moral or religious belief, physical, sensory or mental disability, or any other personal or social condition or circumstance. It also guarantees all pupils the right to respect for their physical and moral integrity and their personal dignity, and stipulates that they may not be subjected to humiliating or degrading treatment under any circumstances.<sup>111</sup>

The Government has acknowledged that in practice some Romani children do not enjoy equal access to education as a result of marginalisation, discriminatory treatment, acts of intolerance and rejection.<sup>112</sup> Though levels of enrolment among Romani children have improved since 1980, high drop-out rates and absenteeism continue to pose serious problems, and few Roma/gitanos complete higher education. Public schools are increasingly “ghettoised,” and difficulties in accessing kindergartens and certain schools have been reported.

### *Enrolment and school attendance*

Levels of enrolment among the Roma/gitano population have improved significantly in recent years. According to one source, as of 2001, the majority of Romani children

<sup>104</sup> Andalusia, Canaries, Catalunya, Valencia, Galicia, Navarra and the Basque Country.

<sup>105</sup> LODE, Art. 10(3).

<sup>106</sup> LODE, Art. 5(1).

<sup>107</sup> The Legal Protection of Minors Act, Art. 13.

<sup>108</sup> The term “curricula” encompasses the overall objectives, content, teaching methods and criteria for assessment at each of the levels, stages, cycles, grades and practical regulatory modalities that constitute the educational system.

<sup>109</sup> To achieve this goal, competent authorities must define priority needs in educational matters, fix targets for action and determine the necessary resources. See LOGSE, Art. 27(2).

<sup>110</sup> Royal Decree No. 732/1995 of 5 May 1995 establishing the rights and obligations of pupils and the internal rules governing behaviour in schools.

<sup>111</sup> Royal Decree No. 732/1995, Art. 17.

<sup>112</sup> *Periodic Reports of States Parties Due in 1999: Spain*, CRC/C/70/Add.9, 12 November 2001, para. 361.

(about 91 percent) began school at the normal age (i.e. at the same age as their non-Roma classmates).<sup>113</sup> However, enrolment among the non-Roma majority population is at 100 percent.<sup>114</sup> Moreover, studies show that differences between Romani pupils' age and grade level tend to increase by the end of primary school.<sup>115</sup>

Absenteeism is still very high: in the seven-year period between 1994 and 2001 the level of absenteeism was not significantly reduced<sup>116</sup> and the majority of Romani pupils attend school irregularly (54 percent);<sup>117</sup> of these, 31 percent miss classes for extended periods of time – three or more months per year.<sup>118</sup> A recent case study in Andalusia showed that Romani children are almost 12 times more likely to miss classes than non-Roma.<sup>119</sup>

**Table 1: Absenteeism according to ethnicity**

	<i>Roma/gitanos</i>	<i>Non-Roma</i>
Irregular school attendance:	45.1 percent	3.8 percent

The study also sought to differentiate among the reasons for absenteeism, and found that although almost half of the Romani pupils missed classes regularly, only one third did so for “unjustified” reasons<sup>120</sup> (e.g. the parents or the child did not want to attend). Many others cannot attend because their parents are engaged in seasonal work, requiring them to travel. However, there have been no studies on the relationship between seasonal work and school attendance, and thus – apart from several compensatory education initiatives for seasonal workers – there is neither a strategic approach nor a coherent policy to address the issue.

Children with irregular legal status appear to be particularly vulnerable. According to a recent report by Human Rights Watch, many unaccompanied migrant children in

<sup>113</sup> FSGG, *Evaluation of Educational Normalisation of Romani Children*, Madrid, 2002, p. 190.

<sup>114</sup> See Ministry of Education, *Datos Básicos de la Educación en España en el Curso 2001/2002 (Basic Data on Education in Spain for the Year 2001/2002)*, Madrid, 2001, p. 3.

<sup>115</sup> FSGG, *Evaluation of Educational Normalisation of Romani Children*, p.190.

<sup>116</sup> FSGG, *Evaluation of Educational Normalisation of Romani Children*, pp. 79–81.

<sup>117</sup> FSGG, *Evaluation of Educational Normalisation of Romani Children*, p. 197.

<sup>118</sup> FSGG, *Evaluation of Educational Normalisation of Romani Children*, p. 190.

<sup>119</sup> The study involved 264 Roma/gitano children and 1,097 non-Roma pupils. See A. Giménez Adelantado, F. Gavarri Hernández, “Seasonal Work and Absence from School,” in *Special Roma Dialogue: The Education of Romani Children in Europe*, No. 90, July–September 2001, p. 19.

<sup>120</sup> A. López Escudero, “Because of their Precarious Social Situation, Half of the Romani Children Miss Classes,” *El País*, 22 October 2001.

Ceuta and Melilla are not enrolled in school and do not have access to any form of effective education.<sup>121</sup> The UN Committee on the Rights of the Child has stressed the State's legal obligation to guarantee children of irregular legal status access to education.<sup>122</sup>

The Government has reacted indignantly to these critiques. The Government representative for immigration issues<sup>123</sup> called the Human Rights Watch reporting "unfocused" and "inaccurate;"<sup>124</sup> the Secretary of Social Affairs pointed out that the number of unaccompanied children had increased dramatically, and suggested that they (and not the police) were guilty for violent incidents.<sup>125</sup> The Governor of Melilla called the UN report "calumnious" and asked the Government to "protest energetically" to the UN against "the groundless allegations;" representatives of the two cities stated that the CRC's concluding observations were "false and manipulated."<sup>126</sup>

### *Kindergartens*

Pre-school education for children under six is voluntary. However, public administration has a legal obligation to provide a sufficient number of places to meet all enrolment requests. Most pre-school education services are provided by the private sector but there is also a network of public centres and services. These are not entirely free of charge; though pre-school institutions receive some public funding, parents are also required to make a contribution. Some municipalities run their own *crèches* and nursery schools. The criteria for admission to publicly-funded establishments are based principally on family income and the employment status of parents.

In practice, educational disparities between Roma and non-Roma children begin at the pre-school level: according to official estimates, approximately 59 percent of Romani

<sup>121</sup> Human Rights Watch, *Nowhere to Turn: State Abuses of Unaccompanied Migrant Children by Spain and Morocco*, May 2002, Vol. 14, No. 4 (D), pp. 20–21.

<sup>122</sup> CRC, *Concluding Observations of the Committee on the Rights of the Child: Spain*, CRC/C/15/Add.185, 7 June 2002, paras. 27–28 and 44–45.

<sup>123</sup> The delegate of the Government for immigration issues is the highest public functionary on immigration issues, subordinated to the Minister of Interior.

<sup>124</sup> T. Cruz, "Critics of the Ombudsman in Canarias," *El Mundo*, 27 February 2002.

<sup>125</sup> "The Popular Party Denies that Children's Rights are Violated in Spain," *El País*, 9 June 2002, p. 27.

<sup>126</sup> "The Popular Party Denies that Children's Rights are Violated in Spain," *El País*, 9 June 2002, p. 27.

children have access to kindergartens,<sup>127</sup> compared to a national average of 93.9 percent for the academic year 2001–2002.<sup>128</sup>

While acknowledging a certain resistance within Romani families to entrust small children to non-Roma institutions, NGOs stress that the lack of clear anti-discrimination norms, discriminatory eligibility requirements and uneven territorial distribution of kindergartens are also significant factors in the under-representation of Romani children at the pre-school level.<sup>129</sup> Moreover, supposed disregard for education among Roma is often overstated; one recent study suggests that 77 percent of Roma/gitano families are convinced that their children should finish compulsory education and 36 percent would like them to continue their studies. Further, Romani families' attitudes towards school appears to have changed considerably between 1994 and 2001: increasing numbers of Romani parents monitor their children's attendance and performance and participate in school-related activities.<sup>130</sup>

Racial discrimination also plays a role. In Spring 2002, a television programme documented the attempts of a Romani woman and a non-Roma reporter to enrol a 16-month-old child in various kindergartens in Valencia with a hidden camera. At each kindergarten visited, the Romani woman was told that there were no places available, and that she should try again the next year, though there could be "no guarantee that she would get a place even then, due to the large number of requests." The "non-Romani" child was immediately enrolled. One of the owners of a private nursery school explained to the reporter why he does not receive Romani children:

Last Summer, before the holidays, I accepted a Romani boy [into my kindergarten]. I did not tell anybody because I thought that this would be ridiculous. In September, when parents came to bring their children, they saw the child, and started asking me if he was a Romani boy. I said 'yes.' We began to receive notes and letters saying 'if you do not solve the problem, we'll take measures' ... [then they said] 'either the Romani boy leaves or we shall all go' ... they told me this directly, they did not care and they did not hide it ... [they said] 'you can call us racist, but we do not want our children mixing with a Rom...'

<sup>127</sup> MEC and CIDE, *The Inequalities in Education in Spain*, Madrid, 1999, p. 33.

<sup>128</sup> Ministry of Education, *Basic Data on Education in Spain for the Year 2001/2002*, Madrid, 2001.

<sup>129</sup> *The Romani People and Education – A Working Document*, November 1999, document elaborated on the basis of the debate within the Consultative Commission of Roma associations and federations with representatives of the Ministry of Education and Culture and representatives of the Ministry of Labour and Social Affairs held in Madrid, on 12 May 1999. Document on file with EUMAP.

<sup>130</sup> FSGG, *Evaluation of Educational Normalisation of Romani Children*, pp. 193–194.



The reporter, with her hidden camera, then visited the Association of Private Nursery Schools in Valencia, pretending that she wanted advice on how to open a private nursery school. An Association representative advised her never to accept Romani children:

Just tell [Romani parents] delicately that there are no more places. Otherwise, as soon as you accept one, many others will come – they are like that! ... a private kindergarten is free to accept or reject registration, nobody can tell us to take a child or not ... [but when you refuse Roma] always do it with soft words, so they cannot say ‘this kindergarten is racist and discriminates against us’ ... Instead of saying, ‘No, I do not want you here,’ just say ‘the Government allows me to have eight, 13, 20 ... children and there are no vacancies now, and I’ll put you in a waiting list,’ and then you leave the child on the waiting list forever. I can tell you that 90 percent of schools do not accept them, because of all the problems they bring with them. The first month they will pay you, the second the mother will not turn up, she will not pay you, the child does not always come or comes dirty... That is why everybody avoids the problem and washes their hands of it.<sup>131</sup>

### *Colegios concertados (mixed public/private schools)*

There are three types of educational institutions: public, private and *colegios concertados*, which receive both public and private funding. The assignment of children to publicly-funded nursery, primary and secondary educational establishments is regulated by a decree of the Ministry of Education,<sup>132</sup> which establishes primary criteria (family income, proximity to home, siblings attending the same school) and secondary criteria (family belonging to the “large family” category, disabled parents, siblings or guardians, other circumstances deemed relevant by the competent body of the school) for selection. The decree stipulates that enrolment committees are obliged to adopt measures to facilitate the enrolment of pupils with special educational needs stemming from social or cultural disadvantages. Such pupils must be equitably distributed among publicly funded schools, so as to favour their integration, avoiding extremes of concentration or dispersal.<sup>133</sup>

In practice, Romani pupils are overrepresented in public schools,<sup>134</sup> while their access to private and *colegios concertados* is blocked by discriminatory policies. Within the

<sup>131</sup> Information provided to a TV reporter, in response to a question about how to set up a private nursery school, “Investigation TV,” *Channel 9*, January 2002.

<sup>132</sup> Royal Decree No. 366/1997. This decree, however, does not apply in the ACs that have assumed competences in the field of education.

<sup>133</sup> *Periodic Reports of States Parties Due in 1999: Spain*, CRC/C/70/Add.9, 12 November 2001, para. 1272.

<sup>134</sup> A. A. Chao, “Where are they and how are they, the Romani pupils,” in *Special Roma Dialogue: Education of the Romani Children in Europe*, No. 90, July–September 2001, pp. 7–8.

public school system, there is a discernible pattern of progressive ghettoisation of certain public schools, resulting in *de facto* educational segregation. For example, according to statistics gathered by *Enseñantes con Gitanos* (“Teachers with Gitanos”) in 1984, 88 percent of Romani children attended public schools, 12 percent attended *colegios concertados*, and none attended private schools. Ten years later, in 1994, while absolute exclusion from private schools had been maintained, the number of Roma attending public schools had increased to 93 percent, and the number at *colegios concertados* had declined to seven percent.<sup>135</sup> There are regional variations to these percentages, but disparities exist throughout the country.

Selection criteria tend to exclude Roma children from *colegios concertados*. Children whose brothers or sisters or parents have studied at a school are favoured during the selection process, which tends to perpetuate existing inequalities.<sup>136</sup> Many schools are located in better neighbourhoods and thus are not “proximate” to children living in marginalised areas. Moreover, children from disadvantaged families who are accepted in *colegios concertados* are immediately confronted with another set of problems: extra-curricular activities are expensive, and those who cannot afford them feel excluded from the group.<sup>137</sup>

Individual ACs have adopted legislative measures to improve the representation of disadvantaged pupils at *colegios concertados*. In Madrid, for example, the 2001 instructions from the Ministry of Education required all publicly financed schools (thus including both public schools and *colegios concertados*) to enrol in every class at least two immigrants, Roma, or children from marginalised neighbourhoods.<sup>138</sup> Failure to comply with ministerial instructions may be sanctioned with cancellation of public subsidies.

However, opposition parties and trade unions have argued that the law itself must be amended or replaced, and that ministerial instructions are insufficient to address the systemic disparities generated by the implementation of the national norm regulating

<sup>135</sup> J. Salinas, intervention published in Working Documents 43, “Debate on Romani People,” p. 58.

<sup>136</sup> A. L. Escudero, “Educación quiere reservar un mínimo de dos plazas por clase para alumnos desfavorecidos” (Schools to Reserve at Least Two Places in Class for Disadvantaged Students), *El País – Madrid*, 5 February 2001.

<sup>137</sup> María Neredó’s interview with Paz Serrano, secondary education teacher, member of Baltasar Gracián-Group, Madrid, November 2001. On file with EUMAP.

<sup>138</sup> It was the first time that the ministry established a minimum number – previously, schools had only the obligation to set up a quota system at their discretion.

access to publicly funded schools. They have also argued that guaranteeing two places in each class is not sufficient to balance existing inequalities.<sup>139</sup>

Moreover, early indications suggest that the instructions are not respected, and authorities appear to be reluctant to impose sanctions. Indeed, representatives of the Ministry have acknowledged that 25 percent of *colegios concertados* from relevant areas have not reserved two places for disadvantaged children per class.<sup>140</sup> In addition, some entities that manage multiple schools reportedly use a “creative reporting system.” For example, an entity in Madrid which administers a total of five schools has argued that there is no need to comply with the ministerial instruction in four of them, as 70 percent of the students at the fifth, in Lavapies, are Romani or immigrants.<sup>141</sup>

In this context, the level of educational achievement among Romani children has not improved, and the distance between Roma and majority children has actually increased,<sup>142</sup> as certain public schools have been transformed into “parking places” for Romani children.<sup>143</sup> There are significant regional differences, however. In Andalucia, social interaction between Roma and non-Roma communities appears to be more positive and tolerance of cultural and ethnic differences appears to be higher than in other parts of the country. In Madrid, Romani/gitano parents appear to take a greater interest in school and their children tend to record higher levels of achievement.<sup>144</sup>

### *From exclusion to segregation*

In the 1970s, almost half of Romani children between four and 14 did not attend school at all;<sup>145</sup> although school registration was obligatory, the rule simply was not implemented for them.<sup>146</sup> In an attempt to improve school attendance, in 1978 the Ministry of Education signed a “bridge school agreement” (*escuelas puente*) with the

<sup>139</sup> A. L. Escudero, “Schools to Reserve at Least Two Places in Class for Disadvantaged Students,” *El País – Madrid*, 5 February 2001.

<sup>140</sup> A. L. Escudero, “Schools to Reserve at Least Two Places in Class for Disadvantaged Students,” *El País – Madrid*, 5 February 2001.

<sup>141</sup> Maria Naredo’s interview with Paz Serrano, secondary education teacher, member of Baltasar Gracián-Group, Madrid, November 2001. On file with EUMAP.

<sup>142</sup> H. García, intervention published in Working Documents 43, “Debate on Romani People,” p. 59.

<sup>143</sup> J. M. Flores, intervention published in Working Documents 43, “Debate on Romani People,” p. 60.

<sup>144</sup> FSGG, *Evaluation of Educational Normalisation of Romani Children*, pp. 160–161.

<sup>145</sup> ISAM, 1978 as cited in M. F. Enguita, p. 180.

<sup>146</sup> M. F. Enguita, *Roma Pupils in the non-Roma School – A Study of the Ethnic Relations in the Educational System*, Editorial Ariel, S.A., Barcelona, 1999, p. 181.

Secretariado Gitano, creating a network of schools established especially for Romani children, in the places in which they were living and adapted to their circumstances.

In the long term, the programme proved controversial. On the one hand, it provided some level of education to children who otherwise would have remained illiterate, brought schools closer to communities,<sup>147</sup> and permitted the development of flexible institutional models adapted to the needs of Roma/gitanos. It also generated a small group of teachers interested in Romani education issues. On the other hand, these schools were in effect segregated and poorly equipped, and students posted poor academic results. They were strongly criticised for failing to provide a socially and intellectually stimulating environment, tending to perpetuate themselves and, especially, for not fulfilling the promise of “bridging” anything – for not promoting the integration of Romani children into normal schools. However, it is generally agreed that though these schools were unacceptable as a permanent solution, they did play a transitional role in bringing education closer to the Roma/gitano community.

“Bridge schools” were abolished in 1986<sup>148</sup> in favour of mainstreaming. However, by the 1990s, a new segregationist tendency had emerged: public schools situated near Roma/gitano neighbourhoods became Roma-dominated or Roma-only schools, following the withdrawal of non-Roma children whose parents were reluctant to send their children to school together with Roma.<sup>149</sup> The trend becomes very visible when the demographic structure of Romani neighbourhoods is compared with the ethnic distribution in some schools: in districts with 50 percent Roma population, Romani children represent 80-90 percent of the student body.<sup>150</sup> Many Romani parents feel that the increasing ghettoisation of schools constitutes a form of discrimination,<sup>151</sup> while experts point out that education authorities themselves sometimes play an important role in the process:

[I]n some districts where there are many Romani children, if there are, for example, five schools, Roma tend to be concentrated in one of them. And, very often, the inspectors themselves are the ones who place Romani children in the same school, and the school becomes the “bad school of the neighbourhood.” All the children unwanted in other schools are moved there, and if immigrants arrive, they are also placed there, and – I am sorry to say it – disabled children as well. In other words, all those with whom teachers do not feel comfortable

<sup>147</sup> M. F. Enguita, p. 182.

<sup>148</sup> Although exceptionally, some “bridge schools” have been maintained. See Enguita, p. 181.

<sup>149</sup> B. G. Pastor, “Roma from Valencia – from the Street to the School,” *Special Roma Dialogue: Education of Romani Children in Europe*, No. 90, July–September 2001, pp.13–14.

<sup>150</sup> J. M. Fresno, intervention published in Working Documents 43, “Debate on Romani People,” p. 65.

<sup>151</sup> M. F. Enguita, *Roma Pupils in the non-Roma School*, p. 184.

working... And this is unacceptable – the competent authorities should put an end to it.<sup>152</sup>

Despite opposition from the Roma/gitano community, the ghettoisation phenomenon has spread throughout the country: it is estimated that there are tens, if not hundreds, of such “ghetto” schools in which the vast majority of pupils are Roma.<sup>153</sup>

### *Teachers’ and parents’ attitudes*

Alongside many sensitive and dedicated teachers who support Romani children, there are others who discriminate against them out of ignorance, and still others who do so intentionally.<sup>154</sup> One study found that one of every four pupils and one of every six teachers did not consider Roma/gitanos as fellow citizens, because “they do not respect the law,” “do not pay taxes,” “don’t want to integrate” or because “many of them are Portuguese.”<sup>155</sup> Comparative research in the last two decades showed that the level of racism against Roma tripled over the nine-year period from 1986 to 1993.<sup>156</sup>

In general, the educational system itself still seems insensitive to cultural differences: the majority of schools and teachers do not develop and do not participate in any intercultural education programmes. However, this may be due to lack of encouragement and opportunity; one recent study revealed that 63 percent of teachers surveyed would do something or would consider doing something for Romani children and 70 percent have tried to learn more about the Romani culture.<sup>157</sup>

In some cases, non-Roma parents have been actively involved in promoting the exclusion of Romani children from schools. For example, in May 2000 in Barakaldo (Vizcaya) the parents’ association protested against the enrolment of three Romani pupils by refusing to allow their children to enter the school while the Romani children were inside and insulting teachers who disagreed. The Municipal police provided protection to the children, as well as to their parents, Romani leaders and the teachers, and the children were able to enter the school. A commission formed by representatives of the education authorities, the school, and the local Roma association monitored the

<sup>152</sup> T. San Román, in Working Documents 43, “Debate on Romani People,” p. 71.

<sup>153</sup> A. A. Chao, “Where Are They and How Are They, the Romani Pupils,” in *Special Roma Dialogue: Education of Romani Children in Europe*, pp. 7–8.

<sup>154</sup> J. M. Fresno, intervention published in Working Documents 43, “Debate on Romani People,” p. 68.

<sup>155</sup> T. C. Buezas, *Racism Increases, Solidarity as Well*, Tecnos, Junta de Extremadura, 1995, p. 101.

<sup>156</sup> T. C. Buezas, p. 109.

<sup>157</sup> FSGG, *Evaluation of Educational Normalisation of Romani Children*, pp. 172–173.

situation until Autumn 2001, by which time the school director felt that the Romani children had been completely integrated into the non-Roma student body.<sup>158</sup>

### *Government response*

The Government has developed two complementary sets of educational programmes to improve educational opportunities for minority groups: compensatory programmes – which are designed to promote equality of opportunity for minority and disadvantaged children, and intercultural programmes – which target the population as a whole, and are designed to promote diversity and the right to be different.

Compensatory education programmes are not uniform nation-wide, as they are regulated by specific norms in those ACs that have assumed competences in the area of primary education<sup>159</sup> and by basic legislation in the rest of the country. There is a broad variety of such programmes: schools with a large number of Romani and immigrant children, rural education centres in disadvantaged areas, programmes for children of seasonal workers or itinerant families,<sup>160</sup> and programmes for hospitalised children or children in prolonged convalescence. The centres that develop compensatory education programmes receive extra funding and have staff trained to work with disadvantaged groups. Priority is given to schools with the largest numbers of disadvantaged pupils.<sup>161</sup> The main challenge is the willingness and the preparedness of the teachers to develop and implement compensatory education programmes which are sensitive and responsive to the needs of disadvantaged children and are not used as instruments to separate them from the majority.

Roma representatives have recognised the need for and the value of special compensatory programmes. However, some are concerned that these initiatives may reinforce – and at the very least do little to address – educational segregation. Differences in legislation between ACs have led to uneven and sometimes arbitrary implementation and to the use of widely varying criteria for the allocation of

<sup>158</sup> N. Galarraga, “Ricardo Herrero. School Director: ‘They Have Friends, They are Integrated,’” *El País*, 22 October 2001.

<sup>159</sup> Andalucía, Canarias, Catalunya, Valencia, Galicia, Navarra and the Basque Country.

<sup>160</sup> Itinerant families may be, for example, persons who change places of residence regularly, such as Roma from Eastern Europe, or other immigrants in search of work. These programmes are supposed to ensure coordination between different schools in which children are enrolled, develop “distance learning” materials, ensure extra teachers for oversubscribed schools; and provide scholarships and aid to cover accommodation, teaching materials for pupils pursuing courses of study away from home, and special training for teachers.

<sup>161</sup> *Periodic Reports of States Parties Due in 1999: Spain*, CRC/C/70/Add.9, 12 November 2001, para. 1253.

programme funds. Finally, while compensatory programmes develop measures to compensate for problems related to marginalisation such as teaching assistance for students with poor academic performance, scholarships for books and food, vaccinations, or courses in hygiene, they do not embody a positive approach towards Romani language, history or culture.<sup>162</sup>

Intercultural education remains more of a concept than a reality, because there is no legal framework for its implementation. Though LOGSE provides that educational activities should be based on respect for cultural diversity,<sup>163</sup> in practice existing curricula tend to reflect the majority culture almost exclusively<sup>164</sup> (See Section 3.3.3).

Education is one of the key areas of the Roma Development Programme, and under its umbrella a significant number of NGO initiatives have received State funding for extracurricular activities, workshops and seminars on education and multiculturalism. Teachers and administrators may – and have – initiated intercultural activities in some schools on an *ad hoc* basis, but they are not required or given any incentives to do so, and when they do, their activities are not regulated, supported, or evaluated. Setting such activities within a broader legal and institutional framework would ensure that they are implemented on a more systematic and consistent basis and stimulate teacher initiative.

### 3.1.2 Employment

The Constitution, the Labour Law and the Law on Foreigners contain norms prohibiting racial discrimination in employment. The Penal Code criminalises discrimination in both public and private employment, with sanctions ranging from fines to imprisonment. Unions have criticised the Government for devoting insufficient resources to inspection and enforcement,<sup>165</sup> and in fact despite frequent allegations of discrimination there is little case-law.

There are significant barriers against the entry of Roma into the job market. In addition to the handicap of generally low levels of education and training, marginalised Roma/gitanos face strong prejudices; it is commonly believed that “gitanos do not

<sup>162</sup> The Romani People and Education – A Working Document, November 1999; on file with EUMAP.

<sup>163</sup> LOGSE, Art. 2.

<sup>164</sup> FSGG, *Evaluation of Educational Normalisation of Romani Children*, p. 35.

<sup>165</sup> US Department of State, *Spain – Country Reports on Human Rights Practices – 2001*, Released by the Bureau of Democracy, Human Rights and Labour, 4 March 2002.

work,<sup>166</sup> “are dirty,”<sup>167</sup> or would steal from their employers. Thus, many Romani families are engaged in a combination of formal and informal employment; many are self-employed but are not registered as such.<sup>168</sup> Marginalised Roma/gitanos tend to take up jobs which vary from one region to another<sup>169</sup> but are generally considered undesirable by the rest of the population, such as “street selling,”<sup>170</sup> solid waste collection and seasonal work. Street selling is considered a marginal, almost black market activity; solid waste collection is “dirty;” while seasonal work is difficult and poorly paid.<sup>171</sup> Moreover, there are increasing restrictions on some forms of informal employment, while the accessibility of others has been reduced by the influx of immigrant labour.

The percentage of working age Roma engaged in street-selling is extremely high – by one estimate ranging between 50 and 75 percent.<sup>172</sup> Their position has become increasingly precarious as municipalities have raised taxes and other costs and have established stricter eligibility requirements for trade permits. Families who trade without permits are subject to fines, increasing their poverty and marginalisation. Romani women complain of continuous police surveillance, harassment, and detention

<sup>166</sup> C. Méndez López, “Hidden Journeys. Hidden Opportunity for Romani Families,” Cáceres City Hall, 2001.

<sup>167</sup> A subtle illustration of this stereotype appeared in a recent article about Romani women working as hairdressers, in which one person was quoted as saying: “It’s curious: when I enter the hairdressing school, the ones with the cleanest uniforms ... are gitanas.” E. Moliner, “Romani women opening ways,” *El País – Catalunya*, 21 May 2001.

<sup>168</sup> According to the Government, the vast majority of Roma (50–80 percent) are self-employed in “traditional occupations” (street selling, solid waste collection, seasonal work); 6–16 percent are antique-dealers, shopkeepers or artists; 10–16 percent are engaged in “new” occupations such as construction, public works or unskilled civil service jobs; and a very small number with university education have skilled jobs. See State FCNM Report, p. 4.

<sup>169</sup> In Andalucía, for example, the most frequent occupation for Roma is seasonal work in agriculture, but a small group of Romani intellectuals, who are engaged in business and administration, has also emerged.

<sup>170</sup> Street-selling is defined as any commercial activity which takes place outside of a permanent establishment, on the streets, passages, flea markets, or exhibitions, using mobile stalls or counters. ASGG, *Situation and Normalisation of Street-selling in Spain*, Madrid, 1996, pp. 16–17.

<sup>171</sup> L. Fernández, “The Employment Situation of the Roma from the Ghettos,” *Revista Hika* 111, see: <[http://www.hika.net/revista/zenb111/Hon\\_laboral.html](http://www.hika.net/revista/zenb111/Hon_laboral.html)>, (accessed 20 August 2002).

<sup>172</sup> See ASGG, *Situation and Normalisation of Street-selling in Spain*, p. 12, respectively Grupo PASS, 1991.



for street-selling activities.<sup>173</sup> Government representatives have asserted that allegations of racial discrimination are unfounded, as regulations concerning street-selling are applicable to Roma and non-Roma, and moreover that regulation of street commerce “is a matter for the municipalities and not for the Central Government.”<sup>174</sup> CERD has criticised this response as “unacceptable, as it was the Government and not the municipalities that... acceded to the Convention [ICERD] and [is] responsible for its application.”<sup>175</sup>

Working conditions in flea markets and similar venues are often poor; many are in inaccessible locations, with an insufficient number of authorised stalls and opening days,<sup>176</sup> and a lack of coordination among municipalities regarding market schedules.<sup>177</sup>

At the beginning of the 1990s, an estimated 10–15 percent of Roma/gitanos were *chatarreros*,<sup>178</sup> collectors of scrap metal, glass or paper. This type of activity has since been increasingly limited by competing public and private recycling systems, the closure of municipal garbage dumps and a drop in metal prices. Many Romani *chatarreros* gave up this type of work when they moved into social flats, where there is no storage space. In addition, many municipalities have adopted restrictive regulations on scrap collection.

According to the Ministry of Labour and Social Affairs, 20 percent of the Roma/gitano population work as *temporeros* – seasonal agricultural workers.<sup>179</sup> In recent years, some employers have begun to exhibit a preference for hiring immigrants for these jobs; immigrants are cheaper and can be easily manipulated due to their irregular legal status.

<sup>173</sup> One Romani woman alleged that “[the police] detained me because I did not have my ID with me – I had left it home – and they kept me all day in detention, until six o’clock in the afternoon, when my husband came with my identity card. All day in detention for selling carnations.” IONE Project, *Study on Women at Risk of Exclusion*, Madrid, December 2000, para. 2.2.2.

<sup>174</sup> CERD, *Summary Record of the 1384th Meeting: Spain, Tonga*, CERD/C/SR.1384, 15 June 2000 para. 54.

<sup>175</sup> CERD, *Summary Record of the 1384th Meeting: Spain, Tonga*, CERD/C/SR.1384, 15 June 2000 para. 44.

<sup>176</sup> ASGG, *Situation and Normalisation of Street-selling in Spain*, p. 17.

<sup>177</sup> Municipal markets are not open every day; each municipality establishes one or two days during the week when vendors can sell. Romani families are traditionally moving between cities, selling every day in a different city. This is impossible if municipalities open their markets in the same day of the week, instead of coordinating opening schedules.

<sup>178</sup> Grupo PASS 1991.

<sup>179</sup> As cited by IONE Project, *Study on Women at Risk of Exclusion*, December 2000.

*Discrimination in recruitment*

Academic studies and human rights reports show that compared to the majority population, Roma and immigrants are more likely to be employed in the black economy, to be paid less, and to work in unsafe and unhealthy conditions<sup>180</sup> that most Spanish workers would consider unacceptable.<sup>181</sup>

Although there has been no systematic research on the subject, Romani leaders and human rights organisations,<sup>182</sup> as well as inter-governmental bodies such as ECRI,<sup>183</sup> concur that discrimination against Roma/gitanos in the labour market is a daily reality. Some believe that discrimination against Roma/gitanos is even more widespread than discrimination against immigrants.<sup>184</sup>

Employment offices report that many companies openly refuse to employ or even to interview Romani applicants. According to a community mediator who currently works on a special employment programme for Roma, “in five cases out of ten the employers tell me directly that they do not want Roma.”<sup>185</sup> As a rule, employment discrimination is more visible in the practice of private companies, but is not limited to the private sector: many public companies contract private employment agencies to “screen” applicants. In this way they can refuse Romani applicants (or other “undesirable” candidates) and shield themselves against accusations of racial discrimination.

NGOs have registered numerous cases of discrimination by both private and public employers. In 1998, the Romani Union recorded 29 cases of discrimination in recruitment and at the workplace.<sup>186</sup> According to SOS Racismo, the mayor of Bellcaire repeatedly denied a license to set up refreshment concessions at public swimming pools to a young Romani entrepreneur, without any explanation.<sup>187</sup> The President of the Romani women’s association “Romí Sersení” described one instance when the representative of a construction company refused to employ Romani workers,

<sup>180</sup> EUMC, *Annual Report 1999 – Summary*, p. 6.

<sup>181</sup> M. J. Lago Avila, “Ethnic Minorities in Spain, Between Exclusion and Integration,” presentation at the conference “Housing and Habitat – Determinants of Social Exclusion,” organised by the MLSA in 1997.

<sup>182</sup> EUMC, *Diversity and Equality for Europe – Annual Report 2000*, p. 43 and p. 46.

<sup>183</sup> ECRI Report 1999, para. 18.

<sup>184</sup> Interview with Daniel Wagman, coordinator of Barafí Team, Madrid, 10 December 2001.

<sup>185</sup> Interview with a Romani woman who works in an employment office, anonymity requested, December 2001.

<sup>186</sup> As cited by the EUMC, *Looking Reality in the Face – The Situation Regarding Racism and Xenophobia in the European Community – Annual Report 1998*, Part II, Vienna, 22 December 1999, p. 10.

<sup>187</sup> SOS Racism, *Annual Report 2001 on Racism in Spain*, Icaria Editorial, Barcelona, 2001, p. 27.

arguing that “gitanos will steal the materials,” and another when the owner of a dry-cleaning company stated: “I want to employ Roma, and I will do so, but only if they do not *look* like Roma. Our company cleans tablecloths and bed sheets, and one of the tasks of the person we hire will be to distribute them – but hotels and restaurants will not want gitanos to enter their buildings.”<sup>188</sup>

### *Discrimination against Romani women*

Employment discrimination against Romani women is particularly acute. A recent study by the IONE Project on women at risk of exclusion concluded that:

The main employment problem of Romani women is discrimination. In spite of what is commonly believed, it is not lack of education, culture, the existence of alternatives more appropriate with the cultural habits, and not even *machismo* within Romani families. All these elements exist and influence the manner in which Romani women approach work, but first and foremost, there is discrimination.<sup>189</sup>

Some Romani women claim that, though they are Spanish citizens, they have taken to pretending that they are from Brazil or Cuba to obtain jobs. “To obtain work,” said one, “we have to make sure that [the employer] does not realise that the applicant is a Rom.”<sup>190</sup>

Romani women who obtain employment complain of discriminatory practices in the workplace. The president of “Romí Sersení”<sup>191</sup> notes that “one of every three employed Romani women complain of problems with their non-Roma colleagues ... they feel hostility and rejection in tens of small gestures – changes of tone, manner of speaking, hiding bags when a Rom shows up, insulting looks. Frequently, in cases like this the boss notices that there is tension between employees and prefers to dismiss the Romani woman to avoid problems. Or she simply leaves because she does not feel good; she feels discriminated against and humiliated.”<sup>192</sup>

### *Government response*

Governmental response to employment issues affecting the Romani community has been framed in terms of clichés and generalisations about lack of skills and different cultural attitudes towards work among Roma/gitano communities; little consideration

<sup>188</sup> Interview with Amara Montoya, President of Romí Sersení, Madrid, 10 December 2001.

<sup>189</sup> IONE Project, *Study on Women at Risk of Exclusion*, para. 2.2.2.

<sup>190</sup> IONE Project, *Study on Women at Risk of Exclusion*, para. 2.2.2.

<sup>191</sup> Romí Sersení is a Madrid-based non-governmental organisation of Romani women.

<sup>192</sup> Interview with Amara Montoya, President of Romí Sersení, Madrid, 10 December 2001.

has been given to the role played by racial discrimination,<sup>193</sup> and as a result few strategic policy responses to the reality of discrimination have been developed.<sup>194</sup>

A number of “employment integration” schemes have received State and AC funding through the Roma Development Programme, including pre-employment training, career guidance, assistance and supervision to help young people integrate into the labour market, vocational training for groups excluded from standard training, and training for intercultural mediators. The Ministry of Social Affairs and local governments have financed various programmes to assist street sellers.

One encouraging development is “Acceder,” an EU-supported programme, which for the first time includes the Romani community as a special target group for the operative programmes of the European Social Fund. The Programme aims to work with ACs and municipalities to secure employment for 2,500 Romani individuals over a seven-year period. “Acceder” branches opened in each participating municipality function as a network of parallel employment offices for Roma/gitanos, providing training, counselling and mediation services. The programme is administered by the Fundación Secretariado General Gitano (FSGG) and financed by the EU and Autonomous Communities. It has over 150 full-time staff persons, who work in five-member multicultural teams, and collaborators in 32 municipalities in 13 ACs.

One recently-adopted legislative measure provides an example of creativity and flexibility in policy development. Perceiving that illiterate Romani street sellers were unable to obtain driving licenses due to their inability to pass a mandatory written exam, a new regulation was adopted to allow illiterate or functionally illiterate persons to take a non-written exam, provided they enrol in a parallel literacy course.<sup>195</sup> The regulation thus both facilitates the work of street sellers (who need to be able to drive in order to transport their merchandise and to reach flea markets) and promotes their integration into the job market.

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<sup>193</sup> For example, the President of Madrid’s Municipal Institute for Employment and Professional Qualification (IMEFE) told the Romani press: “It is true that the Romani population still has difficulties in accessing equal conditions in the labour market, but the majority of these problems are the result of the lack of qualification rather than the result of racial discrimination.” See *Gitanos – Pensamiento y Cultura*, No. 2, October 1999, pp. 28–29.

<sup>194</sup> See, e.g. A. Vega Cortés, “Roma in Spain,” text published by the Association of Young People against Intolerance, Barcelona, 13 February 1997.

<sup>195</sup> Royal Decree 772/97 of 30 May 1997, Art. 5.2.

### 3.1.3 Housing and other public goods and services

The Constitution recognises the right of all citizens to enjoy decent and adequate housing, and public authorities have the legal obligation to ensure effective implementation of this right.<sup>196</sup> ACs may assume competence for housing through their statutes; in those ACs which have done so, local authorities have the obligation to ensure equal access to housing. However, some ACs have never adopted specific housing laws. Moreover, private owners may refuse to rent or to sell houses or flats on racial or ethnic grounds with impunity.<sup>197</sup>

State law sanctions misleading advertising, but not discriminatory advertisement.<sup>198</sup> ACs may establish regulations in this area, and some have done so,<sup>199</sup> but without placing an express prohibition on discrimination in advertising the sale or rental of housing or land. Advertisements about apartments to let that stipulate “no foreigners,” “no Arabs,” “no gitanos” or “no people from the East,” are common in central Madrid and other big cities.

#### *Housing conditions*

Roma/gitanos are predominantly settled. In Andalucia, for example, 85 percent of the Romani population have lived in the same locality for more than 15 years.<sup>200</sup> Very few Roma families are itinerant, and many that travel do so in search of work. Roma/gitanos can be found in rich residential zones as well as in segregated rural settlements and shanty-towns, in patterns that vary from region to region. However, it is clear that large numbers of Roma live in substandard housing,<sup>201</sup> and ownership rates are far lower among Roma/gitanos than among the majority population. According to a 1998 FOESSA Report, though they are Spanish citizens Roma/gitanos live in worse conditions than any other group, including immigrants (see Table 2):<sup>202</sup>

<sup>196</sup> Constitution, Art. 47.

<sup>197</sup> The anti-discrimination provisions of the Penal Code (Art. 511 and 512) do not apply to lesser-lessee relations between private persons. See J. Bernal del Castillo, *The Discrimination in Criminal Law*, Editorial Comares, Granada 1998, pp. 101–103.

<sup>198</sup> Law on Advertising (*Ley General de Publicidad*), 34/1988 of 11 November 1988.

<sup>199</sup> For example, Navarra adopted a decree on advertisement of the sale of subsidised flats (*Decreto Foral 2/1990. de 11 de Enero, por el que se establecen los requisitos que debera cumplir la publicidad de venta de viviendas de protección oficial, BON num, 10, de 22 de enero de 1990*).

<sup>200</sup> Grupo PASS 1991.

<sup>201</sup> In 1996, the Government informed the UN Committee on Economic, Social and Cultural rights that 28 percent of the Roma/gitanos live in substandard housing. CESCR, *Summary Record of the Sixth Session: Spain*, E/C.12/1996/SR.5, 9 December 1996, para. 13.

<sup>202</sup> FOESSA, *The Living Conditions of the Poor Population in Spain. General Report*, Madrid, Fundación Foessa, 1998.

**Table 2: Percentages according to the type of housing and ethnic groups in Spain**

<i>Type of housing</i>	<i>Roma/gitanos</i>	<i>Immigrants</i>
Flats	40.9 percent	47.3 percent
Houses	38.2 percent	39.0 percent
Caves, shanties, other	20.6 percent	13.7 percent

**Source:** FOESSA report, 1998, p. 278.

**Note:** Shanties and some dwellings labelled as “houses” are located in *chabolas*.

Not all Spanish Roma live in *chabolas* (segregated or marginalised shanty-towns), but *chabolas* are almost exclusively inhabited by Roma/gitanos, and the proportion has increased over the past few decades: Roma/gitanos constituted 55 percent of the shanty-town population in 1975, and 90 percent by 1990;<sup>203</sup> the situation had not changed as of 1999.<sup>204</sup>

Shanty-towns inhabited almost exclusively by Roma exist throughout the country. Madrid is surrounded by “transitional housing” districts and shanty-towns. Thousands of Roma live in *chabolas* on the margins of Galician cities. Many of these areas are plagued with problems related to drugs, violence and disease. Conditions are no better in Roma ghettos located in the centres of cities, such as South Polygon (Polígono Sur) in Sevilla, “an island of marginalisation in the very heart of the city, into which no social service, garbage collection, telephone or water service companies will enter.”<sup>205</sup>

In the 1980s and 1990s, many ACs and local public authorities developed programmes to “eradicate” *chabolas* by resettling Roma/gitanos into social flats (either in integrated neighbourhoods or blocks of flats) or, more usually, in “transitional housing” – specially constructed basic and sometimes substandard buildings, often on the periphery of urban centres. These programmes were designed to serve two functions: to improve living conditions for Roma/gitanos, and to free up land for which there has been a rising demand.

Transitional housing was meant to offer temporary shelter until adequate housing could be supplied, and to help Roma from shanty-towns adjust to living in a house

<sup>203</sup> US Department of State, *Spain – Country Reports on Human Rights Practices – 1999*, Released by the Bureau of Democracy, Human Rights, and Labour, 23 February 2000.

<sup>204</sup> According to the national ombudsman, “... *chabolismo* is a phenomenon which affects especially the Roma people; discrimination against them is particularly clear in housing: more than 90 percent of the shanty-town population belong to this ethnic group.” National Ombudsman, *Report to the Parliament 1999*, paras. 14.2.5.

<sup>205</sup> I. S. J. Camacho, “A Romani Woman Kills her Partner and the Mayor of Sevilla Demands ‘the Cleaning of the Undesirables,’” *El Mundo*, 8 September 2000.

before eventual settlement into integrated neighbourhoods. In the short term, the transfer of thousands of families from shanties to flats with water, electricity and sanitary facilities was an undeniable improvement. However, the transfer was not conceived of or implemented as part of a long-term policy; little effort has been devoted to activities that would actually facilitate a transition to integrated housing, such as assisting families in obtaining work or otherwise integrating them into the community (see below).

The absence of a national policy framework for these programmes has left great discretion to local authorities, and some – particularly those which have sought actively to integrate Roma/gitanos into neighbourhoods where the majority is non-Roma<sup>206</sup> – have achieved some measure of success. While this has granted flexibility in designing policies more responsive to local conditions, it has also meant that there has been little or no coordinated exchange of positive and negative experiences between communities, and little assessment or accountability. Solutions which were initially improvised to deal with crisis situations threaten to become permanent.

As of 2002, thousands of Roma live in transitional housing, without any indication of when the transition period will end. Though the number of inhabitants has increased over time, there has been no attempt to expand the housing stock. As a result, over the long term these blocks of flats have evolved into severely overcrowded ghettos, which segregate Roma/gitanos and reinforce and exacerbate prejudices about them. Eighty pre-fabricated houses which were constructed in La Quinta in 1992 are still there. Forty “transitional” housing units in Mimbrenas I,<sup>207</sup> built in 1994, were described recently by the national ombudsman as a settlement “situated several kilometres from the margins of the city and lacking the basic facilities.”<sup>208</sup> Asperones (Malaga), built at the end of the 1980s between a cemetery and an old garbage dump as part of the “Plan for the Eradication of Shanty-towns in Malaga,” is still there 12 years later, and has become one of the most conflict-ridden and isolated settlements of Malaga.<sup>209</sup>

<sup>206</sup> Integration into non-Roma neighbourhoods is expensive, slow, and often encounters resistance from local inhabitants, requiring the intensive engagement of social workers (see below).

<sup>207</sup> IRIS (*Instituto de Realojamiento e Integración Social*), Annual Report 2000, Madrid, p. 26.

<sup>208</sup> Ombudsman, *Annual Report 1999*, Section 14.1.1.

<sup>209</sup> Social services report that 677 Romani people, almost half of them children, live in Asperones. Social Services, Malaga, Centre for Social Services of the Central District, “Social Welfare Plan for the Central District,” 2000.

Numerous domestic and international organisations have criticised transitional housing programmes.<sup>210</sup> SOS Racismo has noted that their development and implementation has been marked by discriminatory attitudes:

[D]iscriminatory [housing] policies ... prompt the appearance and perpetuation of ghettos ... the last housing units built within [the] eradication of marginalisation plan in El Cascayu, where 16 families will be re-housed, is a way of chasing these families out of the city. They will live in a place surrounded by a 'sewer-river,' a railroad trail, an industrial park and a highway. So far away from education centres, shops, recreational places and without public transport, it will be physically difficult for them to get out of there.<sup>211</sup>

Agustín Vega Cortés writes:

the so-called policy for the integration of the marginalised population is a segregation policy, because not only did it not eradicate ghettos and end marginalisation, it has perpetuated them, by creating minimal subsistence conditions which condemn the Romani people to pessimist conformism and low self-esteem.<sup>212</sup>

Experts have called for an end to transitional housing programmes, pointing out that particularly when they are developed in response to pressure from neighbourhood associations (see below) rather than out of concern for the welfare of Romani inhabitants, they are likely simply to reproduce patterns of marginalisation and areas of concentrated, substandard housing elsewhere, far from city centres.<sup>213</sup>

The national ombudsman recommended that the competent authorities in Torrelavega (Santander) should re-house eight Romani families from substandard transitional houses into normal (non-transitional) housing,<sup>214</sup> noting that the "failure of this type

<sup>210</sup> CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Spain*. CERD/C/304/Add.8, 28 March 1996, para. 14: "It is noted that, while efforts to relocate members of the Gypsy community in the Madrid area through the resettlement plan of the Madrid Municipal Corporation are welcomed, more attention should be paid by the authorities to ensuring that the implementation of the plan does not lead to the segregation of this community."

<sup>211</sup> C. Prado, *What Do We Mean When We Speak about Racism?*, SOS Racismo, Oviedo. <<http://www.nodo50.org/sosracismo.madrid/cprado.htm>>, (accessed 15 August 2002).

<sup>212</sup> A. Vega Cortés, "The Roma in Spain," text published by the Association of Young People against Intolerance, Barcelona, 13 February 1997.

<sup>213</sup> Roundtable, "Active Access to Housing Policies for the Disadvantaged," at the 1997 conference "Housing and Habitat – Determinants of Social Exclusion," organised by the Ministry of labour and Social Affairs.

<sup>214</sup> Ombudsman, *Annual Report 1999*, Section 14.2.5 (Case 9711923).



of programme ... [has] resulted in deeper marginalisation than existed in the shanty-towns which they replaced.”<sup>215</sup>

Some local authorities admit that transitional housing programmes have failed and instead support eradication programs. For example, in Madrid, IRIS – the Institute for Re-housing and Social Integration – has eradicated settlements such as La Rosilla (137 houses built between 1992 and 1997)<sup>216</sup> and La Celsa (96 housing units built in 1995).<sup>217</sup> However, only a part of the inhabitants received alternative housing, the rest simply moved into other ghettos around Madrid.

Romani leaders claim that the failure to improve the housing situation for Roma/gitanos is a direct result of State authorities’ failure to secure their active participation in programme development and implementation, and of the tendency to treat housing problems as a charity issue rather than a matter of rights and human dignity. According to one Romani leader, “frequently the institutions treat Roma as if they were minors, without the capacity to decide on their lives and destinies.”<sup>218</sup> Frequently, public authorities have sought to elude official responsibility by delegating responsibility in this area to NGOs, which often lack the necessary authority or expertise to deal with it effectively.<sup>219</sup>

### *Public attitudes*

The development of Government housing programmes has also been conditioned by strong resistance to the resettlement of Romani families in non-Roma neighbourhoods. Research indicates that aggressive, overt racism against Roma – so-called *racismo militante* – has increased alarmingly in recent years. In 1986, 11.4 percent of teenagers surveyed declared that they would expel Roma/gitanos from the country if they could; by 1993, the percentage had almost tripled, to 30 percent.<sup>220</sup> More recent public opinion polls indicate persistent support for segregation; many non-Roma assert that Roma “like to live together;” some clearly assert their own preference that “[Roma]

<sup>215</sup> Ombudsman, *Annual Report 1999*, section 14.2.5 (Re-housing the marginalised population).

<sup>216</sup> According to IRIS, la Rossila was eradicated in 2000. IRIS – Institute for Re-housing and Social Integration – *Annual Report 2000*, Madrid, p. 15.

<sup>217</sup> According to IRIS, la Celsa was eradicated in 2000. IRIS – Institute for Re-housing and Social Integration – *Annual Report 2000*, Madrid, p. 18.

<sup>218</sup> See C. Prado, *What Do We Mean When We Speak about Racism?* SOS Racismo, Oviedo.

<sup>219</sup> “Chamizo Asks the Public Administration not to Let Shanty-towns in Andalucia to Become Permanent,” *El Mundo*, 7 December 2000.

<sup>220</sup> T. C. Buezas, *Racism Increases, Solidarity as Well*, Tecnos, Junta de Extremadura, 1995, p. 105.

should live separately,” “should not be allocated housing in our districts,” or “should be expelled from the country.”<sup>221</sup>

Efforts to re-house Romani families in or close to non-Roma neighbourhoods are often impeded or blocked by neighbours.<sup>222</sup> According to one Roma leader from Mieres: “in the housing area, we first have to wait to receive a house and then, when we finally manage, we have to fight with non-Roma to let us enter into their communities.” He pointed out that social apartments in Mieres have remained empty because non-Roma have refused to permit Romani families to move in.<sup>223</sup>

In April 2000, 2,000 persons demonstrated against the re-housing of Romani families in Nueva Segovia (Segovia), carrying placards that stated “it’s enough, we don’t want more of them,” and demanding that the authorities limit the number of Roma accepted into social housing; some physically attacked a group of anti-racism demonstrators.<sup>224</sup> Also in 2000, the inhabitants of Magraners (Lleida) organised a series of similar protests against the arrival of Roma in their neighbourhood.<sup>225</sup> In December of the same year, the inhabitants of La Paz (Sevilla) blocked traffic to protest the possible re-housing in their neighbourhood of Roma families from shanty-towns.<sup>226</sup>

In January 2001, the inhabitants of a building situated in Poligono Norte (Sevilla) organised teams of guards at the entrance to prevent a Roma family from moving into a legally acquired flat.<sup>227</sup> In May 2001, local authorities in Lleida renounced a plan to

<sup>221</sup> The response of a teenager from Asturias to an opinion survey is illustrative: “I think that Roma/gitanos are marginalised because they are different. The marginalisation of the gitanos is positive and useful because people can get rid of the problem...” T. C. Buezas, as cited by A. Piquero, “Received Worse than People from Maghreb,” *G. El Comercio*, 10 April 2000.

<sup>222</sup> ECRI Report 1999, para. 29: “Racist demonstrations are sometimes also carried out by neighbourhood groups against the integration or proximity of Roma/Gypsies or immigrants.”

<sup>223</sup> P. G. del Gallo, “Roma Associations Want to Put an End to the Stereotype of the ‘Dirty and Thieving Gitano,’” *La Nueva España*, 24 January 1999.

<sup>224</sup> “Around 2000 Persons Ask to Limit the Number of Gitanos in Nueva Segovia”, *El Adelantado de Segovia*, 17 April 2000.

<sup>225</sup> In August 2000, the ASGG indicated “a series of neighbours’ protests against Roma;” ASGG, *Press Bulletin*, August 2000. In November 2000, a report of the Movement against Intolerance noted that “the arrival of two new Roma families in a camp situated near the Poligono in Magraners triggered unrest among the associations of neighbours; Movement against Intolerance, *Informe RAXEN*, 1 November 2000.

<sup>226</sup> Movement against Intolerance, *RAXEN Report – Racism, Xenophobia and Intolerance in Spain through Facts*, No. 8, January 2001, p. 6.

<sup>227</sup> Movement against Intolerance, *RAXEN Report – Racism, Xenophobia and Intolerance in Spain through Facts*, p. 7. See also “A Roma Family Cannot Enter a Legally Acquired Flat Because of Repeated Obstruction by Neighbours,” *El Mundo*, 13 January 2001.

re-house five Roma families<sup>228</sup> after groups of inhabitants organised a protest.<sup>229</sup> In June 2001, in Catalunya, 13 adults and 12 children were forced to find refuge in abandoned houses after the neighbours blocked their access to the temporary housing which had been arranged by social services.<sup>230</sup> Also in Spring 2001, another Romani family was obliged to leave the place where they had been re-housed after only five days due to strong protests from their neighbours (Dos Hermanas, Andalucia).<sup>231</sup>

### *Access to social housing*

There is no housing deficit; in fact, there are over two million empty houses in the country.<sup>232</sup> In this context, experts believe that difficulties experienced by Roma and other marginalised groups are rooted in governmental housing policies and discrimination rather than in a shortage of available living space.<sup>233</sup>

The Government's Housing Programme provides State or AC-financed social housing subsidies only to persons with a stable minimum income. As noted above (see Section 3.1.2), a significant part of the Romani population in particular do not meet these requirements.<sup>234</sup> High rates of illiteracy, lack of basic documents and lack of trust in public institutions among Roma communities further impedes their access to social housing.<sup>235</sup>

<sup>228</sup> "The Neighbours' Protests in Lleida Finally Brought Results Forcing the Authorities to Give up Plans to Re-house Five Roma Families," *El Mundo*, 4 May 2001.

<sup>229</sup> Movement against Intolerance, *RAXEN Report – Racism, Xenophobia and Intolerance in Spain through Facts*, No. 9, April 2001, p. 37.

<sup>230</sup> Movement against Intolerance, *Urban Violence and Racist Aggressions in Spain by Autonomous Communities*, May–July 2001, p. 20.

<sup>231</sup> Movement against Intolerance, *Urban Violence and Racist Aggressions in Spain by Autonomous Communities*, May–July 2001, p. 4.

<sup>232</sup> *Housing Census: Family Housing According to Occupation 1991*. Census of population and housing, INE, Ministry of Economy and Finance, 1991.

<sup>233</sup> Workshop "Vulnerable Districts: Disadvantaged Districts in Spain. Problems and Solutions," organised by the General Direction for Social Action, Minors and Family, in cooperation with CAVE and the Superior Technical School of Architecture, Madrid, 1998.

<sup>234</sup> Presentation "Housing Situation of the Persons Living in a Situation of Social Exclusion in Spain," at the conference "Housing and Habitat – Determinants of Social Exclusion," 1997, organised by MLSA.

<sup>235</sup> Roundtable, "Active Access to Housing Policies for the Disadvantaged," at the conference "Housing and Habitat – Determinants of Social Exclusion," 1997, organised by MLSA.

*Private housing*

For large numbers of Roma/gitanos, access to private housing is obstructed by poverty and rigid and exclusionary criteria for obtaining housing loans.<sup>236</sup> Discrimination is also a powerful obstacle: in a significant number of cases, private owners and agencies refuse to rent flats to Romani families.<sup>237</sup> “Even nowadays,” stated an NGO representative, “there are Roma families that send the whitest member of the family to negotiate with the owner when renting a flat.”<sup>238</sup>

In recent years, there have been numerous press reports about Roma being denied access to private housing in Barcelona,<sup>239</sup> Oviedo and Valencia.<sup>240</sup> According to competent authorities in Pontevedra (Galicia), the refusal of private owners to accept Roma is so widespread that re-housing programmes based on rental of private housing are at risk of failing.<sup>241</sup> Local authorities in Cornellà (Catalunya) told the press that tens of children and adults had to live on the streets for months after their multiple-story building burned down because it was “very difficult [to find] somebody [who] would rent a house to these families.”<sup>242</sup> In July 2001, SOS Racismo denounced a case in La Coruña, where 12 Romani families were systematically refused access to private rental, although local social services guaranteed the owners the regular payment of rent. The Head of the Social Services in La Coruña described a case of a Romani family with small children which was not able to find a house for six months.<sup>243</sup> In October 2001,

<sup>236</sup> For example, housing loans normally require proof of stable employment, tax declarations, and registration with local authorities; as noted in this report, many Roma/gitanos are engaged in informal forms of employment, and are not formally registered in the municipalities in which they live. M. J. Lago Avila, “Ethnic Minorities in Spain, between Exclusion and Integration,” presentation at the conference “Housing and Habitat – Determinants of Social Exclusion,” 1997, organised by MLSA.

<sup>237</sup> J. M. Fresno García, Director FSGG, “The Situation with Roma rights in Spain,” communication presented during the European Roma Rights Centre’s “Workshop on Human Rights Litigation on Behalf of Roma,” held in Granada, 6-8 May 1999.

<sup>238</sup> Statement by Ricardo Blasco, the President of the Unión Gitana de Gràcia, during the inaugural ceremony of the Roma City Council in Barcelona. See Union Romani, “Barcelona Starts the New Gypsy People City Council,” 29 December 1998.

<sup>239</sup> ASGG, Press Bulletin, May 2000.

<sup>240</sup> ASGG, Press Bulletin, November 2000.

<sup>241</sup> Movement against Intolerance, *Urban Violence and Racist Aggressions in Spain by Autonomous Communities*, August–October 2000,” p. 35.

<sup>242</sup> G. Garcia, “On the Street – Four Roma Families Sleep on the Street in Cornellà,” *El Mundo – Catalunya*, 26 July 2000.

<sup>243</sup> SOS Racismo, *Annual Report 2001 on Racism in Spain*, Icaria Editorial, Barcelona, 2001, p. 23.

the inhabitants of a village in Rioja refused to rent a house to a Roma family, forcing them to take shelter in a ruined pavilion, without electricity or water.<sup>244</sup>

Some private owners increase prices for prospective Romani lessees as another means of barring access. In a recent case, a group of Roma families claimed that when they tried to rent flats in Xirivella (Valencia) through private agencies, “when [they saw] that the majority of us are gitanos they said nothing was available or exaggeratedly increased the rent.”<sup>245</sup>

### *Evictions*

The law requires tenancy contracts to be concluded for a minimum period of five years in order to secure tenure. Legal tenants of a building which has to be demolished or repaired have the right to alternative housing. Evictions of lawful tenants are regulated by the Civil Code and special laws, and are subject to judicial review.<sup>246</sup>

Roma families living in shanty-towns are particularly vulnerable to forced evictions, as in many cases they have no legal title to the land on which they live. In July 1999, Cerro de las Liebres, a shanty-town on the edge of Madrid, was bulldozed on the basis of a judicial order. Thirty-eight families, many of whom had been living there for a decade, were left homeless.<sup>247</sup> In Summer 2000, about 50 Roma/gitano adults and children were sleeping on the street in Cornellà (Catalunya),<sup>248</sup> after they became homeless when the building in which they lived burned down. In January 2001, a shanty-town in Carballo (Galicia), was demolished over the strong protests of Roma organisations; the inhabitants – most of whom were Roma/gitanos – were left homeless.<sup>249</sup> In April 2001, five Roma families – about 50 persons, half of them children – were evicted from an old stable, where they had been living for more than

<sup>244</sup> “The Refusal of the Inhabitants of a Village in the Region of La Rioja to Rent a Flat to a Roma Family Forced Them to Live in a Pavilion in Ruins without Water and without Electricity,” *El Correo*, 7 October 2001.

<sup>245</sup> L. Nadal, “Inhabitants of Zamorra de Xirivella Say that They Are Denied Flats Rental for Being Roma,” *Las Provincias*, 2 November 2001.

<sup>246</sup> Judicial eviction is regulated by Art. 1569-1572 of the Code Civil and by laws on rent in urban and rural areas (*Ley 29/1994, de 24 Noviembre, de Arrendamientos Urbanos*), Art. 9, 27, 35 and 39.3).

<sup>247</sup> J. C. de la Cal, “A Night in Las Liebres – Hundred Romani Children Sleep between Rats and Snakes after the City Hall Ordered the Destruction of their Shanties,” *El Mundo – Madrid*, 23 July 1999.

<sup>248</sup> “Cornellà Evicts 53 Gitanos Who Were Living in Unhealthy Conditions,” *El Mundo – Catalunya*, 25 July 2000.

<sup>249</sup> Movement against Intolerance, *RAXEN Report – Racism, Xenophobia and Intolerance in Spain through Facts*, No. 8, January 2001, p. 32.

five years, although they had been paying the rent regularly. The families became homeless.<sup>250</sup>

### *Government response*

Housing is one of the most important elements of the Roma Development Programme, and funding has been made available for a number of re-housing projects for Roma. However, neither the authorities nor civil society have developed criteria or a coherent mechanism for assessing the projects' effectiveness.

Many of the projects cited as examples of "good practice" are in fact surrounded by controversy. For example, a project for improving the housing situation of marginalised populations in Valladolid was nominated by the Ministry of Development for the 1998 Dubai Award for Best Practice,<sup>251</sup> but was severely criticised by local experts for failing to address the structural problems of the ghettos and for not allowing the active participation of affected persons. The "Substandard Housing Transformation Programme" in Andalucia offers a more flexible, less intrusive option which is considered promising by many Roma organisations; it aims to improve certain areas in the cities without obliging people to move.

There has been no coordinated strategic State response to the problem of forced evictions, which are considered either a necessary part of programmes for the eradication of shanty-towns or a matter of private relations between owners and tenants, not requiring State intervention. However, a number of State institutions or agencies have responded to incidents and individual cases. For example, the national ombudsman has addressed security of tenure on several occasions, visiting some Roma settlements at risk of eviction around Madrid, intervening in the case of forced eviction and demolition of shanties in the Matalablima quarter of Oviedo,<sup>252</sup> and initiating *ex officio* investigations in cases of inappropriate police action in eviction procedures.<sup>253</sup> The office of the Defender of the Minors (*Defensor del Menor*) ordered a study on the situation of children living in shanty-towns around Madrid.<sup>254</sup>

<sup>250</sup> M. J. Sangenis, "Gitanos in the Rain – A Judge Orders the Eviction of a Roma Family although They Were Paying Rent," *El Mundo*, 24 April 2001.

<sup>251</sup> Cities for a sustainable future, "1998 Spanish Best Practices selected by the International Jury," Superior Technical School of Architecture, Madrid, 2000.

<sup>252</sup> *Thirteenth Periodic Reports of State Parties Due in 1994: Spain*, CERD/C/263/Add.5, 3 March 1995 para. 250.

<sup>253</sup> Ombudsman, *Report to the Parliament 1995* (case F9500012: *Police intervention in eviction procedures in Humanes, Madrid*).

<sup>254</sup> EDIS Report, *Minors Who Live in Madrid Ghettos*, report elaborated by Sociological Investigation Team for the Office of the Ombudsman for Minors, May 2000.

*Other goods and services*

At the national level the only limit on private actors' right to regulate access to their goods or services is a 1982 decree which requires that admissions policies be publicised in advertising material or at the entry to business premises.<sup>255</sup> Each AC was to have adopted specific regulations in this field, but only Catalunya has done so. The Catalan decree, adopted in July 2001, obliges management to notify clients of any conditions that might limit access by posting a notice, which must be approved by local authorities in advance, at the entrance to their establishment. Discrimination on all protected grounds is prohibited, and persons who wear symbols inciting to racism, violence or xenophobia may be legally denied entry. It remains to be seen how these provisions will be implemented in practice.

Discrimination on racial or ethnic grounds in access to goods and public services is sanctioned by the Penal Code, and violations can be punished with a prison sentence, fines and/or loss of license.<sup>256</sup> The offence is aggravated if committed by a civil servant;<sup>257</sup> private discriminators do not risk prison or fine, but only loss of their license.<sup>258</sup>

In practice, many owners and managers operate discriminatory admission policies and use poorly trained security guards to enforce them, often resulting in violent incidents. In some cases, admissions policies clearly refer to racial or ethnic belonging, with *negros* (Black persons), *moros* (Arabs) and *gitanos* (Roma) often singled out as groups which should be denied access. In other cases, establishments use requirements related to clothing, quality of shoes, or hair length<sup>259</sup> to deny entry to certain groups. Some establishments allegedly employ less direct methods of exclusion, such as increasing entrance fees or asking for club cards, invitations<sup>260</sup> or identity cards.<sup>261</sup>

<sup>255</sup> General Police Rules for Public Shows and Entertainment (Royal Decree 2816/82 of 27 August 1982), Art. 59(1).

<sup>256</sup> The Penal Code, Art. 511, paras. 1 and 2.

<sup>257</sup> The Penal Code, Art. 511, para. 3.

<sup>258</sup> The Penal Code, Art. 512.

<sup>259</sup> The Romani members of an NGO team which tested the entry conditions in some discos were denied entry for "having long hair" while the rest of the team entered, including one non-Roma colleague with much longer hair. SOS Racismo, *Annual Report 2000 on Racism in Spain*, Editorial Icaria, 2000, p. 192.

<sup>260</sup> In Vigo, two restaurants in the area of Arael required an invitation card from a Moroccan, while no such card was required from other clients. SOS Racismo, *Annual Report 2001 on Racism in Spain*, Editorial Icaria, 2001, p. 92.

<sup>261</sup> In February 2001, the disco "Bronce" in Santa Coloma de Gramenet (Barcelona) was denounced for asking for the passports from a group of clients from Nicaragua, while their Spanish friends could enter without presenting any identification papers. SOS Racismo, *Annual Report 2001 on Racism in Spain*, p. 191.

Many examples of such practices have been documented by NGOs and reported by the press. In October 2001, in Bilbao, Bertin Oke, the director-general of the Immigration Department of the Basque Government, was denied entry to a bar because he is black.<sup>262</sup> In Malaga, a trade union member with a dark complexion was insulted and prevented from entering the building of a private security firm because the doorman suspected that he was a Rom.<sup>263</sup> A Cuban woman was severely beaten by security guards of the disco “Panini” in Barcelona after she protested being denied entry because she was presumed to be a “gitana.”<sup>264</sup> In 2000, a civic association from Iruñea (Pamplona) denounced the refusal of local pub owners to allow entry to “people from the Maghreb, Gypsies, or black Africans.”<sup>265</sup> In 2001, in Premià de Mar (Barcelona) a security guard told a Romani boy that gitanos and skinheads were not allowed in because they provoke scandals.<sup>266</sup> In Alicante, an employee of the “Sausalito” pub declared during a trial that he had received express orders not to receive “negros, gitanos or moros.”<sup>267</sup>

Many complaints have issued from the Maremagnum area in Barcelona. In one incident, the staff of the “Caipirinha” bar refused entry to a 26-year-old Ecuadorian, under the pretext that he did not have adequate shoes. During the fight that followed, the man was beaten by the doormen and three security guards and then thrown from a bridge into the sea, where he drowned.<sup>268</sup>

Roma/gitano children and women are also regularly denied entry to public places.<sup>269</sup> In August 2000, Nicanor Giménez, a Romani man from Castillia y León, filed a complaint against a private enterprise in Trobajo del Camino for refusing the right to use a public swimming pool to his wife, four daughters and two nieces. The ticket

<sup>262</sup> “The Director of the Basque Immigration Office Discriminated against for Being Black,” *El Mundo*, 22 October 2001.

<sup>263</sup> SOS Racismo, *Annual Report 2001 on Racism in Spain*, p.35.

<sup>264</sup> SOS Racismo, *Annual Report 2001 on Racism in Spain*, p. 91.

<sup>265</sup> Movement against Intolerance, *Urban Violence and Racist Aggressions in Spain by Autonomous Communities*, May-July 2000, p. 37.

<sup>266</sup> SOS Racismo, *Annual Report 2001 on Racism in Spain*, p. 91.

<sup>267</sup> SOS Racismo, *Annual Report 2001 on Racism in Spain*, p.192.

<sup>268</sup> E. Figueredo, “The Autopsy Shows that the Ecuadorian was Still Alive when They Threw Him into the Sea,” *El Mundo*, 30 January 2002.

<sup>269</sup> In 1989 a Roma organisation from Atarfe (Granada) complained that one of the village’s public swimming pools was asking Roma to pay twice as much as non-Roma to enter. See J. F. Gamella, *The Roma Population in Andalucía*, Junta de Andalucía, Sevilla, 1996, p. 332.



vendor told Giménez's wife that she had express orders not to admit gitanos.<sup>270</sup> In January 2002, a Romani woman who works for FSGG wanted to buy a dress in a shop in the centre of Madrid. When she approached the door, the shop assistant saw her and locked her out. She asked politely to be admitted, and was told "we do not receive Roma here." She filed a complaint with the Consumer Protection Office and with the police. Both cases are pending.<sup>271</sup> In Falces (Navarra), Romani women allegedly are not allowed into discos.<sup>272</sup>

### *Government response*

The right to admission is insufficiently regulated. General laws are vague and outdated, and local legislators – with the exception of Catalunya – have failed to respond adequately to a significant number of complaints about denial of entry to discos, restaurants and other public places on racial or ethnic grounds.<sup>273</sup>

Penal sanctions are rare and tend to be mild. In 1997, the Audiencia Provincial in Murcia applied Article 512 of the Criminal Code and suspended for one year the license of an automobile vendor who had refused to deal with a Portuguese client saying, "I do not sell cars to brownies like you, to gitanos, or to Arabs."<sup>274</sup> In April 2001, an innkeeper from Orense was fined €120 for asking a black person to change his room from one floor to another, because he did not want to "mix white people with black people on the same floor."<sup>275</sup>

In some cases, police are reportedly reluctant to register and investigate complaints of discriminatory denial of services. A group of Romani boys allege that, in December 2000, the police in Barcelona refused to register their complaint of being denied entry to the disco "El Andalus." Two young Moroccans lodged a complaint with SOS Racismo that, when informing the police in Granollers (Barcelona) that the owner of a bar had refused to serve them on racial grounds, saying "we don't serve Arabs here," the agent in charge responded that the police were too busy to attend to them.<sup>276</sup>

<sup>270</sup> Movement against Intolerance, *Urban Violence and Racist Aggressions in Spain by Autonomous Communities*, August-October 2000, p. 20. See also: "Complaint against a Swimming Pool for Denying Entry to Some Girls for Being Gitanas," *El País*, 6 August 2001.

<sup>271</sup> Interview with Alicia Terruel, the lawyer in both cases, 26 April 2002.

<sup>272</sup> SOS Racismo, *Annual Report 2001 on Racism in Spain*, 2001, p. 26.

<sup>273</sup> SOS Racismo alone filed 46 discrimination complaints in the last three years. *Diari de Terrasa*, 2 February 2002.

<sup>274</sup> Supreme Court, Decision No. 1089/1998 of 29 September 1998.

<sup>275</sup> SOS Racismo, *Annual Report 2000 on Racism in Spain*, p. 193.

<sup>276</sup> SOS Racismo Barcelona filed a formal complaint against El Andalus. See SOS Racismo, *Annual Report 2000 on Racism in Spain*, p. 34.

The professional association of bar owners has recommended greater police monitoring of places of entertainment, a police hotline for victims of violence, and specialised mandatory training for service personnel.<sup>277</sup> The Movement against Intolerance recently announced the launch of a campaign to educate bar owners and staff on “the right to admission without discrimination.”<sup>278</sup>

### 3.1.4 Healthcare

There are no statistics or studies on the health situation of Roma/gitanos at the national level. However, data gathered at the regional or local level suggest that the Romani community suffers from lower life expectancy, worse health conditions and greater difficulty in accessing health services than the majority.<sup>279</sup>

The infant mortality rate is four times higher than the national average among marginalised Romani communities. Vaccinations are far below the national average: in some regions, 40 percent of Romani children have not been vaccinated, and a further 50 percent have received only some vaccinations.<sup>280</sup> In Alicante, a recent study revealed that 18 percent of two year-old Romani children had not received any vaccinations, while virtually all non-Roma children had been vaccinated.<sup>281</sup> Roma children receive less post-natal care<sup>282</sup> and are at higher risk of getting ill,<sup>283</sup> suffering an accident (such as burns, falls, broken bones, car accidents, and animal bites<sup>284</sup>), lead poisoning,<sup>285</sup> and dermatological problems.<sup>286</sup> They

<sup>277</sup> “The Bars Ask for ‘Neighbourhood Police’ to Put an End to Violence,” Belt Ibérica [professional association], S.A., *Professional News*, 6 February 2002.

<sup>278</sup> “The Bars Ask for ‘Neighbourhood Police’ to Put an End to Violence,” Belt Ibérica [professional association], S.A., *Professional News*, 6 February 2002.

<sup>279</sup> See, e.g., J. F. Gamella, *The Roma Population in Andalucía*, Junta de Andalucía, Sevilla, 1996, p. 171.

<sup>280</sup> J. L. Bustamante, “The Most Vulnerable Exclusion – the Alarming Status of Health of the Poorest Roma,” SOS Racismo, *Annual Report 2001 on Racism in Spain*, p. 30.

<sup>281</sup> F. J. Sánchez Serrano et al., “Ethnic Differences in Emergency Services. A Close Look to the Romani Reality,” *Anales Especiales de Pediatría*, 2002, no. 56, pp. 17–22.

<sup>282</sup> Government of Andalucía, Department of Social Affairs, *Integral Plan for the Romani Community*, p. 27.

<sup>283</sup> J. M. Corretger, C. Fortuny, F. Botet, O. Valls, “Marginalisation, Ethnic Groups and Health,” *Anales Españoles de Pediatría* 1992; No. 36 (Supl. 48), pp. 115–117.

<sup>284</sup> J. F. Gamella, *The Roma Population in Andalucía*, p. 186.

<sup>285</sup> M. J. Redondo, F. J. Guisasola, “An Unknown Risk Group of Lead Poisoning: the Gypsy Children,” *European Journal of Pediatrics* 1995; no 154, pp. 197–200.

<sup>286</sup> Government of Andalucía, Department of Social Affairs, *Integral Plan for the Romani Community*, p. 28.

are more likely to suffer from congenital handicaps, nutritional deficiencies and anaemia.<sup>287</sup> In Alicante, 11.6 percent of Romani children need to be hospitalised when examined by doctors, as compared to 1.9 percent of non-Roma children.<sup>288</sup>

Roma allege that healthcare personnel are often insensitive to their distinct cultural traditions and attitudes, which is a contributing factor to their under-utilisation of primary and preventive healthcare services and over-reliance on emergency services.<sup>289</sup> Moreover, many Roma/gitanos do not have effective access to information about the availability of various healthcare services.<sup>290</sup>

According to authorities in Andalucía, marginalised Roma/gitanos have a very low level of health education, participate in preventive health programmes less than non-Roma and rely heavily on hospital emergency services.<sup>291</sup> In some areas (e.g. Castellón), doctors have recorded a higher incidence of hepatitis B and hepatitis C among Roma than among non-Roma.<sup>292</sup> Roma are more often victims of accidents than the population at large.<sup>293</sup>

Romani women's organisations allege that they have been overlooked in the allocation of Government funding to mainstream public healthcare programmes: "for seven years in a row we submitted health proposals for Romani women to the Women's Institute, but they always rejected them, saying that we should ask for money from the Roma Development Programme."<sup>294</sup>

### *Government response*

The Roma Development Programme has financed various workshops, seminars and small health education projects carried out by Romani NGOs. However, no general

<sup>287</sup> J. L. Bustamante, "The Most Vulnerable Exclusion – the Alarming Status of Health of the Poorest Roma," SOS Racismo, *Annual Report 2001 on the racism in Spain*, pp. 30–31.

<sup>288</sup> F. J. Sánchez Serrano et al., "Ethnic Differences in Emergency Services. A Close Look to the Romani Reality," *Anales Especiales de Pediatría*, 2002; no. 56, pp. 17–22.

<sup>289</sup> P. Bezunartea, Health Department of the FSGG: "Romani Community and Health," <<http://www.fsgg.org/salud02.htm>>, (accessed 15 August 2002).

<sup>290</sup> J. M. Fresno García, "The Situation with Roma Rights in Spain," communication presented during the European Roma Rights Centre's "Workshop on Human Rights Litigation on Behalf of Roma," held in Granada, 6–8 May 1999.

<sup>291</sup> Government of Andalucía, Department of Social Affairs, *Integral Plan for the Romani Community*, p. 28.

<sup>292</sup> V. R. Cabedo García et al., "How are the Roma People and What are They Suffering from," *Atención Primaria*, January 2000, no 26, pp. 21–25.

<sup>293</sup> J. L. Bustamante, "The Most Vulnerable Exclusion – the Alarming Status of Health of the Poorest Roma," SOS Racismo, *Annual Report 2001 on Racism in Spain*, p. 31.

<sup>294</sup> D. Fernández, intervention in Working Documents 43, "Debate on Romani People," p. 159.

information is available on the content of these programmes, and there has been no evaluation of their efficacy or impact.

State support for Romani health programmes focuses on AIDS, substance abuse or mental disorders – a selection that Romani leaders have criticised as inopportune and prejudiced.<sup>295</sup>

### 3.1.5 Criminal justice

The Constitution provides for the right to a fair public trial,<sup>296</sup> and prohibits racial discrimination in all areas, including criminal justice.<sup>297</sup> Indigent defendants have the right to be represented by an attorney at State expense, and to be released on bail unless the court believes that they may flee or constitute a threat to public safety. Defendants have the legal right to a speedy trial, but pre-trial detention is permitted for up to two years, which judges may extend for two additional years.

Official data gathered by the judicial and prison administration provides no information on the ethnicity of suspects, defendants or prisoners, which makes it difficult to establish patterns of racial discrimination. However, academics and non-governmental organisations have amassed an increasing body of evidence of discriminatory practices against Roma within the criminal justice system.

Roma/gitanos are increasingly associated with drug use and trafficking, which colours the way in which members of their communities are perceived and treated by law enforcement officials.<sup>298</sup> Racial profiling is a common experience for Roma who live in poor neighbourhoods.<sup>299</sup> The ombudsman has investigated a case related to nationwide supermarket security company that was keeping files on suspected thieves, with special references to their situation (e.g. alcoholics, drug-addicts) or their ethnicity (gitanos) and collecting not only information about them but also pictures and information about their relatives.<sup>300</sup> Practicing lawyers and human rights organisations

<sup>295</sup> Interview with Carmen Santiago Reyes, Castellon, July 2002.

<sup>296</sup> Constitution, Art. 24 (Legal Remedies).

<sup>297</sup> Constitution, Art. 14 (Equality).

<sup>298</sup> T. San Román Espinosa, intervention published in Working Documents 43, “Debate on Romani People,” p. 71.

<sup>299</sup> Interview with Carmen Mendéz López, Barcelona, November 2001. See also Amnesty International, “Spain: The Deadly Consequences of Racism – Torture and Ill-treatment,” Press release, 16 April 2002, AI Index EUR 41/005/2002 – News service Nr. 64.

<sup>300</sup> Ombudsman, *Report to the Parliament 1997*, Chapter 3.1.3 (*ex officio* investigation No. 9700018).

report frequent breaches of the presumption of innocence principle *vis-à-vis* Romani defendants,<sup>301</sup> and allege that less value is attached to the testimony of Romani victims and witnesses than to the testimonies of non-Roma.<sup>302</sup>

The Basque ombudsman has expressed concern over the disproportionate number of Romani children sent by courts to juvenile detention centres from the region: six of every ten children sent to such centres are Roma/gitanos.<sup>303</sup>

One practising lawyer has stated that the tone of criminal law decisions of the Supreme Court involving Roma “oscillates between charity and racism.”<sup>304</sup> Courts frequently make direct references to the Romani background of defendants or other participants during criminal trials. For example, “[he committed the crime] because the gitanos insisted and even threatened him;”<sup>305</sup> “they wanted to buy heroin from a gitano;”<sup>306</sup> and “the [witness] had relations with gitanos, including with the defendant.”<sup>307</sup> Supreme Court case-law occasionally includes racist remarks such as: “the victims have manifested fear of reprisal for denouncing [the crime], which is not surprising, considering the fact that [the complaint] was against members of a gypsy family...”<sup>308</sup>

Widespread lack of understanding of Romani culture and traditions within the judiciary<sup>309</sup> may lead to uneven application of the law and result in rights violations. For examples, some judges have denied Romani women the right to visit their husbands in prison, refusing to recognise marriages conducted according to the Romani tradition.<sup>310</sup> Courts

<sup>301</sup> Interview with Carmen Santiago Reyes, Cordoba, November 2001. Allegedly, the police often enter and search Romani houses without warrant, expecting to find stolen goods.

<sup>302</sup> Movement against Intolerance, *RAXEN Report – Racism, Xenophobia and Intolerance in Spain through Facts*, Especial 2001, p. 33.

<sup>303</sup> Ombudsman of the Basque Country, “Ararteko Report to the Basque Parliament on 2000,” p. 71: “More than half (58.8 percent) of the children against whom a detention measure was adopted in 1999 are of Roma ethnicity.”

<sup>304</sup> D. L. Fernández Jiménez, “Juridical Aspects” in Working Documents 43, “Debate on Romani People,” p. 176.

<sup>305</sup> Supreme Court Decision 1834/1992 of 14 September 1992.

<sup>306</sup> RJ 1990/8201, decision of 22 October 1990.

<sup>307</sup> RJ 1989/2615, decision of 13 March 1989.

<sup>308</sup> Supreme Court Decision 686/1994 of 1 April 1994.

<sup>309</sup> See, e.g., F. Hernández, intervention published in Working Documents 43, “Debate on Romani People,” p. 183.

<sup>310</sup> D. L. Fernández Jiménez, “Juridical Aspects,” in Working Documents 43, “Debate on Romani People,” pp. 179–180.

have rarely consulted with Romani organisations on cultural codes and language used by Roma,<sup>311</sup> and the practice has never been encouraged.

A study published in 2000 by the Barañi team has documented severe discrimination against Romani women in prisons. Although Roma comprise approximately 1.5 percent of the total population, over 25 percent of female inmates were Romani, serving average sentences of 6.7 years. Sixty percent were serving sentences for drug dealing, usually on a small scale, and most of the rest were in prison for theft or robbery related to drug use. Of these, approximately 87 percent were being held in pre-trial detention, 87 percent are mothers, 14 percent are reportedly imprisoned outside their AC and another 30 percent outside their province.<sup>312</sup>

The same study gathered empirical evidence that, compared with non-Romani women, Romani women are more actively pursued by the police and other criminal justice officials when warrants are pending against them. Romani women are more likely to be targeted by the police for spontaneous searches and have fewer guarantees during arrest procedures. Romani women are more likely to be tried, found guilty and imprisoned; they are less likely to receive alternative sentencing, less likely to be paroled, and less likely to receive pardons.<sup>313</sup>

#### *Government response*

There has been no official response to the Barañi report<sup>314</sup> or to other allegations of discrimination in the criminal justice system. In a 1997 Declaration against Racism, representatives of the legal profession pledged to eliminate any form of discrimination on racial grounds from the judicial system and from daily practice. However, the Declaration was not followed by any concrete anti-discrimination initiative.

### **3.2 Racially Motivated Violence**

The Penal Code prohibits incitement to racially motivated discrimination, hatred or violence.<sup>315</sup> Offences committed with a racial motivation are aggravated offences.<sup>316</sup> Though it has been in force for more than five years, this provision has been applied

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<sup>311</sup> State FCNM Report, p. 21.

<sup>312</sup> Barañi Team, *Romani Women and the Criminal Justice*, Ediciones Metyel, Madrid 2001.

<sup>313</sup> Barañi Team, *Romani Women and the Criminal Justice*, Ediciones Metyel, Madrid 2001.

<sup>314</sup> Interview with Daniel Wagman, coordinator of Barañi Team, Madrid, 10 December 2001.

<sup>315</sup> The Penal Code, Art. 510(1).

<sup>316</sup> The Penal Code, Art. 22(4).

extremely rarely,<sup>317</sup> despite a generally acknowledged increase in the number of racially motivated attacks, juvenile violence, and attacks by extremist and neo-Nazi groups and gangs.<sup>318</sup>

CERD has expressed concern over the “remarkably few” cases identified before national courts as incidents of racial discrimination, and has noted that judicial proceedings on allegations of assault, unlawful detention and property damage often fail to take into consideration the racial motivation of offences.<sup>319</sup>

Lengthy judicial proceedings, mild sentences, poor standards of forensic medical reporting and the practice of holding detainees *incommunicado* have contributed to the development of a “culture of impunity” for human rights abuses.<sup>320</sup> The UN Committee Against Torture stated that proceedings in torture cases are frequently prolonged for periods incompatible with Article 13 of the Convention against Torture, citing cases in which a sentence was handed down 15 years after an incident.<sup>321</sup>

### 3.2.1 Violence by private individuals

There is no reliable information on the number of racially motivated attacks and violence, in spite of international bodies’ recommendations to the authorities to gather such data.<sup>322</sup> Human rights organisations maintain that the number of cases is severely under-reported by the authorities.<sup>323</sup>

Community violence against immigrants and Roma/gitanos has reached alarming proportions, and has become a subject of concern of specialised international bodies.<sup>324</sup> A number of incidents have followed a similar pattern: the majority population of a

<sup>317</sup> In one of the rare cases in which Art. 22 (4) has been applied, a court in Zaragoza sentenced two young people to imprisonment for a racially motivated attack on a student in April 1997. See SOS Racismo, *Annual Report 2001 on Racism in Spain*, p. 131.

<sup>318</sup> ECRI Report 1999, Introduction; EUMC, *Diversity and Equality for Europe – Annual Report 2000*, p. 27.

<sup>319</sup> CERD, *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Spain*, CERD/C/304/Add.95, 19 April 2000, para. 6.

<sup>320</sup> Amnesty International Report on Spain – 2000.

<sup>321</sup> CAT, *Concluding Observations: Spain*, CAT/C/ SPA, 21 November 1997, para. 8.

<sup>322</sup> CERD/C/304/Add.95.

<sup>323</sup> In the last five years the police recorded 148 racist assaults, whereas non-governmental sources recorded 777. See EUMC, *Diversity and Equality for Europe – Annual Report 2000*, p. 20.

<sup>324</sup> *Summary Record of the 1384th Meeting: Spain, Tonga*. CERD/C/SR.1384, 15 June 2000, para. 64. ECRI Report 1999, paras. 27-29.

town or village holds the entire Romani community accountable for an individual offence committed by one of its members, and retaliates by destroying property, shouting racial insults and expelling Romani families from the area. On some occasions, mayors have tolerated or encouraged these actions, with the police as passive observers. Official investigations of these incidents have been slow; there has been a lack of interest and follow up by political leaders and the press; and compensation for victims is uncertain.

*Albaladejo case:* In early May 1999, a Roma man was shot and seriously wounded by two non-Roma in the village of Albaladejo.<sup>325</sup> After the two assailants were apprehended, more than half of the 1,800 residents of the village turned out to protest their incarceration and to petition for their release. The mayor led the demonstrations,<sup>326</sup> publicly stating that it was the victim who was a “wrongdoer” while the accused were “hard working, exemplary persons, who never had any kind of problems.”<sup>327</sup> The mayor promised the crowd to instruct the judge to “free the accused.” The demonstrations continued for weeks,<sup>328</sup> with demonstrators arriving in buses provided by the city hall, and harassing other Romani families in the village.<sup>329</sup> In early June, the family of the Romani victim left the village, and shortly thereafter, the two accused were released on bail. The local press carried a front-page story with the heading “Finally, they are free!”<sup>330</sup> The case is currently pending.<sup>331</sup>

*Almoradi case:* In the early morning on 17 June 2000, Miguel Angel Martínez Riquelme, a 22 year-old resident of Almoradí (Alicante), was killed in the district of Cruz de Galindo, an area inhabited mainly by Roma/gitanos. Suspicion focused on his Romani drug-dealer, who was detained shortly after the event and charged with murder. On June 20, approximately 3,000 neighbours gathered in the city’s main square to demonstrate against drug trafficking, but the demonstration turned against

<sup>325</sup> For a more detailed account of the incident, see B. López-Angulo Ruiz, “Alphabet of Racism and Xenophobia,” *Derechos para Todos*, No. 1, July–August 2000.

<sup>326</sup> US Department of State, *Spain – Country Reports on Human Rights Practices – 2001*, Released by the Bureau of Democracy, Human Rights and Labour, 4 March 2002.

<sup>327</sup> “More than Thousand Neighbours Ask for the Release of Two Young People,” *Lanza*, 6 May 1999.

<sup>328</sup> “Two Weeks after the Incidents, Albaladejo Continue to Maintain its Firm Support to Raul and Jose,” *Crónicas de la Mancha*, No. 223, 1999.

<sup>329</sup> Allegedly, demonstrators shouted insults and threats in front of Romani houses, and Romani children were denied access to the school. B. López-Angulo Ruiz, “Alphabet of Racism and Xenophobia,” *Derechos para Todos*, No. 1, July–August 2000.

<sup>330</sup> “Finally, They are Free!” *Lanza*, 28 June 1999.

<sup>331</sup> US Department of State, *Spain – Country Reports on Human Rights Practices – 2001*, Released by the Bureau of Democracy, Human Rights and Labour, 4 March 2002.



the city's Roma/gitanos community in general. At the end of the day, 30-40 of the demonstrators went to the Romani neighbourhood armed with sticks, bats, stones and gasoline.<sup>332</sup> Two Romani houses were set on fire and another eight were damaged,<sup>333</sup> cars and motorcycles parked on the street were destroyed. The first group was encouraged and supported by another 1,000 demonstrators.<sup>334</sup> Three adults and 13 Romani children narrowly escaped from one of the burning houses. When the fire brigades arrived, about 500 persons attempted to block their access.<sup>335</sup>

Local authorities did not prevent the attack. Twenty policemen who had been ordered by the mayor to patrol the district simply announced to Romani families that they were in danger and advised them to run away. When several young men were detained one week after the attack, almost 200 persons gathered in protest. A journalist from *El País* was harassed and had to abandon the village under escort from the Civil Guard. One of the accused was released almost immediately, and the other four were released on bail one month later.<sup>336</sup>

Neighbours interviewed by the press several days later felt that the on-going drug trafficking in the city, for which they blamed the Roma community, fully justified the aggression.<sup>337</sup> The mayor declared that the violence was simply an isolated incident and had nothing to do with racism.<sup>338</sup> As for the Roma, they "were afraid, felt that the authorities had let them down and left the village, abandoning their houses."<sup>339</sup> Alicante Kalí, a local Roma organisation, organised a demonstration in Alicante to protest against the arson and, together with other Roma associations, filed criminal complaints.

Other such cases have been recorded. For example, in March 2000, after an incident between some young Roma and non-Roma in Arévalo, neighbours organised a

<sup>332</sup> As described for the press by Joaquín Moreno, the owner of one of the destroyed houses. See "Serious Racist Incidents in Almoradí Following the Murder of a Young Man," *UPAM*, 26 June 2000.

<sup>333</sup> "Four Assailants on Gitano Settlement are Freed," *El Mundo*, 28 July 2000.

<sup>334</sup> F. Pascual, "Racism: Six Detained after Incidents in Almoradí," *El Mundo*, 26 June 2000.

<sup>335</sup> F. Pascual, "Racist Violence – The Victims Denounce the Passivity of the Police – Thousand People Put on Fire Three Roma Houses as Revenge for the Death of a Young Man," *El Mundo*, 22 June 2000.

<sup>336</sup> "Four Assailants on Gitano Settlement are Freed," *El Mundo*, 28 July 2000.

<sup>337</sup> S. Navarro, "Six Persons Detained for the Attack on the Roma Neighbourhood in Almoradí – The Detentions Triggered a Wave of Protests," *El País*, 26 June 2000.

<sup>338</sup> F. Pascual, "Racist Violence – The Victims Denounce the Passivity of the Police – Thousand People Put on Fire Three Roma Houses as a Revenge for the Death of a Young Man," *El Mundo*, 22 June 2000.

<sup>339</sup> A. Vega Cortés, President of the National Platform for the Status of Roma Nation, "Romani People in Danger," *Gitanos – Pensamiento y Cultura*, No. 5, June 2000, p. 36.

demonstration and asked the authorities to expel the Roma from the locality.<sup>340</sup> In October 2001, during a Community Assembly, a citizens' association in Sestao (Bilbao) announced their resolution to "clean the neighbourhood of gitanos" as a formal objective.<sup>341</sup>

### 3.2.2 Violence by public officials

Security forces<sup>342</sup> have been criticised for brutality, abuse of detainees and ill-treatment of foreigners and immigrants.<sup>343</sup> ECRI has mentioned reports of racist attitudes and misconduct among the police forces towards vulnerable groups in particular.<sup>344</sup>

In April 2002, Amnesty International published a devastating report on torture and ill-treatment by law enforcement officials, documenting 321 cases and an increase of criminal activity of this type in the period 1995–2002.<sup>345</sup> According to the AI's researcher,

[M]en, women and children have been verbally abused, physically ill-treated, arbitrarily detained, and in some cases tortured... [t]he cases we have documented show a *pattern of violation* by law enforcement officers of the rights of members of ethnic minorities or persons of non-Spanish origin. Discrimination against these people, tolerated by the authorities, makes them especially vulnerable to torture and ill-treatment by State officials.<sup>346</sup>

Many victims of ill-treatment do not file complaints because they are afraid, are advised against complaining, or do not have the support of a legal counsel. Those who bring charges are routinely served with counter-charges by those whom they are accusing, or are more severely sanctioned. For example, in July 2002, two policemen

<sup>340</sup> ASGG, *Press Bulletin*, March 2000.

<sup>341</sup> *El País*, 18 October 2001.

<sup>342</sup> There are three levels within the security forces: the national police are responsible, *inter alia*, for security in urban areas and nationwide investigations; the Civil Guard police control rural areas and borders and highways; and, in some communities (e.g. Galicia, Catalunya, Basque Country), autonomous police forces have taken over many of the duties of the Civil Guard. All security forces are under the effective control of the Government.

<sup>343</sup> The UN Committee against Torture (CAT) frequently receives reports from Spain on torture and ill-treatment, many of which point to manifestations of racial discrimination. See CAT, *Concluding Observations: Spain*, CAT/C/ SPA10, 21 November 1997, paras. 10–11.

<sup>344</sup> ECRI Report 1999, para. 15.

<sup>345</sup> Amnesty International, "Spain: Crisis of Identity – Race-related Torture and Ill-treatment by State Agents," April 2002, AI-Index EUR 41/001/2002.

<sup>346</sup> Amnesty International, "Spain: The Deadly Consequences of Racism – Torture and Ill-treatment," *Press-release*, 16 April 2002, AI Index EUR 41/005/2002 – News service Nr. 64.

who beat and insulted a Chilean man in line at the Immigration Office received a fine of €80, while the victim was fined €320 for hitting law enforcement officials.<sup>347</sup>

The police routinely make insulting references to the ethnic background of detainees. Sometimes, the term “gitano/gitana” is even used as an insult against non-Roma, especially against persons from Latin America, as a double reference to their dark complexion and a suspicion of involvement in drug trafficking. A policeman accused in April 2001 of sexually assaulting a Peruvian woman in custody told the judge: “the ‘gitana’ has been detained for drug trafficking and is just trying to damage [my] reputation.”<sup>348</sup>

### *Government response*

The Government acknowledges the existence of individual racist acts perpetrated against Roma/gitanos by right-wing extremist groups or individuals, but generally has associated them with labour conflicts<sup>349</sup> or otherwise downplayed their significance. There are no reliable statistics on the number of racially motivated attacks and no official body to gather and process data on complaints, investigations or sentences, or to develop and oversee the implementation of a strategic policy to combat racism and intolerance.

Government reports emphasise that, as a rule, attacks which might have been triggered or aggravated by the victim’s race or ethnic group are dealt with as simple assaults because it is difficult to establish racial motivation. At the same time, State authorities have made efforts to collect and interpret existing data: in 1998, the police recorded 58 racially motivated incidents, and the Public Prosecutor’s Office recorded 22 racist offences. A survey carried out in 1998 in 18 provincial high courts found six cases of racially motivated violence in Murcia, León, Madrid and Seville.<sup>350</sup> However, no information was made available about the content of the offence or the punishment.<sup>351</sup>

As a rule, however, crimes are categorised in terms of the injury inflicted, without reference to any existing racial motivation, and thus such crimes do not appear in official records or statistics.<sup>352</sup> As a result, racially motivated violence is severely under-

<sup>347</sup> “Two Policemen are Fined for Aggression,” *El Mundo*, 10 July 2002.

<sup>348</sup> J. A. Hernández, “The Prosecutor Demands Ten Years of Prison for a Policeman Who Raped an Immigrant,” *El País*, 17 April 2001.

<sup>349</sup> *Fifteenth Periodic Reports of States Parties Due in 1998: Spain*, CERD/C/338/Add.6, 12 October 1998, para. 9.

<sup>350</sup> *Fifteenth Periodic Reports of States Parties Due in 1998: Spain*, CERD/C/338/Add.6, 12 October 1998, para. 40.

<sup>351</sup> *Summary Record of the 1384th Meeting: Spain, Tonga*, CERD/C/SR.1384, 15 June 2000, para. 45.

<sup>352</sup> *Fifteenth Periodic Reports of States Parties Due in 1998: Spain*, CERD/C/338/Add.6, 12 October 1998, para. 43.

reported. Several NGOs<sup>353</sup> keep track and publish annual reports on complaints received in the reporting period, but they receive only a limited number of cases, and do not cover the entire country.

The Government has supported police training on human rights and anti-discrimination issues,<sup>354</sup> initiatives to raise awareness about racism attitudes,<sup>355</sup> and research on offences related to racism.<sup>356</sup> However, there is no mechanism to monitor how the policemen who attend these courses apply what they learn.

Police officers convicted of wrongdoing have often been able to obtain political pardons. The easy availability of pardons has cast doubts on the authorities' willingness to put an end to ill-treatment by public officials, and has triggered international criticism. For example, in July 2000, the Council of Ministers partially pardoned three Civil Guards convicted of illegal detention and torture<sup>357</sup> and included in the so-called "millennium pardon" another 14 members of security forces who had been convicted for torture.<sup>358</sup>

The Movement against Intolerance has proposed the creation of national and regional Observatories of Racism and Intolerance with clear monitoring and reporting responsibilities. This recommendation has been supported by inter-governmental bodies such as ECRI, which placed a high priority on the need to refine data on racist acts,<sup>359</sup> and CERD, which specifically asked the Government to include in periodical reports statistics on allegations of racially motivated and related offences, results of investigation and sanctions applied.<sup>360</sup> The community of Madrid has established such

<sup>353</sup> E.g. The Movement against Intolerance, which publishes RAXEN reports in cooperation with the EUMC, or SOS Racismo, which publishes such information in its Annual Reports.

<sup>354</sup> Police training include international human rights treaties and the jurisprudence of the European Court of Human Rights in Strasbourg. See CESCR, *Summary Record: Spain*, E/C.12/1996/SR.7, 12 October 1996, para. 16.

<sup>355</sup> Several campaigns aimed at raising public awareness have been launched by the MLSA and NGOs (e.g. "Young People against Intolerance" and "Democracy Means Equality"). See ECRI 1999, para. 12.

<sup>356</sup> *Fifteenth Periodic Reports of States Parties Due in 1998: Spain*, CERD/C/338/Add.6, 12 October 1998, paras. 53–54.

<sup>357</sup> The Council of Ministers' pardon ensured that, despite a September 1998 Supreme Court ruling finding that the officers had indeed committed acts of torture, they would remain in service. See: Amnesty International Report on Spain – 2000.

<sup>358</sup> US Department of State, *Spain – Country Reports on Human Rights Practices – 2001*, Released by the Bureau of Democracy, Human Rights and Labour, 4 March, 2002.

<sup>359</sup> ECRI Report 1999, *Introduction*.

<sup>360</sup> CERD, *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Spain*, CERD/C/304/Add.95, 19 April 2000, para. 6.

an Observatory of Racism, but the institution lacks funding, permanent staff, a programme, and monitoring competences, and there has been no sign that the recommendation is being taken up at the national level.<sup>361</sup>

### 3.3 Minority Rights

The Constitution does not formally recognise or define “ethnic minority;” it refers to “peoples” or “nations” rather than “minorities,” without defining these terms.

The Preamble, after affirming the “Spanish nation,” pledges to protect human rights, cultures, traditions, languages and institutions of the “peoples of Spain”<sup>362</sup> – which refers only to those groups recognised as a *pueblo* (“people/nation”) in AC statutes (e.g. the Basques, the Catalans, and the Galicians). Although these groups represent “minority groups” in the context of the country as a whole, they make up the majority in their respective regions. There is no State or Government institution or agency responsible for minorities.<sup>363</sup>

There is no recognition of Roma/gitanos as a group: they are not recognised as either an ethnic minority or a “nation.” Thus, there is no coherent legal framework for the protection of their culture, tradition or language. When ratifying the FCNM, Spain neither made a declaration listing recognised ethnic minorities, nor defined the concept of a “national minority.” However, the State FCNM Report addresses Roma issues exclusively – a *de facto* recognition of their existence.

#### 3.3.1 Identity

Romani associations and individuals have made intensive efforts to put the preservation of Romani identity on the political agenda. They have made two fundamental demands: the legal recognition of Roma/gitanos as a group and the creation of political and institutional structures that would enable them to fully participate in public life (see Section 3.3.5).

On 12 February 2000, in Toledo, 30 Romani women and men from across Spain created the “Platform for the Statute of the Roma Nation,” a political and social movement in support of “Romipen” (*la gitaneidad*). They signed a declaration now known as the “Toledo Manifesto,” urging the authorities to recognise Roma as a *pueblo*

<sup>361</sup> Interview with the President of the Movement against Intolerance, Madrid, December 2001.

<sup>362</sup> Constitution, *Preamble*.

<sup>363</sup> State FCNM Report, p. 5.

and to adopt a Statute of Cultural Autonomy (*Estatuto de Autonomía Cultural*) which, as a minimum, should include:

- i) the recognition of Romani language;
- ii) a Council or an Assembly of democratically elected Romani representatives that would secure both participation of Roma and political and social structures as well as defence of Romani rights;
- iii) a Roma Cultural Institute;
- iv) the legal framework and technical and financial support for the creation of a strong Romani press, Roma TV and radio channels.<sup>364</sup>

In March 2000, before the general elections, the Manifesto was distributed to all political parties and individual candidates; in July of the same year, it was submitted to the Senate,<sup>365</sup> but there was little or no reaction to it.<sup>366</sup>

Similar demands have been formulated by other Romani organisations: the Romani Union recommended the adoption of a Roma Statute,<sup>367</sup> and the Regional Federation of the Romani Associations in Castilla – La Mancha asked the regional government to recognise the *pueblo gitano* and provide support for its culture, language and traditions.<sup>368</sup>

A parliamentary sub-commission which examined the situation of the Roma community in 1999 noted that “the absence of more specific actions aimed to maintain and develop their culture endangers the Romani language and traditional values” and considered it “...necessary to strengthen efforts for the recuperation and promotion of the cultural values and identity of the community.”<sup>369</sup>

<sup>364</sup> “Manifesto for the Constitution of Platform for the Statute of the Roma Nation – Romipen,” Toledo, 12 February 2000, points 1 and 2, see: <<http://www.cenfor.com/romipen/manifiesto.htm>>, (accessed 20 August 2002).

<sup>365</sup> ASGG News, “Manifesto for the Rights, Dignity and Future of the Roma Nation,” NT 00.07.01.

<sup>366</sup> “Romipen and the Cultural Autonomy Status,” *Revista Hika* 111, <<http://www.hika.net/revista/zenb111/HenEstatuto.html>>, (accessed 20 August 2002).

<sup>367</sup> P. Aguilera Cortés, “Political Participation in Romani Communities,” *Gitanos – Pensamiento y Cultura*, No. 4, April 2000.

<sup>368</sup> Movement against Intolerance, *Urban Violence and Racist Aggressions in Spain by Autonomous Communities*, August–October 2001, p. 20.

<sup>369</sup> “Report of the Subcommission for the Study of the Problems of the Roma People (154/000028),” *Official Bulletin of the Parliament*, Chamber of Deputies, No. 520, 17 December 1999.

In the summer of 2001, a group of Roma and non-Roma organisations led by Expresión Gitana asked for political support for the creation of a Roma Cultural Centre in Madrid. All parliamentary groups endorsed the idea and the Community of Madrid invited the NGOs to submit a proposal.

### *Government response*

There has been no official response to requests for legal recognition or to the other demands contained in the Toledo Manifesto. However, the Government has supported public awareness campaigns and made efforts to promote a positive image of Roma in the press. It has also encouraged public institutions and authorities to avoid prejudices and stereotypes when issuing reports or information on Roma/gitanos.<sup>370</sup>

### 3.3.2 Language

The Constitution recognises and protects the languages of all “peoples of Spain.” Though citizens have a responsibility to learn Castilian, the official State language,<sup>371</sup> other languages also may be designated “official” under regional statutes,<sup>372</sup> and the official policy is that “different language variations of Spanish are a cultural heritage which shall be... respected and protected.”<sup>373</sup> A language or dialect other than Castilian Spanish is used in six of 17 ACs.<sup>374</sup> However, Caló, the language of the Spanish Roma, is not legally recognised anywhere in Spain, nor is it recognised by the State as a protected language under the CRML.<sup>375</sup>

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<sup>370</sup> State FCNM Report, p. 14.

<sup>371</sup> Constitution, Art. 3 (1).

<sup>372</sup> Constitution, Art. 3 (2).

<sup>373</sup> Constitution, Art. 3 (3).

<sup>374</sup> Laws in some of the Autonomous Communities (e.g. Basque Country, Galicia and Valencia) require local governments to promote their respective regional languages in schools and at official functions. A Law on Catalan Language, adopted by the Catalan parliament in 1998, controversially established the use of Catalan as the official language in local governmental and administrative offices, regional courts, publicly-owned corporations, and private companies subsidised by the Catalan regional government, though Spanish-speaking citizens have the right to be addressed in Spanish by public officials.

<sup>375</sup> Council of Europe, *List of Declarations Made with Respect to Treaty no. 148, European Charter for Regional or Minority Languages*, Complete chronology on 18 May 2002. Spain recognised as regional or minority languages the official languages recognised as such in the Autonomy Statutes of the Basque Country, Catalunya, Balearic Islands, Galicia, Valencia and Navarra; other languages, which are protected by the Statutes of Autonomy in the territories where they are traditionally spoken, are also considered regional or minority languages.

Presently, Caló is almost lost because of historical persecution (see Section 2), lack of resources within the Romani community to protect and promote it, and lack of official interest in preserving it. As a result, Caló is mainly spoken by old people, while the younger generation generally know only some words and expressions. All Roma/gitanos speak Castilian Spanish and/or another recognised language of Spain. There are no restrictions on speaking Caló in private or in public, but in dealing with authorities Roma must use the official language.

As the parliamentary sub-commission for the study of the situation of Roma observed, Caló is practically absent from school curricula.<sup>376</sup> Its use before public bodies or the courts is hardly conceivable; the introduction of public signs or place names has never been an issue. There are no special restrictions on the use of Romani surnames and first names, which are usually not different from names used by the majority, and nothing to prevent the public display in Caló of signs, inscriptions and other information of a private character.

However, Caló plays an extraordinarily important role as a unifying ethnic symbol; in the political context, recognition of the language is essential for recognition of minority identity, which is key to recognition of the political rights of a group.<sup>377</sup> Thus, the survival of Caló is of great importance to the Romani community, and Roma leaders have repeatedly requested Government assistance for promoting its study and use,<sup>378</sup> but with little success.

### *Government response*

There have been no effective measures to protect or promote Caló. The Roma Development Programme and the ACs occasionally provide funding for NGO-sponsored courses in Romano-Caló<sup>379</sup> and do not interfere with the right to speak it in private.

As an example of good practice, Barcelona City Hall last year made a small symbolic gesture appreciated by the local Roma community: Christmas wishes displayed on city streets were not only in Catalan, Spanish and English, but also in Caló.<sup>380</sup>

<sup>376</sup> “Report of the Subcommittee for the Study of the Problems of Roma People (154/000028),” *Official Bulletin of the Parliament*, Chamber of Deputies, No. 520, 17 December 1999, point D.

<sup>377</sup> I. Álvarez Dorronsoro, “Interview with Teresa San Román: Change and Continuity of the Romani Identity,” *Revista Hika* 111, <[http://www.hika.net/revista/zenb111/Ha\\_a\\_Teresa.html](http://www.hika.net/revista/zenb111/Ha_a_Teresa.html)>, (accessed 20 August 2002).

<sup>378</sup> “Manifesto for the Constitution of Platform for the Statute of the Roma Nation – Romipen,” Toledo, 12 February 2000, para. 14, see: <<http://www.cenfor.com/romipen/manifiesto.htm>>, (accessed 20 August 2002).

<sup>379</sup> MLSA, *Roma Development Programme*, March 1999, p. 4.

<sup>380</sup> Interview with Sebastian Porras, Romani journalist, Barcelona, November 2001.



### 3.3.3 Education

There are no minority schools for Roma. Education for Roma/gitanos is addressed in the context of education for immigrants rather than in relation to existing AC minority educational policies, which reflect the presence of groups with different languages and cultures (such as Basques, Catalans, etc.).<sup>381</sup>

Roma/gitanos have always been largely absent from school textbooks: one review of 171 schoolbooks in use in 1989 found just 17 references to Roma/gitanos, half of which concerned the life of Roma between the 16<sup>th</sup> and the 18<sup>th</sup> centuries.<sup>382</sup> There has been no improvement in the past decade: Romani people are still missing from textbooks, and when they do appear, it is usually as an example of misbehaviour.<sup>383</sup>

Some school materials reinforce negative perceptions of Roma/gitanos. For example, Spanish and Catalan dictionaries contain pejorative definitions of “gypsy.” In one Catalan school dictionary, a “gitano” is defined as: “Person who belongs to an ethnic group. Person who is normally dirty or badly dressed.”<sup>384</sup>

The national ombudsman<sup>385</sup> and CERD<sup>386</sup> criticised the definition of the term *gitanada* by the Royal Academy’s dictionary, which states: “1. Action specific to the Roma/gitanos. 2. Flattery, joke, caress or deceit with which one obtains what one wants.”<sup>387</sup> However, the definition continues to appear in dictionaries sold in 2002. The FSGG asked<sup>388</sup> the editors to recall from the market all copies of the 1998 edition

<sup>381</sup> J. Salinas, intervention published in Working Documents 43, “Debate on Romani People – Madrid 19-20 June 1997,” Ministry of Labour and Social Affairs, p. 59.

<sup>382</sup> T. C. Buezas, “Racism Increases, Solidarity as Well,” *Tecnos*, Junta de Extremadura, 1995, p. 225.

<sup>383</sup> A. Vega Cortés, intervention published in Working Documents 43, “Debate on Romani people – Madrid 19-20 June 1997,” Ministry of Labour and Social Affairs, p. 75.

<sup>384</sup> J. de Dios Ramirez, intervention published in Working Documents 43, “Debate on Romani people – Madrid 19-20 June 1997,” Ministry of Labour and Social Affairs, p. 76.

<sup>385</sup> *Thirteenth periodic reports of States parties due in 1994: Spain*, CERD/C/263/Add.5, 3 May 1995, paras. 73–76.

<sup>386</sup> CERD recommended to Spanish authorities to consider deleting this definition from the dictionary, see *Summary record of the 1145th meeting: Spain*, CERD/C/SR.1145, 12 March 1996, para. 33. However, the representatives of the Government only promised to “see what can be done,” see *Summary record of the 1146th meeting: Spain*, CERD/C/SR.1146, 22 April 1996, para. 9.

<sup>387</sup> Royal Academy of Spain, *Dictionary of Spanish Language*, 21<sup>st</sup> edition, Vol. 1, Madrid 1995, p. 1040.

<sup>388</sup> See <<http://www.denunciantes.com/visden.asp?id=2>>, (accessed 20 August 2002).

of the Universal Illustrated Encyclopaedic Dictionary which defines “gitano/a” as follows:

Fraudulent in their relations and exaggerators in what they say... Because of their inclination to steal, their lifestyle, their traditions and their keeping company with bad people, we cannot expect them to have a high concept of morality... the gypsies live and multiply in their shanties (...) In the miserable shack they call a house (...) the bread sits near the garbage and their shame next to their dishonesty. The family multiplies like reptiles (...) all the vices and weaknesses of persons of every age and each sex, as well as all the misery resulting from the abandonment and rejection of [other] people, all converge and form a circle around the unhappy gypsy family.

Teachers’ associations and Roma NGOs have repeatedly requested the inclusion of specialised courses on the history and culture of Spanish ethnic groups and intercultural communication and teaching into university curricula for teachers, psychologists, magistrates, and social workers. However, these recommendations were not taken up during preparation of the last reform of the university education system.<sup>389</sup> As a result, there are still many teachers who perceive the different cultural background of Romani children as a problem rather than an advantage, and the dominant approach to teaching Roma remains compensatory education classes.<sup>390</sup>

Intercultural programmes are still rare: according to one source, only 12 percent of the schools with a significant number of Romani pupils integrate elements of Romani culture in their programmes. Of the remaining 88 percent of schools, 68 percent do not consider it necessary; in 8 percent there is no consensus among the teachers about the need for such programmes; and 12 percent might consider them useful but have done nothing to put them into practice.<sup>391</sup>

Individual teachers have introduced elements of Romani culture into their classes on an *ad hoc* basis: 31 percent have organised a special session on elements of Roma history and traditions at least once, and six percent have included the topic in their usual teaching programme. However, absent more formal guidelines and encouragement, the majority of teachers have done nothing to introduce Romani culture into their classes: 37 percent consider that it is not necessary, while 26 percent believe that it would be useful but have never done it.<sup>392</sup>

<sup>389</sup> J. Salinas, intervention published in Working Documents 43, “Debate on Romani People,” p. 58.

<sup>390</sup> J. D. Santiago, intervention published in Working Documents 43, “Debate on Romani People,” p. 69.

<sup>391</sup> FSGG, *Evaluation of Educational Normalisation of Romani Children*, pp. 170–171.

<sup>392</sup> FSGG, *Evaluation of Educational Normalisation of Romani Children*, pp. 171–172.

*Government response*

Education on respect for human rights and diversity is included in education curricula. In recent years, education on tolerance and solidarity has also been integrated into teacher training curricula.<sup>393</sup> The Ministry of Education has created a working group to design special training modules for teachers working with Roma children, and to incorporate these modules into the general training programme.<sup>394</sup>

The Ministry of Labour and Social Affairs has funded a number of programmes and projects to identify racist allusions to Roma/gitanos in school textbooks and to familiarise people with their culture,<sup>395</sup> but no description of these programmes, evaluation of their results or information about follow up is currently available.

In Barcelona, in the private university Ramon Llull-Fundacion Tarrès, a post-graduate course was developed for those who work with the Romani community, with funding provided by the *Generalitat*. In 2002–2003, the University of Alicante plans to offer a course on Romani music and culture. Many other universities (such as Sevilla, Granada, and Extremadura) have also received public funding to organise events related to Roma culture.

In addition, the Roma Development Programme has supported flamenco workshops, Roma cultural days, exhibitions, cultural tours and discussion groups. The Ministry of Labour and Social Affairs included a module on “Roma cultural anthropology and inter-cultural relations” in training courses for professionals who work with the Roma/gitano community.<sup>396</sup>

### 3.3.4 Media

Romani experts assert that there is a lack of a coherent minority media policy.<sup>397</sup> While there are a number of State-funded press publications, Roma NGOs have been unsuccessful in arguing that the State obligation to protect the culture and ethnic

<sup>393</sup> ECRI Report 1999, para. 13.

<sup>394</sup> State FCNM Report, pp. 11–12.

<sup>395</sup> CERD, *Summary Record of the 1146th Meeting: Spain*, CERD/C/SR.1146, 22 April 1996, para. 9.

<sup>396</sup> State FCNM report, p. 13.

<sup>397</sup> Interview with Sebastian Porras, Romani journalist, Barcelona, November 2001.

identity of its minorities<sup>398</sup> requires improved media access and increased funding for the realisation of radio and television programmes.

There are several significant Romani press publications, all of which are financed by the State or by local governments. Among the most interesting is *I Tchatchipen*,<sup>399</sup> edited by the Union Romani, with Catalan and Spanish editions and summaries in English and Romanes. Among the journals that focus on the situation of Roma in Spain are: *Gitanos, Pensamiento y Cultura* of the FSGG, *Nevipens Romani* published by the Instituto Romanó in Barcelona, and *Arakerando* in Alicante. The FSGG also issues a monthly press review of all Roma-related articles published in the country, with a thematic summary.<sup>400</sup> Sometimes, *Extremadura Romani* is inserted in the local newspaper, which significantly increases the number of readers. *Veda Kali* in Andalusia appears three or four times a year. However, the circulation of these publications is very limited, and they have no influence on public opinion; there is no daily Roma newspaper.

There are several radio programmes at the local level, all of which struggle with financial difficulties. Many, such as the *Romí radio* programme in Madrid, have had to close down soon after being established due to lack of funding, despite having attracted a significant audience.<sup>401</sup> A few, such as *O Drom* in Barcelona, which airs every two weeks for half an hour, have managed to survive for several years.

There are no Roma private or public TV channels or regular Romani programmes on public television. Roma are rarely portrayed at all, but when they are, it is generally in connection with flamenco, bull-fighting, drugs or “clan” conflicts. According to Sebastian Porras, one of the few Spanish Romani journalists,<sup>402</sup> “there are documentaries on every imaginable subject, but in the last ten years I never saw one about us. I am dreaming about a series of ten one-hour documentaries about how Roma really live in this country.”<sup>403</sup> Schools of journalism have courses on ethics where privacy issues and protection of minorities in general are addressed, but these provide very little information on Roma/gitanos.<sup>404</sup>

<sup>398</sup> “Manifiesto for the Constitution of Platform for the Statute of the Roma Nation – Romipen,” Toledo, 12 February 2000, point 2 c), see: <<http://www.cenfor.com/romipen/manifiesto.htm>>, (accessed 20 August 2002).

<sup>399</sup> *I Tchatchipen* means “the Truth” in Caló.

<sup>400</sup> These summaries are accessible at: <<http://www.fsgg.org>>, (accessed 2 September 2002).

<sup>401</sup> Interview with Amara Montoya, President of the Romí Serseni, Madrid, November 2001.

<sup>402</sup> There are very few self-acknowledged Romani journalists: among the most prominent are: a journalist who works with the National Radio and another who works with *El País* in Valencia.

<sup>403</sup> Interview with Sebastian Porras, Romani journalist, Barcelona, November 2001.

<sup>404</sup> Interview with Sebastian Porras, Romani journalist, Barcelona, November 2001.

*Government response*

There have been some official efforts to promote a positive image of Roma in the press. For example, the Ministry of Labour and Social Affairs has issued guidelines for the press, and some of the ACs have signed agreements with mass media representatives on the “protection of the culture and image of ethnic minorities,” an initiative highlighted by CERD as “original and positive.”<sup>405</sup>

The 1999 parliamentary sub-commission recognised the need for Romani-related programmes, radio frequencies and more publications, which would improve the majority’s understanding of the Roma community.<sup>406</sup>

### 3.3.5 Participation in public life

The Constitution recognises citizens’ right to participate in public affairs, directly or through representatives freely elected in periodic elections,<sup>407</sup> and the right to accede, under conditions of equality, to public functions and positions, in accordance with the requirements established by law.<sup>408</sup> Political parties are the fundamental instruments for political participation.<sup>409</sup>

In the last 20 years Romani organisations and representatives have slowly attained a certain measure of participation on the international, national, and local levels, generally in a consultative capacity. However, their involvement in mainstream politics and in the elaboration and implementation of the policies that affect them directly has been extremely limited.<sup>410</sup>

Spanish Roma have been represented in international bodies such as the European Parliament and the Council of Europe.<sup>411</sup> At the national level, Roma representatives

<sup>405</sup> CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Spain*, CERD/C/304/Add.8, 28 March 1996, “Positive Aspects.”

<sup>406</sup> “Report of the Subcommission for the Study of the Problems of the Roma People (154/000028),” *Official Bulletin of the Parliament*, Chamber of Deputies, No. 520, 17 December 1999.

<sup>407</sup> Constitution, Art. 23(1).

<sup>408</sup> Constitution, Art. 23(2).

<sup>409</sup> Constitution, Art. 6.

<sup>410</sup> “Report of the Subcommission for the Study of the Problems of the Roma People,” *Official Bulletin of the Parliament*, Chamber of Deputies, No. 520, 17 December 1999.

<sup>411</sup> Juan de Dios Ramírez Heredia was a Member of the European Parliament for several years, and a Romani lawyer, Carmen Santiago Reyes, represented Spain in the Council of Europe’s Roma Experts Group.

have participated in the Consultative Commission of the Roma Development Programme and in a similar Commission on Education organised by the Ministry of Education (see Section 4.1). Romani experts were invited to testify before a specialised sub-commission for the examination of the situation of the Romani people, established in 1999 by the Chamber of Deputies. More recently, in June 2001, nine Romani women from Kamira were invited to discuss their concerns with the President of the Chamber of Deputies.<sup>412</sup> Roma organisations are represented in the National Council of NGOs for Social Action, a consultative body for the development of social protection policies.<sup>413</sup>

At the regional level, in 1998, the Roma City Council in Barcelona created an advisory body to ensure Romani participation in the political, economic, cultural and social life of the city. Romani leaders characterised this as a “huge step,” as they “did not want to get stuck [only] with the social services but [wished] to be represented in the political sphere as well.”<sup>414</sup> The Council is chaired by the mayor of the city, with the head of the Department for Social Welfare as a deputy, and membership drawn from all Barcelona-based Romani organisations and representatives of the municipality. The Council meets every two months or when formally convened to discuss issues of importance to Roma. The activities of the Council have been “very discreet” to date, but Roma observers see it as a potentially useful instrument to secure more effective participation.<sup>415</sup>

In addition, social protection legislation in various ACs offers further opportunities for participation. For example, under the social protection law of the Community of Valencia, the participation of civil society is one of the fundamental principles of social action,<sup>416</sup> and two Roma representatives are *de jure* members of the regional Social Welfare Council, together with representatives of other disadvantaged groups.<sup>417</sup> However, these representatives are not elected, but nominated by the social protection authorities.<sup>418</sup> Roma are involved in work on social programmes in a number of other

<sup>412</sup> P. Marcos, “Roma in the Congress – Nine Romani Women Ask the President of the Congress Education for their Children,” *El País – Madrid*, 16 June 2001.

<sup>413</sup> Art. 5 of the Royal Decree 1910/1999 of 17 December 1999, BOE, 12 January 2000, p. 1152–1155, establishes that “two of the members of the council will be representatives of Roma associations or NGOs working with Roma.”

<sup>414</sup> Union Romani, “Barcelona Starts the New Gypsy People City Council,” 29 December 1998.

<sup>415</sup> P. Aguilera Cortés, “Political Participation in Romani Communities,” *Gitanos – Pensamiento y Cultura*, No. 4, April 2000.

<sup>416</sup> Law 5/1997 of 25 June 1997, regulating the Social Services System in Valencia [97/1935], Art. 4.

<sup>417</sup> Law 5/1997, Art. 4.

<sup>418</sup> Law 5/1997, Art. 4.

ACs, but not at a decision-making level. In Madrid, the President of a Romani women's organisation was nominated a member of the municipal Observatory against Racism (See Section 3.2.2).

### *Political participation*

The programme of the only Romani political party, the *Partido Nacionalista Caló* (Caló Nationalist Party), closely follows the demands that have been articulated by Romani organisations. Many Romani activists believe that political mainstreaming is preferable to the establishment of political parties on an ethnic basis.<sup>419</sup>

However, the presence of Romani candidates on other political parties' lists has been extremely limited; only one Rom has succeeded in being elected to the national Parliament, more than 20 years ago. At the local level, in 2000, Manuel Bustamante became the first Romani MP in the Parliament of Valencia. A Romani lawyer from Cordoba, Diego Luis Fernández Jiménez, serves as the National Coordinator for Ethnic Minorities in the Socialist Party.

The analysis of the participation of Roma/gitanos in the 2000 elections is illustrative: there were 17 Romani candidates on electoral lists, of which 15 were for municipal elections. The majority of these (13) were on the lists of left and centre-left parties. Women were under-represented, with only three women to 14 men. The majority of candidates had university degrees and almost all were associated with one or more Romani NGOs. As a rule, Romani candidates were placed at the end of the party lists, with minimal chances of being elected: of 17 candidates only two won seats in local councils, one at the regional level and the other in a municipality.<sup>420</sup>

The systematic under-representation of Roma on the political scene has led some Romani leaders to suggest that a system of proportional representation, with reserved parliamentary seats for Roma, might be appropriate.<sup>421</sup> However, there is no policy to encourage either parliamentary participation or the employment of Roma in public positions.

<sup>419</sup> L. Nogués and M. Llusia, "Interview with Juan David Santiago Torres: 'Our Future: our Development as a Nation,'" *Revista Hika* 111, see: <<http://www.hika.net/revista/zenb111/HaJuanDavid.html>>, (accessed 20 August 2002).

<sup>420</sup> P. Aguilera Cortés, "Political Participation in Romani Communities," *Gitanos – Pensamiento y Cultura*, No. 4, April 2000.

<sup>421</sup> L. Nogués y M. Llusia, "Interview with Juan David Santiago Torres: 'Our future: our development as a nation,'" *Revista Hika* 111, see: <<http://www.hika.net/revista/zenb111/HaJuanDavid.html>>, (accessed 20 August 2002).

## 4. INSTITUTIONS FOR MINORITY PROTECTION

### 4.1 Official Bodies

As noted above, there is no body for the promotion of equal treatment that could provide independent assistance to victims of discrimination, conduct independent surveys, and publish reports, as required by the EU Race Directive.<sup>422</sup>

The Government's principal national policy towards Roma – the Roma Development Programme (RDP) – has been criticised by Romani leaders as a scheme for delivering social assistance rather than a strategic plan to protect and promote the rights and identity of the Roma minority. According to one Romani leader:

The problem in Spain is not the racism of some private individuals (which should be sanctioned) but institutionalised discrimination: the State does not recognise Roma either as an ethnic minority, or as a non-territorial 'nation' (*pueblo*). The Romani question, ignored for the last 15 years and still absent from the political agenda, is a question of political will and not a matter of social assistance schemes.<sup>423</sup>

#### 4.1.1 Ombudsman

The *Defensor del Pueblo* (ombudsman) is a constitutionally established non-jurisdictional institution that monitors activities of the administration. Elected for five-year periods by a three-fifths majority of the Congress of Deputies, the ombudsman operates independently from ministries and political parties, and is immune from prosecution. The ombudsman and two deputies are political appointments and may not hold any other elected or appointed function. The ombudsman may not be in the service of the public administration, maintain any affiliation with a political party, trade union or association, or carry on any other commercial or professional activity. The only purely technical (i.e. non-political) role within the ombudsman's office is filled by the Secretary, which has been occupied to date by the Prime Minister's brother.<sup>424</sup>

The ombudsman investigates complaints of human rights abuses by authorities *ex officio* or based on individual complaints. In the process, he or she may ask for the collaboration of regional ombudsmen, who operate at the level of the ACs. The

<sup>422</sup> Council Directive 2000/43/EC, Art. 13.

<sup>423</sup> Interview with Diego Luis Fernández Jiménez, Cordoba, 6 November 2001.

<sup>424</sup> F. Lazaro, "Manuel Aznar Leaves the Office Due to Differences with Enrique Múgica," *El Mundo*, 4 June 2002.



national ombudsman has access to information and all administrative bodies have a legal obligation<sup>425</sup> to respond to information requests, although in practice not all of them have done so.<sup>426</sup>

The ombudsman has *locus standi* for initiating *amparo* proceedings, but no executive powers. He or she may make recommendations to public authorities, but cannot modify or annul acts or regulations, and cannot consider complaints related to the administration of justice. Discrimination and racism are not expressly listed within the ombudsman's competence, but are considered part of the general mandate to defend fundamental rights and freedoms.

In practice, some of the ombudsman's activities are related to Roma, and the office has received a number of complaints containing allegations of racial discrimination. Every year, the national ombudsman submits an activity report to the Parliament, and may also issue thematic reports. All of the reports of the ombudsman's office are public.

Although ACs may create their own ombudsman institutions, only nine of 17 have done so.<sup>427</sup> There are also national ombudsmen dedicated to the rights of specific groups such as women, children, soldiers, and persons with disabilities.

In practice, Roma do submit complaints to the office of the ombudsman, and annual reports have addressed Romani issues, particularly in the areas of housing and education. One of the most publicised interventions on behalf of the Roma/gitano community was a manifesto in support of Roma rights, initiated by the Presencia Gitana and signed by the national ombudsman as well as the ombudsmen of eight ACs on 4 March 1999. However, the manifesto has not been widely publicised and has had little practical effect.<sup>428</sup>

The ombudsman in Andalucía (*Defensor del Pueblo Andaluz*) has been particularly active in addressing social exclusion, marginalisation, ghettoisation, the situation in

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<sup>425</sup> When committed by a civil servant or agent of the public administration, obstruction of an investigation carried out by the ombudsman is a criminal offence. The Penal Code, Art. 502(2).

<sup>426</sup> Ombudsman Office, "Presentation of the 2000 Report before the Mixed Parliamentary Commission," 18 October 2001.

<sup>427</sup> In each AC the office of the ombudsman has a different name: in País Vasco it is called Ararteko, in Aragón – El Justicia, in Canarias – Diputado del Común, in Castilla y León – Procurador del Común de Castilla y León, in Catalunya – Síndic de Greuges de Catalunya, in Valencia – Síndic de Greuges de la Comunitat Valenciana, in Galicia – Valedor do Pobo, in Cantabria – El Defensor del Pueblo Cántabro, and in Andalucía – El Defensor del Pueblo Andaluz.

<sup>428</sup> *Report on the Real Situation with Racism and Xenophobia in Spain*, ENAR – Spain, Madrid, May 2002.

prisons, and social assistance and housing – all issues of relevance for Roma/gitanos in Andalucía. Other ombudsmen have also intervened in favour of Roma/gitano individuals and communities.<sup>429</sup> The ombudsman in Castilla and León (*Procurador del Común de Castilla y León*) intervened in the period from 1997-2001 in favour of re-housing the Romani families from Cacabelos.<sup>430</sup> The ombudsman in the Basque country (*Ararteko*) has expressed concern over the discriminatory treatment of Romani minors by courts in certain localities of the Basque country.<sup>431</sup>

Although some ombudsmen's offices are making laudable efforts to address discrimination, they do not have sufficient competence to act as bodies for the promotion of equal treatment in the sense established by the Race Directive.<sup>432</sup> The institution of the ombudsman was created as the guardian of individual human rights vis-à-vis the public administration, and as such is bound to give equal attention to all protected rights. It is not a specialised anti-discrimination body, and does not provide assistance to victims, does not conduct independent surveys, does not publish reports and does not make recommendations on issues of racial discrimination.

Transposition of the Race Directive will require either creating a specialised anti-discrimination body or strengthening and focusing the powers of the ombudsman in this field.

#### 4.1.2 Parliamentary bodies

Issues related to discrimination, racism and xenophobia fall within the competence of various parliamentary bodies, but there is no body to deal specifically and systematically with these issues or with Roma/gitanos' problems in particular. However, the Parliament has set up special bodies to examine and report on related issues twice in recent years.

<sup>429</sup> "The Ombudsman of Castilla y León Ask Help for the Romani People Who Need it," *El Norte de Castilla*, 19 January 1999.

<sup>430</sup> "Manuel García Álvarez Congratulates Himself on the Immediate Re-housing of the Romani Families from Cacabelos," *Bierzo Noticias*, 2 February 2001.

<sup>431</sup> "El Ararteko Criticises the Absence of Unified Criteria to Judge Minors," *El País – País Vasco*, 12 August 2001.

<sup>432</sup> Council Directive 2000/43/EC, Art. 13 requires Member States to designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin, capable of providing independent assistance to victims of discrimination, conducting independent surveys concerning discrimination, publishing reports and making recommendations on any issue related to such discrimination.

### *Congress of Deputies Sub-Commission*

In 1999, the Congress of Deputies established a Sub-Commission for Roma Issues within the Commission on Political, Social and Employment Affairs to review the Roma Development Programme (see below) and propose new measures to the Government. The Sub-Commission organised a series of hearings and adopted a report in December 1999.<sup>433</sup> The report constituted an overview of existing problems rather than an innovative policy document, mainly because its members did not have sufficient time to do more before the 2000 parliamentary elections. The report's recommendation to continue its work on examining and making recommendations to improve the situation of Roma was not taken up after the elections.

### *Senate*

A second discussion of possible institutional developments took place in the Senate, when NGO representatives who had been invited to testify on intolerance and new forms of marginalisation proposed the creation of a special parliamentary commission to study and address racism and xenophobia.<sup>434</sup> The proposal was supported by some Senators present at the hearing, but has not been taken up and developed further.

## 4.1.3 Roma development programme

The idea of a national programme to improve the situation for Roma/gitanos first appeared at the beginning of the 1980s. In 1985, Parliament created an administrative unit to oversee and provide funding for the implementation of development projects for Roma/gitanos,<sup>435</sup> and the unit began to function in 1989. At present, the Roma Development Programme (RDP) is subordinated to the General Directorate of Social Action, Minors and Family within the Ministry of Labour and Social Affairs (MLSA).<sup>436</sup>

The RDP aims to: (i) improve the quality of life of the Romani community by ensuring their equal access to the social protection system; (ii) facilitate their participation in public and social life; and (iii) promote coexistence between various social and cultural

<sup>433</sup> "Report of the Subcommittee for the Study of the Problems of the Roma People," *Official Bulletin of the Parliament*, Chamber of Deputies, No. 520, 17 December 1999.

<sup>434</sup> "Report on the Presentation of the Study on Intolerance and New Forms of Marginalisation and Slavery in our Society, Prepared by the Constitutional Commission of the Senate – October/December 1999," *Official Bulletin of the Parliament*, Senate, No. 817, 18 January 2000.

<sup>435</sup> The Chamber of Deputies' Proposal for the Creation of the Roma Development Programme, 3 October 1985, PNL 191-II.

<sup>436</sup> Andalusia, Murcia, and Castilla y León have their own Roma development programmes.

groups by promoting social solidarity, preventing racist attitudes and strengthening Roma/gitano associations. The RDP “promote[s] affirmative action programmes for social development of the most disadvantaged gitano communities.”<sup>437</sup>

The Government allocates approximately €3.3 million annually<sup>438</sup> for implementation of the RDP, and the MLSA decides how to distribute this amount among the ACs, on the basis of established criteria.<sup>439</sup> The Ministry then concludes agreements with the ACs<sup>440</sup> to co-finance and implement social intervention and integration projects in the areas of education, housing, employment, culture, health and social protection. The rule is that the Ministry contributes up to two-thirds and ACs at least one-third of the funds necessary for any given project. A specialised body, the Commission for Monitoring the Roma Development Programme, formed of representatives of the MLSA, ACs and representatives of the Spanish Federation of Cities and Regions,<sup>441</sup> verifies the terms and implementation of these agreements. The agreements are published in the Official Monitor (BOE).

### *Roma participation*

The RDP is a governmental programme, in which Romani NGOs do not participate directly. They have a consultative role through the Consultative Commission for the RDP, which is composed of representatives of the MLSA and representatives of ten national or regional Romani associations. Apart from monitoring the projects supported by the RDP, the Commission formulates recommendations for improving the work of the public administration.<sup>442</sup>

The MLSA has established effective links and regular collaboration with the Ministry of Education and Culture, which set up an Education Group comprised of representatives of the MLSA, Roma organisations, the ACs, and the Ministry of

<sup>437</sup> “The Roma Development Programme,” General Direction for Social Action, Minors and Family, Department of Social Affairs, MLSA, March 1999, p. 8.

<sup>438</sup> Between 1989 and 1999, the MLSA contributed approximately €33 million to the RDP, and the ACs approximately €25 million. AC funding has increased over the years, while the level of State support has remained constant. See Table 2, *Public funding of projects managed by the public sector*, State FCNM Report, p. 11.

<sup>439</sup> Projects must be comprehensive, covering social welfare, education and training, employment, health, housing and living conditions. See State FCNM Report, p. 10.

<sup>440</sup> All but five ACs (Canarias, País Vasco, Navarra, Ceuta and Melilla) participate in these agreements. See “The Roma Development Programme,” MLSA, p. 9.

<sup>441</sup> Federación Española de Municipios y Provincias (FEMP).

<sup>442</sup> The Roma Development Programme,” MLSA, p. 12.

Education and Culture to develop policy measures, with the help of various educational and social sector institutions.<sup>443</sup>

### *Criticism of the Programme*

Virtually all observers agree that the RDP has made a contribution to the improvement of the situation of the Roma/gitano community. However, there is also a consensus that it is rigid in structure and has failed to adapt well to social changes and realities encountered during implementation. According to Romani leader Carmen Santiago Reyes, “in Spain, what is happening is not important and what is important does not happen. For example, there has been no policy change in the RDP during the last ten years, although this is necessary.”<sup>444</sup> According to one Roma expert: “the Programme is totally outdated and, if maintained as it is, it will end up being more of an obstacle to than a tool for the development of the Roma/gitano community.”<sup>445</sup>

The principal criticism of the Programme relates to its orientation as a scheme to deliver social assistance rather than a strategic plan to protect and promote the rights and identity of the Roma minority. The fact that the RDP is administered almost exclusively by the MLSA places Romani issues exclusively within the social sphere, and reinforces the public perception of Roma/gitanos as a socially marginalised group.<sup>446</sup> As one Romani leader put it, “the only relation between Roma/gitanos and the administration is *via* social services – they separate us, put a label on our foreheads, put us in small boxes, and work with us only on social issues.”<sup>447</sup>

There has been almost no Roma participation in designing, implementing or evaluating the RDP at the national level. As a consequence, it fails to reflect some of the principal concerns of the Roma community such as identity, recognition, participation in political life, and discrimination.

The Consultative Commission in which Roma organisations participate has no decision-making power. Moreover, there are concerns related to the representativeness of the NGO members of the Commission, who were not elected by Romani

<sup>443</sup> See State FCNM Report, p. 19.

<sup>444</sup> Interview with Carmen Santiago Reyes, Cordoba, 6 November 2001.

<sup>445</sup> Interview with Diego Luis Fernández Jiménez, the Socialist Party’s Coordinator for Minorities’ Issues, Cordoba, 6 November 2001.

<sup>446</sup> *Report on the Situation of Roma and Sinti in the OSCE Area*, Organisation for Security and Cooperation in Europe, High Commissioner on National Minorities, March 2000, p. 144.

<sup>447</sup> M. Padilla, “Roma Organisations Ask for Recognition of the Roma Contribution to the Society,” *El País*, 27 October 2001.

organisations but invited to participate by the Government.<sup>448</sup> As noted by the OSCE High Commissioner on National Minorities:

One of the more troubling aspects of the Commission is that NGOs represented on the body are principal beneficiaries of project grants to NGOs made by the MLSA under the RDP. [...] There is, of course, a conflict of interest: NGO representatives cannot be expected to dispense fully disinterested advice when decisions concerning the RDP are likely to affect their own funding projects.<sup>449</sup>

The RDP aims to be comprehensive, but in practice the MLSA, which has exclusive responsibility for the Programme, has had difficulties in mobilising the participation of other ministries, establishing formal cooperation or attracting the participation of high level officials in its meetings.

In 2000, the FSGG carried out a small survey to evaluate the Programme. “There was a broad consensus among the interviewees that the Romani issues have never been given sufficient political consideration, and that this is a major obstacle to the ultimate effectiveness of Government efforts. Only at the beginning of the development of the Programme were high-level elected officials involved. Since then, lower level officials have run the Programme and attended the irregular meetings of the coordination boards.”<sup>450</sup>

The Programme has also been criticised for establishing budgetary lines without having carried out any serious assessment of needs. “For more than ten years, the RDP is functioning blindly, without basic information about the target population and without a proper juridical framework.”<sup>451</sup>

In the 13 years of its existence, there has been no serious effort to make a qualitative evaluation of the RDP’s work. Annual activity and financial reports have been published since 1995; these have provided only basic quantitative information such as lists of the programmes funded by various public authorities, the number of people covered by the programmes, the professionals involved, the activities carried out and

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<sup>448</sup> The Government acknowledged that “the associations and federations which form part of the [Consultative Commission] are representative of their respective members or their federal associations, although not representative – it is important to recognise – of the majority of the gitano population.” Office of the Ministry of Foreign Affairs/Office of Human Rights, Comments prepared by the Spanish Government, 29 October 1999, as cited in *Report on the Situation of Roma and Sinti in the OSCE Area*, p. 144.

<sup>449</sup> *Report on the Situation of Roma and Sinti in the OSCE Area*, p. 145.

<sup>450</sup> F. Villarreal, “Spanish Policy and Roma,” *Roma Rights – Quarterly Journal of the European Roma Rights Centre*, No. 2-3, 2001, Budapest, pp. 55–60.

<sup>451</sup> Interview with Diego Luis Fernández Jiménez, Cordoba, 6 November 2001.

the names of the responsible organisations.<sup>452</sup> Recently, the MLSA made a commitment to audit the RDP; the results are expected by the end of 2002.

There is a clear need for a comprehensive review of RDP implementation to date, in light of the demands and issues articulated by Romani organisations. A truly comprehensive strategy will address not only social issues, but also discrimination, identity, mechanisms for meaningful participation, culture, and language, and will involve Roma integrally in all stages of Programme preparation, implementation, and assessment.

## 4.2 Civil Society

The Romani movement started in the 1960s and initially had religious affiliations, which has had a lasting influence on its orientation towards social and charity work. Today Romani civil society is quantitatively rich, with tens of associations in each AC. At national level, there are several well-known organisations: the Association General Roma Secretariat (*Asociación Secretariado General Gitano* – ASGG), which recently became a Foundation (FSGG); the Union Romani, based in Barcelona, and the relatively recent Kamira – the first national federation of Romani women organisations in Europe, which is still struggling to establish its organisational identity.

Several Romani or pro-Roma organisations – Presencia Gitana and FSGG – are members of the local European Networks against Racism (ENAR). The Romani Union and ten other entities have set up a Civic Platform “Nazism never again” to fight against the diffusion of Nazism and pro-Nazi ideas.<sup>453</sup> The European Roma Centre for Anti-racist Research (CREIDA), created in 1996 by Romani Union and Sevilla University with financial support from the EU, has made more than 50,000 articles, documents, books, movies, videos, posters and photos accessible to the public.

There is great diversity among the styles and approaches of Romani leaders.<sup>454</sup> Commentators have noted a need for these leaders to forge strategic approaches, unified methodologies, clear criteria and common objectives at the national level.<sup>455</sup> At

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<sup>452</sup> The Service of the Roma Development Programme, “Report on the Roma Development Programme,” MLSA, Madrid, 1998.

<sup>453</sup> Union Romani, “A Civic Platform is Born in Barcelona to Struggle against Nazism,” 2 December 1998.

<sup>454</sup> See, e.g. T. San Román Espinosa, “The Development of Romani Political Consciousness,” *Gitanos – Pensamiento y Cultura*, No 0, April 1999, Madrid, pp. 36–41.

<sup>455</sup> H. Garcia, intervention published in Working Documents 43, “Debate on Romani People,” p. 182.

the local level, many Romani NGOs work alone – in isolation from other non-governmental organisations, professional associations or political structures; over time, some organisations became a refuge for their members rather than an instrument for active participation.<sup>456</sup> Furthermore, there is a distance between Roma and non-Roma civil society, and a scarcity of intercultural associations.<sup>457</sup> Commentators also note the excessive dependence of many Romani NGOs on the State administration, and a tendency to articulate their agenda around the interests of local authorities.<sup>458</sup>

According to some critics, little effort has been made to draw a connection between State funding allocation and Romani NGOs' management capacities<sup>459</sup> with the result that certain organisations have been granted more money than they could effectively administrate. This, in combination with the absence of serious performance assessment,<sup>460</sup> has resulted in the development of an "NGO clientele"<sup>461</sup> for State funding. Other critics have asserted that NGOs which have adopted a more critical position have been subject to surveillance and control by the State administration.<sup>462</sup>

Furthermore, the fact that the Government has provided substantial funding to select NGOs has contributed to what some characterise as "a widespread sense of

<sup>456</sup> A. Vega Cortés, intervention published in Working Documents 43, "Debate on Romani People," p.183.

<sup>457</sup> J. D. S. Torres, "Social Participation," in Working Documents 43, "Debate on Romani People," p. 173.

<sup>458</sup> P. Aguilera Cortés, "Political Participation in Romani Communities," *Gitanos – Pensamiento y Cultura*, No. 4 April 2000. Teresa San Román Espinosa writes: "...there came a moment when the mere existence of the [Roma] associations was depending exclusively on the administration, which put them in a position against the population which they should serve, and then, another moment, which is far from being over, when the relations with the State and the access to benefits of the most marginalized Roma depend on their relations with these NGOs, which is not good for the former or for the latter. See: T. San Román Espinosa, "The Development of Romani Political Consciousness," pp. 36–41.

<sup>459</sup> H. Garcia, intervention published in Working Documents 43, "Debate on Romani People," p. 182.

<sup>460</sup> J. Salinas, intervention published in Working Documents 43, "Debate on Romani People," p. 174.

<sup>461</sup> Juan de Dios Ramírez describes a cartoon published in *Arakerando Alicante*: a very well dressed Romani man tells a not so well dressed young Roma: "look, cousin, I also was a gitano with worries like you until they started giving me subsidies..." See J. de Dios Ramírez, intervention published in Working Documents 43, "Debate on Romani People," p.184.

<sup>462</sup> J. D. Santiago Torres, "Social Participation," in Working Documents 43, "Debate on Romani People," p. 173.



complacency,”<sup>463</sup> especially among those that do not have access to other sources of funding. According to one expert, it has also created:

[A] golden opportunity for the administration to have a convenient interlocutor, creating the impression of representativeness and democratic dialogue, and allowing [the administration] not to speak with anybody else and avoid social and political responsibilities related to Roma. If Romani NGOs and not the administration are the entities responsible for distributing resources within the Roma community (houses, grants, social welfare, etc.), then not only that [but] all the failures, conflicts and protests are also the responsibility of Roma...<sup>464</sup>

State structures and institutions should be developed in such a way as to allow for representation of the diversity of the Roma/gitano community: the State should fully assume its own responsibility while facilitating meaningful participation from a broad range of independent actors.

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<sup>463</sup> *Report on the Situation of Roma and Sinti in the OSCE Area*, p. 145.

<sup>464</sup> T. San Román Espinosa, “The Development of the Romani Political Consciousness,” pp. 36–41.

## 5. RECOMMENDATIONS TO THE GOVERNMENT

- pass necessary legislation to fully recognise Roma as an ethnic minority;
- adopt comprehensive anti-discrimination legislation, transposing the EU Race Directive as a minimum standard;
- establish independent specialised bodies capable of effectively implementing anti-discrimination legislation and policies through monitoring, investigation and reporting;
- provide training to law enforcement personnel to prevent racially motivated violence against minority communities;
- gather statistics on racially motivated violence; introduce effective mechanisms to prevent, prosecute and dissuade such incidents;
- generate ethnic data on racial and ethnic discrimination and exclusion, in close cooperation with affected minority communities;
- identify priority areas for overcoming exclusion and discrimination against Roma/gitanos, in close cooperation with their communities, with a view towards the development of effective policies;
- take necessary legislative and policy measures to prevent and reverse segregation and ghettoisation of schools; design policies and create the legislative framework to apply the concept of intercultural education, giving due consideration to the incorporation of aspects of Romani culture;
- design fair housing policies and adopt clear anti-discrimination norms in the field of housing; create the legislative framework for eradicating ghettos and shanty-towns, and support ACs in elaborating and implementing short- and medium term strategies to improve the housing situation for Roma;
- replace the Roma Development Programme with a comprehensive strategy at national level for the improvement of the situation of Roma, ensuring full and meaningful participation of duly elected minority representatives;
- provide leadership by publicly supporting Roma rights, condemning racism and discrimination against Roma, and emphasising the importance of multiculturalism and respect for difference.

# The Situation of Muslims in the UK

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## 1. EXECUTIVE SUMMARY

The United Kingdom has almost two million Muslims, forming one of the most diverse, multi-ethnic Muslim communities in the world. Most communities are the result of economic migration in the 1960s and 1970s. More recently Muslims have arrived as refugees seeking asylum. Half of the Muslim population lives in London; others settled mainly in the industrial Midlands, the northern mill towns and the west coast of Scotland. The daughters and sons of these immigrants form a new generation, who identify themselves increasingly with their faith and who are finding new ways of being British and being Muslim.

Relations with Muslim communities are at a critical crossroads. During 2001 the lives of Britain's Muslims came under unprecedented scrutiny and examination. First, following the disturbances in the northern mill towns over the Spring and Summer and then, of course, after 11 September. Much of this scrutiny has focused on the extent to which Muslims have integrated into British society. It has led to assertions that Muslims are isolationist and failing to integrate; that they are living parallel lives to those in the wider community. This report seeks to rebalance this debate by focusing on the need for integration to be a two-way process.

There is evidence of severe discrimination and disadvantage experienced by Muslim communities, which operate as obstacles to those wanting to integrate. Tackling this disadvantage and discrimination is essential for integration, as is the cultivation among Muslims of a sense that they belong to the broader society. This requires respect for their identity as Muslims, and enhanced opportunities for their participation in all spheres of public life and in all aspects of the policymaking process. The UK has official bodies and structures that have the potential to address the concerns of Muslims; it is vital that such bodies encourage, facilitate and take steps to support their participation. The institutions of the European Union must also take steps to ensure inclusion of Muslims in policy-making processes at that level. Measures to improve the situation of British Muslims will bring benefits to society as a whole.

### *Protection from discrimination*

The assertion of Muslim identities challenges the pre-existing legal and institutional framework that views minority communities in terms of racial and ethnic background. The primacy of racial and ethnic community formations has meant that, until recently, religion has been largely missing from the discourse on minority protection. Statistics are not collected on the basis of religion but on the basis of ethnic identities. The absence of reliable data on minority faith communities poses serious challenges to establishing the extent of discrimination against Muslims. Ethnic data provides statistics for Pakistanis and Bangladeshis, revealing severe levels of disadvantage among

those communities. However, these two communities constitute only half the British Muslim population, and the experience of the other half, including Muslims from the Middle East, Africa, Southeast Asia, Europe and the Caribbean, remains largely invisible. There is a need to build up a solid baseline of information about Muslim communities. It is essential that where statistics are collected on the basis of race and ethnic origin, information should also be collected on the basis of religious affiliation.

In a Home Office study of religious discrimination two thirds of Muslim organisations reported unfair treatment resulting from school policies and practices and in institutions of higher education. Three quarters reported unfair treatment from social service staff and from practices in social service departments. Compared with other faith groups Muslims reported the highest level of unfair treatment in employment.

Ethnic data reveal severe deprivation among Pakistani and Bangladeshi Muslim communities in all aspects of life: education, employment, housing, healthcare, and access to justice. In education, only 29 percent of Pakistani and Bangladeshi pupils gained five or more GCSE grades A\*-C – the lowest of any ethnic group and far lower than the national average of 49 percent. Data on ethnic minority participation show that Pakistani and Bangladeshis are consistently the most disadvantaged groups, with lower rates of economic activity and employment and higher rates of unemployment than other ethnic minority groups. Four-fifths of Pakistani and Bangladeshi households have incomes at or below the national average compared with two-fifths for other ethnic minority households. The figures in housing also show that one-third of Pakistani and Bangladeshi households live in unfit properties in the private sector compared to 13 percent of black Caribbean and six percent of white and Indian households. Discrimination, deprivation and social exclusion form significant barriers to integration and participation in public life. Without action taken to address this deprivation and discrimination, an entire generation of Muslims could be locked into a cycle of poverty and alienation from society.

There is growing official acknowledgment that Muslims often experience discrimination, prejudice and stereotypes that focus on their identity as Muslims. Limited legal protection for some Muslims is available through race legislation, and the Human Rights Act offers further protection. The Government plans to introduce legislation prohibiting religious discrimination in employment, but not in other areas. It is essential that anti-discrimination laws and policies provide the same level of protection against religious discrimination as they do against racial discrimination. To be meaningful, changes in the law must be accompanied by education about legal rights and support for those seeking justice before the courts.

Legal prohibitions on discrimination against Muslims must be supported by polices that tackle disadvantage, discrimination and exclusion. Public service providers must provide appropriate services to Muslim communities through such measures as

diversity monitoring; the use of Beacon Council schemes to facilitate the spread of good practice; and the development of guidance and performance standards and indicators that assist local authorities and other public bodies in delivering services to faith communities.

### *Protection from violence*

Deprivation is compounded by feelings of fear and insecurity. One indirect effect of the disadvantage and discrimination experienced by Muslims is that they live in areas with the highest levels of crime and lack the means to protect themselves against crime. The British National Party (BNP) has honed its racism into a specifically anti-Muslim message, exploiting socio-economic conditions of deprivation to scapegoat Muslims. Following 11 September Muslims and those perceived to be Muslim have faced unprecedented levels of attacks and violence. The law has been changed to protect Muslims against “religiously aggravated” offences, and there are also signs that the political will to confront religiously motivated violence is present. However, implementation of anti-terrorism legislation has created a growing perception in Muslim communities that they are being stopped, questioned and searched not on the basis of evidence but on the basis of “looking Muslim.” The British Crime survey should monitor the Muslim community’s experience of crime and policing.

### *Minority rights*

The UK is a party to the Framework Convention on National Minorities, and proclaims an integration policy based on valuing and promoting cultural diversity. As Muslims navigate integration into British society, so they challenge the wider society to change and adapt to ensure that society is inclusive of their distinct cultures and values. Muslims generally enjoy the right to practice their religion. However, certain obstacles arise from the many social practices that are structured around basic Christian assumptions, which accommodate the needs of Christians but not of other minority faith communities.

For young Muslims the education system is the earliest and most significant point of contact with the wider community. The messages that the education system provides in respecting and accommodating their needs will be a significant influence on their attitude to integration and participation in society. The vast majority of Muslims continue to be educated in non-Muslim State schools. Successful integration requires such schools to change to meet the legitimate expectations of Muslims. Schools should, as far as possible, accommodate the religious needs of pupils. There is also potential to find ways in which faith identities can be harnessed to improve educational standards among Muslim pupils. For example, Arabic, which many Muslim pupils learn outside school, could be offered as a foreign language option alongside modern European languages. For many Muslims, the need to integrate education about Islam into the

general schooling process is the most urgent task for the Government in relation to young Muslims, as many after-school mosque classes have not delivered. At present, young people complete their education knowing that they are Muslim but with little understanding of Islam. This creates a gap which groups with differing interpretations of Islam can fill. Without adequate education, young Muslims are ill-equipped to engage in debate and dialogue with such groups.

There are no formal restrictions on Muslims accessing the media. A diverse Muslim print media and the enormous number of Muslim websites reflect the decentralisation of power and authority within Britain's diverse Muslim communities. Muslim concerns focus on prejudiced and negative portrayals of Muslims and Islam in the media and its failure to reflect the cultural diversity of Muslim communities. Muslims as consumers of media products have an important responsibility in influencing this coverage. Media regulatory bodies can support and facilitate the participation of Muslims in media complaints mechanisms. Diverse Muslim voices in the media will emerge through long term, sustained engagement between Muslim communities and media organisations and increased Muslim participation in media production.

### *Institutions for minority protection*

Existing bodies and structures for minority protection see minorities in terms of ethnic communities, and so often ignore the needs of Muslim communities. Out of 64 Commissioners working in the various equality bodies only three are Muslim. Muslim women face discrimination and stereotypes combining their gender and faith identities. The Equal Opportunities Commission could work with Muslim women's groups to challenge these stereotypes.

A strong civil society is vital to liberal democracy. It enables communities to develop solutions that meet their needs and to speak for themselves. Civil society organisations provide an essential medium for full and effective participation in the democratic process. A diverse group of Muslim organisations operates under the umbrella of civil society, and there is an opportunity to harness their energy and talents to tackle problems of social exclusion, discrimination and deprivation. The involvement of Muslim civil society in policy-making is critical to ensuring their participation and inclusion in governance and the development of appropriate and effective policies. Muslim communities are in the formative stages of developing a vibrant civil society, and require support through capacity building activities, training, and other forms of assistance, at the local, national and European levels.



## 2. BACKGROUND

Britain has a long history of contact with the Muslim world. Contact was frequent during the Middle Ages, an age of expansion of the Islamic Empires and the European crusades. Interaction grew as a consequence of British colonial expansion into territories with Muslim populations and rulers. A Muslim presence can be traced back 300 years, to the sailors from the Indian subcontinent, some of whom were Muslims employed by the British East India Company. More Muslims arrived following the opening of the Suez Canal in 1869 and the subsequent recruitment of sailors from Yemen into the merchant navy. Significant Muslim communities developed in port cities such as London, Cardiff, Liverpool, Hull and South Shields, the oldest of which is the Yemeni community.<sup>1</sup>

By the beginning of the 20<sup>th</sup> century, Liverpool and Woking had also become significant centres for Muslim community activity. Liverpool was the centre for an ethnically mixed Muslim community, which included West African sailors and Indian aristocrats and was led by Henry William Quilliam, a British citizen who converted to Islam in 1887 while travelling in Morocco. In 1889 Woking became the site for the first purpose-built mosque. In 1928 a trust was created to build Britain's most famous mosque, the Central London Mosque. A royal donation by King George VI provided a site at Regent's Park. The King opened the Islamic Cultural Centre on the site in 1944, but the present mosque was not completed until 1977.<sup>2</sup>

The 33 years between the opening of the Islamic Cultural Centre and the Central London Mosque saw dramatic changes in the size and settlement patterns of Muslim communities,<sup>3</sup> as Britain gained one of the most multiracial and ethnically diverse Muslim communities in the world. Around half the British Muslim community are Pakistani and Bangladeshi. These communities developed in four phases: "first the pioneers, then what is known as 'chain migration' of generally unskilled male workers, followed by migration of wives and children and finally the emergence of a British-born generation."<sup>4</sup>

In the late 1960s and early 1970s, East African Asians began arriving under pressure from the "Africanisation" policies in Kenya and Tanzania, and in the case of Uganda,

<sup>1</sup> F. Halliday, *Arabs in Exile, Yemeni Migrants in Urban Britain*, London: I.B. Tauris, 1992.

<sup>2</sup> J. S. Nielsen, *Towards a European Islam*, Basingstoke: MacMillan Press, 1999, pp. 5–6.

<sup>3</sup> C. Peach, 'The Muslim Population of Great Britain', *Ethnic and Racial Studies*, vol. 13 no. 3, 1990.

<sup>4</sup> P. Lewis, *Islamic Britain – Religion, Politics and Identity among British Muslims*, London: I. B. Tauris, 1994, p. 17.

as a result of forced expulsion.<sup>5</sup> The East African Asians were highly skilled urban middle class professionals and entrepreneurs; they tended to settle in London and the Midlands. Their experience of living in urban centres combined with their business and professional background ensured faster integration into economic and social structures. It is estimated that 20,000 of the group of 150,000 East African Asians were Muslims, with family roots in Pakistan or the Indian state of Gujarat.<sup>6</sup>

In addition to the South Asian Muslim communities, there are also significant Arab, Kurdish, Nigerian, Turkish and Turkish-Cypriot communities. Most recently, Muslims have arrived as refugees from Iran, Iraq, Afghanistan, Somalia and the Balkans.<sup>7</sup> There are also an estimated 5,000–10,000 Muslim converts, about half from the Afro-Caribbean communities.<sup>8</sup> Exact figures are difficult to obtain, but recent estimates indicate a British Muslim population of 1.4–1.8 million or three percent of the total population.<sup>9</sup>

The economic impetus for the initial phase of migration is reflected in Muslim settlement patterns. Initial settlement was predominantly in London, the inner city wards in the industrial Midlands, the mill towns of the Northwest and the West coast of Scotland. Muslim communities today continue to be concentrated in these regions. This concentration means that in some towns and cities 15 percent of the population are Muslim. Half of the Muslim population live in London; one in eight Londoners are Muslim, and in some boroughs Muslims constitute 30 percent of the population.<sup>10</sup>

In a very short space of time, these post-war Muslim communities have settled into the United Kingdom and laid the foundations for community development. The initial focus, following the phase of family reunions, was on the establishment of mosques, welfare centres, *madrassahs* (religious schools) and *halal* food shops. At the same time,

<sup>5</sup> R. Hansen, *Citizenship and Immigration in Post-war Britain*, Oxford: Oxford University Press, 2000, pp. 153–178.

<sup>6</sup> The Report of the Runnymede Trust Commission on British Muslims and Islamophobia, *Islamophobia – A Challenge for Us All*, London: The Runnymede Trust, 1997, p. 14.

<sup>7</sup> D. Matz, R. Hill, T. Heath, *Asylum Statistics – United Kingdom 2000*, London: Home Office, 2001.

<sup>8</sup> J. S. Nielson, *Muslims in Western Europe*, Edinburgh: Edinburgh University Press, 1991, p. 43. But see also *Financial Times*, 23 January 2002, which quotes Professor M. Anwar as estimating the British Muslim population to be 1.8 million, including 10,000 Afro-Caribbean or white converts.

<sup>9</sup> The Report of the Runnymede Trust Commission on British Muslims and Islamophobia, *Islamophobia – A Challenge for Us All*, London: The Runnymede Trust, 1997, p. 14 estimates a population of 1.2–1.4; the most recent estimate is 1.8 million. See Appendix A, “A map of Muslim Britain,” reprinted from *The Guardian*, 17 June 2002.

<sup>10</sup> See Appendix A.

Islamic movements, often with roots in South Asia, began to establish branches. A third development has been the creation of “national” organisations that seek to represent the British Muslim community.<sup>11</sup>

There is a growing focus today on the younger generation of Muslims – the second and third generation citizens of immigrant families.<sup>12</sup> Born and educated in the United Kingdom, this generation of Muslims is “asserting their growing self confidence in all areas of life – education, the professions, arts and culture.”<sup>13</sup> The “Rushdie Affair” was a seminal moment.<sup>14</sup> The media attention surrounding the issue generated a significant growth in general public awareness of the existence of Muslim communities, and the emergence of a generation of young British Muslims who wished to assert their distinct identity. A recent opinion poll found that British Muslims considered their religion to be a significant element of their identity.<sup>15</sup>

Three trends can be identified within this younger generation. First, a small but significant minority have become radicalised in their interpretation of Islam. Second, a far larger number have retained their Muslim identity and faith but have not seen this as an obstacle to contributing and integrating positively into mainstream British society. This latter group “accept the hybrid nature of living in a pluralistic environment and try to make sense of this without losing sight of their Islamic principles. Here, there is a belief that Islam can actually flourish in new forms through an enriching mutual, two-way engagement with the West, both at the level of values and cultural exchange.”<sup>16</sup> The third group are a large and significant number that are

<sup>11</sup> J.S. Nielsen, *Towards a European Islam*, Basingstoke: MacMillan Press, 1999, pp. 15–16.

<sup>12</sup> See Section 3.3.

<sup>13</sup> Z. Kazmi and Y. Al-Khoei, *The Aftermath of 11 September and Muslim Communities in the West*, unpublished, 2002.

<sup>14</sup> The “Rushdie Affair” concerned events surrounding the publication, in 1988, of Salman Rushdie’s novel, *The Satanic Verses*. The novel caused offence to Muslims across the world who felt it was an abusive and disrespectful portrayal of Islam and the Prophet Muhammad. The issue came to public prominence following the issuing of an opinion, by the late Ayatollah Khomeini, that the book was blasphemous and the subsequent threat to the life of the author and his publishers. In the UK there were protests and demonstrations by Muslims against the publication of the book, and in Bradford and Bolton copies of the book were burnt. Attempts were made to prosecute the book under the English law of blasphemy. These failed because the English common law offence of blasphemy only extended to protect the Anglican faith.

<sup>15</sup> The ICM Research poll of British Muslims asked how they saw themselves first and foremost. 58 percent responded “British Muslim,” 30 percent “Muslim,” six percent “other” and six percent “British.” See *The Guardian*, 17 June 2002.

<sup>16</sup> Z. Kazmi and Y. Al-Khoei, *The Aftermath of 11 September and Muslim Communities in the West*, unpublished, 2002.

born into Muslim communities but do not identify themselves as Muslims in any significant way.

An opinion poll of British Muslims found that the majority felt they were integrated or needed further integration into mainstream British culture, while a minority thought that they had integrated too much.<sup>17</sup> At the same time, the assertion of a distinct Muslim identity causes unease among the majority population and is seen as a dangerous challenge to a secular society. 69 percent of British Muslims believed that non-Muslim Britons did not see Islam as part of British culture.<sup>18</sup>

The assertion of Muslim identity also presents a challenge to the pre-existing legal and institutional framework that views minority communities in terms of race and ethnic background.<sup>19</sup> The large-scale immigration of Muslim communities from the 1950s onwards was a part of a wider process of post-war migration. During the early period of migration, State policy operated under a *laissez-faire* assumption of assimilation. It was thought that the Black and Asian immigrants would adapt quickly to the cultural, life style, and attitudinal norms of the host community. However, social tensions soon began to emerge, particularly in relation to housing. Successive Governments failed to meet post-war demands for housing, and “the arrival of large numbers of immigrants, particularly in the inner city areas with the most acute housing problems, inevitably exacerbated already serious shortages and supplied ready made scapegoats on whom already extant problems could be blamed.”<sup>20</sup>

The initial policy response linked control of immigration to good race relations. The need for successful integration was used to justify restrictions on immigration from the new Commonwealth. Legislative support for integration included the enactment of Race Relations Acts in 1965, 1968, 1976, and 2000. The creation of the Commission for Racial Equality in 1976 was an acknowledgement that the problems faced by minority ethnic communities were of overt and structural racism. This was strengthened by the Race Relations Amendment Act 2000, which creates a duty on public authorities to eliminate racial discrimination and to promote equal opportunities and good relations between persons belonging to different racial groups.

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<sup>17</sup> A. Travis, “The Need to Belong But with a Strong Faith,” *The Guardian*, 17 June 2002. Those interviewed were asked: “Do you think the British Muslim community in Britain needs to do more to integrate into the mainstream British culture, has it got it about right or has it integrated too much?” The responses were: needs to do more to integrate, 41 percent; level of integration was about right, 33 percent; integrated too much, 17 percent; don’t know, nine percent.

<sup>18</sup> A. Travis, “The need to belong but with a strong faith,” *The Guardian*, 17 June 2002.

<sup>19</sup> Interview with organisation B, Glasgow, 26 April 2001.

<sup>20</sup> D. Mason, *Race and Ethnicity in Modern Britain*, Oxford: Oxford University Press, 2000, p. 26.

The Government has attempted to shift away from the language of immigration “control” and to start a debate on “managed” migration and the benefits that migrants bring to Britain.<sup>21</sup> Public opinion polls indicate support for the immigration of workers with skills and for quotas for unskilled workers.<sup>22</sup> Today anti-immigration sentiment focuses on asylum applicants, and the language of control and deterrence still dominates the political discourse on asylum. Government policies have made it more difficult for asylum applicants to get within United Kingdom territory, to the point where it is now virtually impossible to enter the United Kingdom lawfully to claim asylum.<sup>23</sup> Asylum statistics are not collected on the basis of religion. However, a significant proportion of those claiming asylum in the United Kingdom are Muslim; in 2001 over half of the asylum applicants came from predominantly Muslim countries.<sup>24</sup> The treatment of asylum applicants is therefore of particular concern to Muslim communities and organisations. Their concerns include the destitution and poverty experienced by some asylum applicants:

Asylum seekers have barely enough food of a quantity to maintain an adequate diet, and often experience poor health and hunger. They cannot buy enough clothes or shoes to keep warm or buy school uniforms. Many struggle to afford bus fares to attend important appointments, to stay in touch with friends and relatives, to send their children to school. Often it is the most vulnerable who suffer from lack of additional support: parents worry for the health and well-being of their children.<sup>25</sup>

There are also needs that are specific for Muslim asylum applicants that should to be taken into consideration in developing policies for their treatment. Government and refugee support organisations should ensure their policies and practices are appropriate for Muslim asylum applicants.

<sup>21</sup> *Secure Borders, Safe Haven: Integration with Diversity*, Cm 5387, London: Home Office, 2002.

<sup>22</sup> ICM Poll of May 2001 cited in, S. Spencer, “Recent Changes and Future Prospects in UK Migration Policy,” paper presented at the Landerburger Discourse in Migration, 14–15 February 2002.

<sup>23</sup> S. Shutter, A. Niaz, *Asylum: Changing Policy and Practice in the UK, EU and Selected Countries*, London: Justice, 2002, pp. 25–28.

<sup>24</sup> 71,365 asylum applications were made in 2001 including applications from the following countries where the applicants are likely to be Muslim: Afghanistan 9,000; Iraq 6,705; Somalia 6,465; Turkey 3,700, Iran 3,415; FRY 3,190; Pakistan 2,860; Algeria 1,145; Middle East other 1,065; Albania 1,065; Bangladesh 500. Taken from: T. Heath and R. Hill, *Asylum Statistics UK 2001*, London: Home Office, 2002, at p. 21.

<sup>25</sup> J. Penrose, *Poverty and Asylum in the UK*, London: Refugee Council and Oxfam, 2002, p. 4.

*Public opinion*

Two large-scale public opinion polls carried out in 2002 on the state of race relations provide a mixed picture.<sup>26</sup> On the one hand, 59 percent of people thought that Britain had good race relations between different types of people, such as those from different ethnic backgrounds.<sup>27</sup> Only nine percent equated being British with being white.<sup>28</sup> 78 percent thought that it was important to respect the rights of minority groups and 59 percent said that more should be done to learn about the systems and cultures of different ethnic groups.<sup>29</sup> 53 percent said their circle of friends included people from different ethnic backgrounds, and there were generally positive attitudes towards relationships between people of different ethnic backgrounds.<sup>30</sup>

On the other hand, more people thought that racial prejudice had increased over the past ten years, rather than decreased.<sup>31</sup> A majority considered Britain to be a racist society.<sup>32</sup> Furthermore, 45 percent of the population said they knew someone who was prejudiced against people from a different ethnic group to their own. 60 percent of Black and Asian respondents said they had experienced verbal racial abuse and 20 percent had experienced physical racial abuse. 44 percent thought that immigration had damaged British society over the past 50 years.

There has been only limited research focused on public attitudes towards Islam and Muslim communities. In July 2001 ICM Research conducted a public opinion poll examining attitudes towards Islam as part of a BBC season of programmes about Muslims. According to this poll, people were generally comfortable with the idea of a

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<sup>26</sup> The two polls were: *A Voice for Britain – A research Study Conducted for the CRE by MORI*, London: Commission for Racial Equality, 2002 (hereafter, “*A Voice for Britain, 2002*”); and a poll for the BBC News conducted by ICM Research.

<sup>27</sup> *A Voice for Britain, 2002*, p. 6.

<sup>28</sup> *A Voice for Britain, 2002*, p. 5. In the ICM Research poll for the BBC the figure was 20 percent.

<sup>29</sup> *A Voice for Britain, 2002*, p. 6.

<sup>30</sup> BBC poll: when asked “How would you describe your feelings if your child were to marry someone of a different race?” 46 percent said they would not mind, and a further 23 percent said they would be supportive, while only ten percent expressed firm opposition.

<sup>31</sup> *A Voice for Britain, 2002*, p. 7: 47 percent thought there was generally more racial prejudice in Britain today than there was ten years ago. This compares with 29 percent who thought there was less and 21 percent who thought that it was about the same. Among ethnic minorities 34 percent said there was more racial prejudice now than ten years go; 31 percent thought there was less and 22 percent thought it was about the same.

<sup>32</sup> BBC poll by ICM Research: when asked, “Do you think Britain is a racist society?” 51 percent said “yes” and 40 percent said “no.”

member of their own family converting to Islam.<sup>33</sup> However, concern was expressed about the treatment of women within Muslim societies,<sup>34</sup> and more than 20 percent thought that Muslim beliefs condoned terrorism.<sup>35</sup>

There is growing official acknowledgement that the United Kingdom is a multi-faith as well as a multi-ethnic society. This is seen in the contrast between the celebration of the Queen's Silver Jubilee in 1977 and Her Golden Jubilee in 2002. In 1977 there were no visits to any mosques, and no references in Her speech to Parliament to Britain's changing demography. By contrast, Her Summer 2002 tour included a visit to a mosque and in Her Golden Jubilee speech to Parliament she paid tribute to "the consolidation of our rich multicultural and multi-faith society." Similarly, the Prince of Wales generated much controversy in 1994 when he indicated that he wished to be crowned as "Defender of Faith" in place of the traditional "Defender of the Faith."<sup>36</sup> Many, including the leaders in the Muslim communities, welcome this as recognition of the multi-faith nature of British society. Others argue that as head of the Church of England the Monarch should only be "Defender of the Faith." No final decision has yet been made on this issue.

### *Categorisation of multicultural communities*

Patterns of disadvantage revealed by data are in part a product of prior decisions about how to categorise people. These decisions in turn reflect political judgements about which patterns are likely to be important and which groups deserve protection. The primacy given to racial and ethnic community formations has meant that, until recently, religion has largely been missing from the discourse on minority protection. There are differences in the treatment of different religious groups. Jewish and Sikh communities are recognised as ethnic groups and so receive the full protection of the Race Relations Act. However, the Act does not provide the same protection to Muslims. For Muslim

<sup>33</sup> *ICM Research / "Islamophobia" poll – July 2001* see:

<<http://www.icmresearch.co.uk/reviews/2001/islamophobia-poll-july-2001.htm>>, (accessed 25 September 2002). When asked, "Which of the following would best describe your reaction if a member of your family converted to Islam?" 40 percent said they would be supportive; 30 percent said they would be unconcerned; 22 percent said they would be opposed.

<sup>34</sup> *ICM Research / "Islamophobia" poll – July 2001*. When asked: "Do you think that women in Muslim societies have a higher status than women in Western society, a lower status, or do you think there is no difference one way or the other?" the response was: higher status six percent; no difference 24 percent and lower status 59 percent.

<sup>35</sup> *ICM Research / "Islamophobia" poll – July 2001*. When asked: "Do you think Muslim beliefs condone or condemn terrorism, or do you think they have no influence one way or the other?" the response was: 22 percent condone, 38 percent no influence and 11 percent condemn.

<sup>36</sup> A. Roy, "Palace Denies Rift over Prince's Role in Church," *Daily Telegraph*, 27 May 1996.

groups “the effect of Race Relations Act 1976 has been to make race the most powerful and all pervasive keyhole through which to perceive society. The implication of this on the Muslim community – ironically the most multi-racial and biggest within the ethnic community – has been disastrous.”<sup>37</sup> Professor Tariq Modood pointed out the limitations of viewing social exclusion purely through the lens of race, by showing that disaggregating groups in different ways leads to new perspectives on advantage and disadvantage. He found that “by most socio-economic measures there is a major divide between Sunni Muslims, on the one hand, and Asians, on the other, and that this divide is as great as between Asians and Whites, or between Asians and Blacks.”<sup>38</sup>

There are no statistics on the level of disadvantage experienced by Britain’s Muslim communities. Statistics collected on the basis of ethnic origin show high levels of disadvantage among the overwhelmingly Muslim Pakistani and Bangladeshi communities. However, the utility of ethnic data more generally is limited. The census category “Black African,” for example, “covers such a wide range in terms of culture, socio-economic situations and migration experience that it is almost entirely unhelpful.”<sup>39</sup> Similarly, “the term ‘Indian’ fails to distinguish between the large Punjabi and Gujarati communities, and does not take account of certain smaller communities with roots in India which are culturally, religiously, and socio-economically different from the larger group.”<sup>40</sup> Muslims from the Balkans, Ghana, India, Iran, Iraq, Malaysia, Nigeria, Turkey, Somalia, South Africa, Sudan, Yemen, the North African countries or the Balkans remain invisible, hidden behind figures for white, black or other. There is no empirical data to say if these Muslim communities suffer the same level of disadvantages experienced by the Pakistani and Bangladeshi communities. However, Muslim organisations report plenty of anecdotal evidence to suggest that Muslims other than Pakistanis and Bangladeshis also suffer severe disadvantage.

The prison service is one of the few areas where statistics are collected on the basis of religion. If the prison service had collected data on the basis of ethnicity only, this would have hidden the size of the Muslim prison population. “South Asians” only constituted three percent of the male and one percent of the female prison population.<sup>41</sup> Muslims account for seven percent of male and three percent of female

<sup>37</sup> *Second Review of the Race Relations Act 1976 – A Response*, Wembley: An-Nisa Society, 1992, p. 4.

<sup>38</sup> T. Modood, *Not Easy Being British*, Stoke on Trent: Trentham Books, 1992, p. 33.

<sup>39</sup> The Runnymede Trust Commission on the Future of Multi-Ethnic Britain, *The Future of Multi-ethnic Britain – The Parekh Report*, London: Profile Books, 2000, p. 144 (hereafter, Runnymede Trust, “*The Parekh Report*”).

<sup>40</sup> Runnymede Trust, *The Parekh Report*, p. 145.

<sup>41</sup> *Prison Statistics England and Wales 2000*, Cm. 5250, London: Home Office, 2001, p. 108.



inmates.<sup>42</sup> The statistics show that Muslims form a majority with a recorded religion among the “south Asian category” (86 percent) the largest faith community in the “Chinese and other ethnicity” group (47 percent) and the second largest group among “Black” prisoners (19 percent).<sup>43</sup>

The 2001 census for the first time will provide data on the basis of religion, although, in England and Wales, religious affiliation was an optional question.<sup>44</sup> Muslim organisations and community leaders campaigned for and welcomed the inclusion of a question on religion in the census.<sup>45</sup> The Office of National Statistics (ONS) is considering producing a multi-source topic report on religion. This will pull together information from the 2001 census and other sources to provide a comprehensive and authoritative overview of key topics.<sup>46</sup> Before policy options targeted to support Muslim communities can be developed, there is a need to build up solid baseline information about Muslim communities. It is therefore essential that where statistics and data are collected on the basis of race and ethnic origin information should also be collected on the basis of religious affiliation. The proposed ONS report on religion would be a welcome contribution to this.

### *Attitudes of public officials*

There has been growing official acknowledgement of prejudice and discrimination against Muslim communities dating from the publication of the 1997 report of the Commission on British Muslims and Islamophobia.<sup>47</sup> The report was launched in the House of Commons by the then Home Secretary, Jack Straw. Pressure for tackling religious discrimination has since been maintained in Parliament. In 1999 MP John Austin introduced a Private Member’s Bill in the House of Commons to prohibit religious discrimination in employment and the provision of goods, services and facilities.<sup>48</sup> He reintroduced the bill to the House of Commons in 2002. In 1999, the

<sup>42</sup> F. Guessous, N. Hooper, U. Moorthy, *Religion in Prisons 1999 and 2000*, London: Home Office, 2001, p. 6.

<sup>43</sup> *Prison Statistics England and Wales 2000*, p. 115.

<sup>44</sup> In England and Wales, the census form asked the optional question: “What is your religion?” In Scotland and Northern Ireland, there were two non-optional questions: “What religion, religious denomination or body do you belong to?” and “What religion, religious denomination or body were you brought up in?”

<sup>45</sup> Commission on British Muslims and Islamophobia, *Islamophobia – a Challenge for Us All*, London: The Runnymede Trust, 1997, p. 32.

<sup>46</sup> *Religion: Scoping Report*, London: Office of National Statistics, 2002.

<sup>47</sup> Commission on British Muslims and Islamophobia, *Islamophobia – a Challenge for Us All*, London: The Runnymede Trust, 1997.

<sup>48</sup> House of Commons, Deb, 3 March 1998, col. 859.

House of Lords discussed the issue of religious discrimination in a debate initiated by Lord Ahmed,<sup>49</sup> who went on in 2001 to introduce a Race Relations (Religious Discrimination) Bill.<sup>50</sup> In February 2001 the Government published two reports on issues of religious discrimination.<sup>51</sup> Muslim community groups argue that the Government has been slow to translate the official acknowledgement of discrimination faced by Muslim communities into policy initiatives and legislative measures, claiming that the Government is “hot on rhetoric but slow on delivery.”<sup>52</sup>

When the events of September 11 provoked widespread violence against British Muslim communities,<sup>53</sup> including attacks on individuals, properties and mosques, politicians were quick to respond. Prime Minister Blair made it clear that “blaming Islam is as ludicrous as blaming Christianity for loyalist attacks on Catholics or nationalist attacks on Protestants in Northern Ireland.”<sup>54</sup> At a meeting with Muslim leaders on 21 September Home Secretary, David Blunkett promised a national helpline for Muslim victims of hate crimes.<sup>55</sup> Home Office Minister John Denham said the Government was “making it abundantly clear that nothing in the events of 11 September provides any justification for racists in this country to attack, or discriminate against or abuse Muslims...we must tackle the cancer of Islamophobia.”<sup>56</sup> The Prime Minister held meetings with members of the British Muslim communities on 27 September, and afterwards condemned attacks on innocent British Muslims as “despicable,” acknowledging that there was a minority “who are only too happy to use recent events as a convenient cover for racism” which has “no proper place in this country.” The leader of the opposition Conservative party, Mr. Duncan-Smith, met with members of the Muslim community on 1 October 2001. Following the meeting,

<sup>49</sup> House of Lords, Deb. 28 October 1999, col. 454–478.

<sup>50</sup> House of Lords, Deb. 7 June 2000, col. 1189–1209.

<sup>51</sup> P. Weller, A. Feldman, K. Purdam, *Religious Discrimination in England and Wales – Home Office Research Study 220*, London: Home Office, 2001; also B. Hepple, T. Choudhury, *Religious Discrimination: Practical Implications for Policy Makers and Legislators – Home Office Research Study 221*, London: Home Office, 2001.

<sup>52</sup> Interview with organisation G, London, 6 June 2002.

<sup>53</sup> EUMC, *Summary Report on Islamophobia in the EU after September 11 2001*, Vienna, May 2002, pp. 28–29; Islamic Human Rights Commission, *UK Today: The Anti-Muslim Backlash in the Wake of 11<sup>th</sup> September 2001*, London: Islamic Human Rights Commission, 2001.

<sup>54</sup> “No 10 Moves to Stamp out Anti-Muslim Backlash,” *The Guardian*, 19 September 2001, see: <<http://www.guardian.co.uk/Print?0,3858,4260121,00.html>>, (accessed 23 May 2002).

<sup>55</sup> The Government subsequently committed funding for the “Muslimline” project.

<sup>56</sup> Speech by Minister John Denham at a conference “Exploring Islamophobia” organised by the Forum Against Islamophobia and Racism, London, 29 September 2001.

he too paid tribute to the Muslim contribution to British life. Church leaders also spoke out in support of Britain's Muslim communities.<sup>57</sup>

The most critical comment from a senior politician came from the former Prime Minister, Baroness Thatcher. Though prominent British Muslim organisations condemned the 11 September attacks, Baroness Thatcher commented that: "The people who brought down those towers were Muslims and Muslims must stand up and say that it is not the way of Islam. They must say that it is disgraceful. I have not heard enough condemnation from Muslim priests."<sup>58</sup> However, the leadership of the Conservative party did not endorse her comments, and opposition home affairs spokesman Oliver Letwin said that senior Muslims he met were "pretty categorical in their condemnation of terrorism."<sup>59</sup>

### *Summer 2001 riots*

The far right British National Party (BNP) have honed their racist rhetoric into an anti-Muslim message. Their "Boycott Asian Businesses" campaign leaflet tells its readers not to boycott businesses owned by Chinese or Hindus, "only Muslims as it's their community we need to pressure." Other BNP leaflets and publications constantly refer to alleged Muslim thuggery, seeing racial tensions as "mainly Muslim-on-white."<sup>60</sup> They have a campaign "to keep Britain free of Islam."<sup>61</sup> In the run up to the 2001 general election, the BNP focused their campaign on attacking Islam and the British Muslim community. At the 2001 general election for the Oldham West and Royton seat, the BNP received 6,552 votes, or 16.4 percent, the third biggest share of the vote. In the constituencies of Oldham East and Saddleworth and in Burnley the BNP gained 11.2 percent of the vote. By the May 2002 local elections the BNP doubled its vote in Burnley and gained three local council seats. Nationally, the BNP only stood candidates in 66 council wards out of a total of 6,000 contested seats, so there was no national vote for the BNP. However, in the seats it contested the BNP polled an average of 12 percent.<sup>62</sup>

<sup>57</sup> "Bishops Plea for Tolerance towards Muslims," *The Times*, 15 September 2001.

<sup>58</sup> R. Allison, "Muslim Leaders Condemn Thatcher Attack," *The Guardian*, 4 October 2001. See <<http://www.guardian.co.uk/Print/0,3858,4270107.html>>, (accessed 25 May 2002).

<sup>59</sup> See <[http://news.bbc.co.uk/hi/english/uk\\_politics/newsid\\_1578000/1578377.stm](http://news.bbc.co.uk/hi/english/uk_politics/newsid_1578000/1578377.stm)>, (accessed 25 May 2002).

<sup>60</sup> N. M. Ahmed, F. Bodi, R. Kazim, M. Shadjareh, *The Oldham Riots: Discrimination, Deprivation and Communal Tension in the United Kingdom*, London: Islamic Human Rights Commission, 2001, p. 13, (hereafter, "Ahmed et al., *The Oldham Riots*")

<sup>61</sup> See <<http://www.bnp.org.uk/campaigns.html>>, (accessed 16 July 2002).

<sup>62</sup> A. Travis, "The Devil is in the Detail," *The Guardian*, 9 May 2002.

The BNP's general election campaigns triggered riots involving young Muslims in the towns of Oldham, Burnley and Bradford. The riots in Oldham "occurred as the culmination of five weeks of racial abuse orchestrated by right-wing white extremists against the town's ethnic minority community. Verbal as well as physical abuse, including vandalism, by white youths reached levels of virtual impunity as the local British National Party (BNP) mounted its campaign for the general elections."<sup>63</sup> Commenting on the riots the BNP leader, Nick Griffin, said that the riots were "not an Asian or Black problem, but a Muslim one."<sup>64</sup>

Although the BNP campaign was the immediate trigger for the riots, they were exploiting deeper underlying tensions. Commenting on the situation in Oldham the Islamic Human Rights Commission found that "socio-economic conditions of mutual deprivation experienced by communities of all ethnic backgrounds in Oldham – but from which the Asian Muslim community suffer on a greater scale – combined with its disintegrative effects on the increasingly frustrated youth, has engineered an environment which is unstable and vulnerable to provocation."<sup>65</sup> The Commission identified the alienation of Muslim youth from social and political processes as a consequence of deprivation and discrimination as a crucial underlying cause. Furthermore, "the [Muslim] youth feel that they have been ignored and alienated by those who claim to be representing their interests within the community, and those who are supposed to be addressing their interests from outside."<sup>66</sup> Finally, feelings of alienation are fuelled by a sense that Muslim communities are faced with a rise in specifically Islamophobic sentiments that manifest themselves, not merely through the BNP, but in all aspects of public life.<sup>67</sup>

Official reports on the riots also identified deprivation, segregation and Islamophobia as among the deeper underlying causes, and raised concerns about the social exclusion of Muslim communities in those towns:<sup>68</sup>

<sup>63</sup> Ahmed et al., *The Oldham Riots*, p. 10.

<sup>64</sup> Interview on *Newsnight*, BBC 2, 26 June 2001. See also *The Oldham "Riots!" – Shattering the Myths*, London: BRAIN 2001.

<sup>65</sup> Ahmed et al., *The Oldham Riots*, p. 5.

<sup>66</sup> Ahmed et al., *The Oldham Riots*, p. 2.

<sup>67</sup> Ahmed et al., *The Oldham Riots*, p. 13.

<sup>68</sup> Report of the Ministerial Group on Public Order and Community Cohesion, *Building Cohesive Communities*, London: Home Office, 2001; Report of the Independent Review Team chaired by Ted Cantele *Community Cohesion*, London: Home Office, 2001 (hereafter, "Cantele Report"); Bradford Race Review Team chaired by Sir Herman Ousely, *Community Pride not Prejudice: Making Diversity Work in Bradford*, Bradford: Bradford Vision, 2001; Oldham Independent Review, *One Oldham One Future*, 2001.

Islamophobia was identified as a problem in the areas we visited and for some young people was part of their daily experience. They felt that they were being socially excluded because of their faith and that this was not being recognised or dealt with. It is not simply a coincidence that the Pakistani community were at the centre of the disturbances.<sup>69</sup>

At the launch of these official reports, Home Secretary David Blunkett referred to the need for oaths of allegiance and the English language test for immigrants. Outside of the political context in which they were delivered, these proposals may not have been controversial. However, in the context of responding to reports on riots involving predominantly second generation, English-speaking Muslims, linking the riots to immigration caused considerable offence to many in the British Muslim communities.<sup>70</sup>

One report on the riots warned that the “way forward is not to criminalise Asian youths protecting their communities but to launch a thorough independent investigation into the events leading up to the unrest.”<sup>71</sup> In fact, many of those involved have been charged with serious riot offence and been given long custodial sentences. The “Fair Justice for All” campaign was launched in Bradford in July 2002, as an expression of shock at the length of sentences given to Muslims involved in the riots. The supporters of the campaign warned that “terms of up to five years were damaging community relations, especially when many of those convicted had no criminal record and had voluntarily given themselves up in response to police appeals.”<sup>72</sup> In fact, some sentences were reduced on appeal.

Minister for Europe, Peter Hain, caused further offence to Muslim communities in making comments criticising segments of the Muslim community for being isolationist. One Muslim commentator asked: “why are we being singled out again ... and what effect would this have on the public’s view of Muslims?”<sup>73</sup>

### *Media*

Muslim concerns focus on prejudice and negative portrayals of Muslims and Islam in the media, particularly the press.<sup>74</sup> A study of news press coverage of Islam between 1994–1996 revealed an underlying discourse by which Islam was presented as a threat

<sup>69</sup> Cante Report, p. 40.

<sup>70</sup> V. Dodd, “Blunkett’s Blame Game,” *The Guardian*, 11 December 2001.

<sup>71</sup> *The Oldham “Riots!” – Shattering the Myths*, London: BRAIN, 2001, p. 5.

<sup>72</sup> M. Wainwright, “Bradford Rioter’s Jail Sentence Cut to 18 Months,” *The Guardian*, 13 July 2002.

<sup>73</sup> I. Bunglawala, “Its Getting Harder to be a British Muslim,” *The Observer*, 19 May 2002.

<sup>74</sup> Commission on British Muslims and Islamophobia, *Islamophobia – a Challenge for Us All*, London: The Runnymede Trust, 1997, pp. 20–30.

to British society and its values, and Muslims were seen as deviant, irrational, different, and unable to fit in with British society.<sup>75</sup> In analysing media coverage a distinction can be drawn between unfounded hostility towards Islam and Muslims and legitimate criticism that excludes phobias and prejudice but includes disagreement or disapproval of Muslim beliefs, laws and practices. Muslims feel that media agencies fail to reflect a representative range of views from Muslim communities when reporting on issues affecting these communities as well as failing to reflect their cultural diversity.<sup>76</sup>

By seeking to disassociate Islam and Muslims from terrorism immediately after 11 September, the Government's leadership set the agenda for the media. Many of the national and regional newspapers used their "leader" columns to defend Islam and British Muslims. The largest-selling tabloid, *The Sun*, wrote: "if the terrorists were Islamic fanatics then the world must not make the mistake of condemning all Muslims."<sup>77</sup> In subsequent articles it urged people to reach out to Muslims as friends and to "imagine the power you have to affect (Muslim fears) by simply saying hello in the street."<sup>78</sup> In the comments pages, which provide the context for understanding daily news items, attempts were made to provide balanced views of Islam and Muslims.<sup>79</sup>

At the same time, "a disproportionate coverage was given to extremist Muslim groups and British Muslims who declared their willingness to join an Islamic war against the West, while less sensationalist Muslim voices were mainly overlooked."<sup>80</sup> Of the hundreds of mosques in Britain press attention focused on the one that was run by a known radical: "The situation is akin to taking the views of the racist BNP and saying its views are representative of ordinary Britons."<sup>81</sup> As the war against Afghanistan began, media coverage focused on Muslim opposition to the war and on the very small number of Muslims claiming a willingness to fight in Afghanistan against the British

<sup>75</sup> E. Poole, "Framing Islam: An Analysis of Newspaper Coverage of Islam in the British Press," in K. Hafez, ed., *Islam and the West in the Mass Media*, New Jersey: Hampton Press, 2000, p. 162.

<sup>76</sup> Interview organisation G, London, 6 June 2002.

<sup>77</sup> "Islam Is Not Evil Religion," *The Sun*, editorial, 13 September 2001.

<sup>78</sup> "Reach out to Muslims as Friends," *The Sun*, 17 September 2001.

<sup>79</sup> Y. Islam, "Don't Blame the Muslims," *The Mirror*, 14 September 2001; A. Gimson, "We Must Not Fail Our Test of Tolerance," *The Evening Standard*, 19 September 2001; J. Casey, "No Offence But Muslims Love Jesus as Much as Christians Do," *The Telegraph*, 19 December 2001; Z. Badawi, "September 11 Will Bring Us All Closer Together," *The Daily Telegraph*, 22 December 2001.

<sup>80</sup> EUMC, *Summary Report on Islamophobia in the EU after 11 September*, Vienna, 2002, p. 28.

<sup>81</sup> I. Bunglawala, "Intolerance Masking as 'Conscientious Secular Liberalism,'" London: Muslim Council of Britain, 20 November 2001.

and American Governments.<sup>82</sup> Muslims were presented as a fifth column, a threat to Britain from within, and the loyalty of British Muslims was called into question. The *Sunday Times* columnist, Melanie Phillips, wrote that “thousands of alienated young British Muslims, most of them born and bred here but who regard themselves as an army within, are waiting for the opportunity to help to destroy the society that sustains them.”<sup>83</sup> Opponents to the war came from a diverse range of religious, ethnic and political backgrounds, but only in the case of British Muslims did such opposition lead to a questioning of their loyalty. There were also calls for British citizens captured fighting against the British forces in Afghanistan to be expelled, even though the punishment against British citizens for treason is imprisonment, not expulsion.<sup>84</sup>

### 3. MINORITY PROTECTION: LAW AND PRACTICE

The United Kingdom is a party to most international instruments requiring respect for and protection of minorities.<sup>85</sup> The major exceptions remain the optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) and Protocol 12 to the European Convention on Human Rights (ECHR). The ratification of an international treaty does not lead automatically to its incorporation into domestic law, although the Human Rights Act 1998 (HRA) gives effect in domestic law to some of the rights in the ECHR. The Government review of the position on international human rights instruments is due to be completed by Spring 2003.<sup>86</sup>

The constitutional structure adds to the complexity of the framework for minority protection. England, Wales, Scotland and Northern Ireland each have their own legal regimes, and devolved administrations can develop their own equal opportunities

<sup>82</sup> R. Littlejohn, “Let’s Crackdown on the Guerrillas in Our Midst,” *The Sun*, 30 October 2001.

<sup>83</sup> M. Phillips, “Britain Is in Denial about the Angry Muslims Within,” *The Sunday Times*, 4 November 2001.

<sup>84</sup> “Stay out or Else,” *Daily Star*, 30 October 2001; “Traitor Muslims Must Not Be Let Back into Britain,” *The Sun*, 26 October 2001.

<sup>85</sup> European Convention on Human Rights and Fundamental Freedoms, ratified 8 March 1951; International Convention on the Elimination of All Forms of Racial Discrimination, ratified 7 March 1969; International Covenant on Civil and Political Rights, ratified 20 May 1976; International Covenant on Economic, Social and Cultural Rights, ratified 20 May 1976; ILO Convention 111 on Discrimination, ratified 8 June 1999; Framework Convention for National Minorities, ratified 15 January 1998; European Charter for Regional and Minority Languages, ratified 27 March 2001.

<sup>86</sup> House of Lords, 7 March 2002, WA 33.

policies, although all are bound by the devolution legislation to refrain from acting in any way that is incompatible with the ECHR. Religion and religious discrimination also have a different meaning and resonance. In Northern Ireland and Scotland religious discrimination is usually understood to refer to sectarian tensions between the Protestant and Roman Catholic communities. This affects the attitude towards issues raised by the Muslim community. For example, in Scotland faith-based schools are seen, by some, as part of the problem in terms of the sectarian divide: “people think that the solution is to treat everybody the same: it’s not to have different services, not to have different schooling, or to meet the needs of Muslims.”<sup>87</sup>

### 3.1 Protection from Discrimination

The present anti-discrimination legislation has developed over time in a piecemeal fashion. New legislation has been introduced to tackle particular forms of discrimination. There are at present four main pieces of anti-discrimination legislation in Britain<sup>88</sup> and five in Northern Ireland.<sup>89</sup> But this is merely a starting point. In fact, there are no less than 30 relevant Acts, 38 statutory instruments, 11 codes of practice and 12 EC directives and recommendations directly relevant to discrimination.<sup>90</sup>

In addition to the prohibition of discrimination some legislation also creates duties to promote equality. Under the Northern Ireland Act 1998 (NIA) there is a requirement on public authorities, in carrying out their duties in relation to Northern Ireland, to have due regard to the need to promote equality of opportunity “between persons of different religious belief.”<sup>91</sup> Furthermore, a public authority “shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.”<sup>92</sup> The duty goes beyond avoiding discrimination. Public bodies are required to

<sup>87</sup> Interview with organisation C, Glasgow, 13 May 2002.

<sup>88</sup> The Equal Pay Act 1971, Sex Discrimination Act 1975, Race Relations Act 1976, Disability Discrimination Act 1995.

<sup>89</sup> The Equal Pay Act (Northern Ireland) 1970, Sex Discrimination (Northern Ireland) Order 1976 SI No 1042 (NI 15), Race Relations (Northern Ireland) Order 1997 SI No 369 (NI 6), the Disability Discrimination Act 1995, Fair Employment and Treatment (Northern Ireland) Order 1998 SI No 3162 (NI 21) (hereafter FETO).

<sup>90</sup> B. Hepple, M. Coussey, T. Choudhury, *Equality: A New Framework, Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation*, Oxford: Hart Publishing, 2000, pp. 126–129.

<sup>91</sup> NIA, s. 75(1).

<sup>92</sup> NIA, s. 75(2).



actively seek ways to encourage greater equality of opportunity through their policy development. The Race Relations Amendment Act 2000 (RRAA) follows the approach in the NIA and imposes a general duty on public authorities to have due regard to the need to promote equality of opportunity and good relations between different racial groups. The Government is committed to creating a duty to promote equality of opportunity in relation to both sex and disability discrimination.<sup>93</sup> The Government should make a commitment to creating, when legislative time allows, a positive duty for public authorities to eliminate unlawful religious discrimination in relation to their function and to promote equality of opportunity and good relations between persons of different religious belief.

In individual cases of discrimination tribunals and courts can award damages. The damages are normally concerned to make good, so far as possible, the pecuniary and non-pecuniary loss suffered by the victim by putting him or her in as good a position as if no wrong had occurred. Damages are also awarded for injury to feelings.<sup>94</sup> In Great Britain there are three Commissions enforcing the different pieces of legislation.<sup>95</sup> In Northern Ireland there is a single Equality Commission. The Commissions have different powers. The Commission for Racial Equality (CRE), for example, can carry out formal investigations and general investigations and can issue non-discrimination notices in respect of discriminatory practices. The RRAA 2000 enables the CRE to enforce the duties on public authorities to eliminate unlawful racial discrimination and to promote equality of opportunity between persons of different racial groups.

The powers of the devolved administrations of Scotland, Wales, and Northern Ireland to address issues of discrimination and equality vary in important respects.

### *Scotland*

Under the Scotland Act the Scottish Parliament cannot legislate on designated “reserved matters,” including anti-discrimination legislation. However, there is an exception allowing “the encouragement (other than by prohibition or regulation) of equal opportunities, and in particular of the observance of the equal opportunity requirements” and for:

<sup>93</sup> Cabinet Office, *Equality Statement*, 30 November 1999.

<sup>94</sup> For recommendations to reform the tribunal system in discrimination cases see: B. Hepple, M. Coussey, T. Choudhury, *Equality: A New Framework, Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation*, Oxford: Hart Publishing, 2000, pp. 86–112.

<sup>95</sup> These are, for sex discrimination and equal pay the Equal Opportunities Commission, for race discrimination the Commission for Racial Equality and for disability discrimination the Disability Rights Commission.

Imposing duties on:

- a) any office-holder in the Scottish Administration, or any Scottish public authority with mixed functions or no reserved functions, to make arrangements with a view to securing that the functions of the office-holder or authority are carried out with due regard to the need to meet the equal opportunity requirements, or
- b) any cross-border public authority to make arrangements with a view to securing that its Scottish functions are carried out with due regard to the need to meet the equal opportunity requirements.

Significantly, for British Muslim communities the Scotland Act defines equal opportunities as “the prevention, elimination or regulation of discrimination between persons” on grounds that include religious beliefs.<sup>96</sup>

### *Wales*

Under the Government of Wales Act 1998 the National Assembly for Wales may exercise the powers of making delegated legislation where these are transferred to it by ministerial order. The Assembly is required to ensure that its business and functions are conducted with due regard to the principle of equality of opportunity for all people.<sup>97</sup> Unlike in Scotland, there is no definition of equal opportunities in the Government of Wales Act. Although the legislation refers to equality of opportunity for “all people” it should be noted that subordinate legislation and statutory instruments cannot change or contravene primary legislation (the responsibility of the British Parliament), but are largely concerned with implementation.

### *Northern Ireland*

In Northern Ireland the Assembly may legislate of its own accord in relation to anti-discrimination legislation and, with the permission of the United Kingdom Secretary of State, in relation to the Equality Commission and the duty on public authorities under the NIA. Under its devolved powers the Northern Ireland Executive has launched consultation on the creation of a single equality bill that it plans to introduce in 2002.<sup>98</sup> The aim of the bill is to “harmonise anti-discrimination laws as far as is practicable and to consider the extension of protection to other categories...to implement new European

<sup>96</sup> Scotland Act 1998, Schedule 5, Part II, L2.

<sup>97</sup> Government of Wales Act 1998, ss. 48 and 120.

<sup>98</sup> *Promoting Equality of Opportunity – A Single Equality Bill for Northern Ireland*, Belfast: Northern Ireland Office of the First Minister and Deputy First Minister, 2001.

Directives on equality and to consider important developments in Great Britain, as well as in the Republic.”<sup>99</sup>

### *Protection from religious discrimination*

Northern Ireland is the only region to have anti-discrimination laws that prohibits discrimination on the grounds of religious belief. It is illegal for public bodies<sup>100</sup> as well as for employers and providers of goods, services and facilities to discriminate on such grounds.<sup>101</sup> Public authorities are required not merely to refrain from discriminating but, in carrying out their functions, must also “have due regard to the need to promote equality of opportunity between persons of different religious belief” and “have regard to the desirability for promoting good relations between persons of different religious belief, political opinion or racial group.”<sup>102</sup>

This legislation is plainly influenced by the particular sectarian issues within Northern Ireland and is focused on the Protestant and Roman Catholic communities. This is clear, for example, from the definition of “affirmative action” as “action designed to secure fair participation in employment by members of the Protestant, or members of the Roman Catholic community, in Northern Ireland.”<sup>103</sup>

Although there is no express reference to religious discrimination in the RRA, several ways have been found to extend protection under the Act to some religious groups. Some religious communities, such as the Sikh<sup>104</sup> and Jewish communities,<sup>105</sup> have won protection against direct and indirect discrimination by emphasising the extent to which they also constitute ethnic groups. In the case of *Mandla v Dowell Lee* the House of Lords accepted that ethnic origin is a wider concept than race and identified seven characteristics relevant to identifying an ethnic group.<sup>106</sup> The two essential characteristics are:

- A long shared history, of which the group is conscious as distinguishing it from other groups; and the memory of which it keeps alive; and

<sup>99</sup> *Promoting Equality of Opportunity – A Single Equality Bill for Northern Ireland*, Belfast: Northern Ireland Office of the First Minister and Deputy First Minister, 2001, p. 3.

<sup>100</sup> NIA, s. 76.

<sup>101</sup> FETO.

<sup>102</sup> NIA, s. 75.

<sup>103</sup> FETO, Art. 4.

<sup>104</sup> *Mandla v Dowell Lee* [1983] 2 AC 548.

<sup>105</sup> *Seide v Gillette Industries Ltd* [1980] IRLR 427.

<sup>106</sup> *Mandla v Dowell Lee* [1983] 2 AC 548.

- A cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance.

Five other characteristics were identified as relevant but not essential:

- Either a common geographical origin, or descent from small number of common ancestors;
- A common literature, peculiar to that group;
- A common language, not necessarily peculiar to the group;
- A common religion, different from that of neighbouring groups or from the general community surrounding it;
- Being a minority or being an oppressed or a dominant group within a larger community.

Under these criteria Roma have been found to constitute a racial group by virtue of their shared history, geographical origins, distinct customs, language derived from Romanes and a common culture.<sup>107</sup> On the other hand, Muslims,<sup>108</sup> Rastafarians<sup>109</sup> and Jehovah's Witnesses<sup>110</sup> have been held not to constitute racial or ethnic groups. The development of the law in this way has created a hierarchy of protection. Muslim communities feel particularly aggrieved that they are not offered the same level of protection that is given to other minority religious communities that are able to bring themselves within the definition of an ethnic group. The development of the case-law in this way has resulted in "inconsistency, inequity and a hierarchy of protection and provisions afforded to different ethnic minorities."<sup>111</sup>

Members of some Muslim communities have pursued the strategy of obtaining protection under the RRA through the concept of indirect discrimination. For example, actions taken by an employer causing detriment to Muslims as a class, such as refusal to allow time off work for religious holidays, might be held to constitute indirect racial discrimination against those from an ethnic or national origin that is

<sup>107</sup> *Commission for Racial Equality v Dutton* [1989] IRLR 8.

<sup>108</sup> *Tariq v Young*, Case 247738/88, EOR Discrimination Case Law Digest No. 2.

<sup>109</sup> *Crown Suppliers (Property Services Agency) v Dawkins* [1993] ICR 517.

<sup>110</sup> *Lovell-Badge v Norwich City College of Further and Higher Education*, Case no: 1502237/97, (Spring 1999) 39 EOR Discrimination Case Law Digest, 4.

<sup>111</sup> Forum Against Islamophobia and Racism, *Towards Equality and Diversity – Implementing the Employment and Race Directives: Response from the Forum Against Islamophobia and Racism*, London: FAIR, 2002, p. 13, (hereafter, "Forum Against Islamophobia and Racism, *Towards Equality and Diversity*").

predominantly Muslim, such as Pakistani and Bangladeshi Muslims.<sup>112</sup> However, a European, Afro-Caribbean or Chinese Muslim cannot use this strategy, as they come from ethnic communities where Muslims are a minority.<sup>113</sup>

There are drawbacks to this reliance on indirect racial discrimination. First, unlike direct discrimination, indirect discrimination may be justified on certain grounds. Second, even if there is a finding of indirect race discrimination, the RRA does not, at present, allow for an award of compensation if there is no proven intent to discriminate.

### *Tackling institutional discrimination*

The Report on the death of black teenager Stephen Lawrence was a major impetus for changes in race equality laws.<sup>114</sup> It recognised the existence of “institutional racism” in the Police Services and in other institutions countrywide.<sup>115</sup> It defined “institutional racism” as:

The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amounted to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantages minority ethnic people. It persists because of the failure of the organisation openly and adequately to recognise and address the existence and causes by policy, example and leadership. Without recognition and action to eliminate such racism it can prevail as part of the ethos or culture of the organisation. It is a corrosive disease.<sup>116</sup>

Muslims argue that where there is institutional racism there is institutional anti-Muslim discrimination which manifests itself in:

[S]topping and searching Muslim youths because they look like “fundamentalists;” when a social worker assesses a Muslim couple for adoption and judges them to be unsuitable as “fundamentalists” because they pray five times a day;

<sup>112</sup> *J H Walker Ltd v Hussain* [1996] IRLR 11 EAT. Other cases where the indirect discrimination provisions have been used include: *CRE v. Precision Manufacturing Services Ltd.*, 10 October 1991, Case No 4106/91, (Summer 1992) 12 EOR Case Law Digest, 8; *Yassin v. Northwest Homecare* (Spring 1994) 19 EOR Case Law Digest 2.

<sup>113</sup> See M. Franks, “Crossing the Borders of Whiteness? White Muslim Women Who Wear the Hijab in Britain Today,” *Ethnic and Racial Studies*, vol. 23(5), 2000, pp. 917–929.

<sup>114</sup> *Stephen Lawrence Inquiry*, Report of an Inquiry by Sir William MacPherson of Cluny, Cm. 4262-I, London: HMSO, 1999, (hereafter, “*Stephen Lawrence Inquiry*”)

<sup>115</sup> *Stephen Lawrence Inquiry*, para. 6.39.

<sup>116</sup> *Stephen Lawrence Inquiry*, para. 6.34.

when Muslim children in care get placed in non-Muslim homes because the authorities insist on placing a child in a racially matching family regardless of the child's religious heritage, when agencies only advertise in the "ethnic" press for job vacancies thereby excluding potential Muslim applicants for jobs, when the only system for obtaining promotion is by hobnobbing with colleagues in the pub which would exclude, for example, alcohol unfriendly Muslims for promotion."<sup>117</sup>

One consequence of the Report is the RRAA 2000, which requires that public bodies eliminate unlawful racial discrimination, promote equality of opportunity and promote good race relations between people of different racial groups. However, the new legislation works within the framework of existing race legislation, and in doing so reproduces its defects. Namely, the protection and provisions of the Act, too, are extended to ethnic-religious minority communities but not to non-ethnic religious communities, a fact which has come in for criticism from Muslim organisations: "There are no moral or legal justifications for giving more comprehensive protection against discrimination to some religious minorities, (e.g. Sikh and Jews), whilst denying them to others (e.g. Muslims) who are clearly at risk of discrimination on the grounds of their religion."<sup>118</sup>

### *The Human Rights Act 1998*

The Human Rights Act (HRA), which seeks to "bring home" the rights set out in the European Convention of Human Rights and Fundamental Freedoms (ECHR), is a significant development in protection against religious discrimination. The HRA makes it unlawful for public authorities to act in a way that is incompatible with Convention rights.<sup>119</sup> Section 13 of the HRA makes special provision for freedom of religion. It requires that any court or tribunal determining any question arising under the HRA which might affect the exercise, by a religious organisation (itself or its members collectively), of the right to freedom of thought, conscience and religion guaranteed by Article 9 of the ECHR must have "particular regard to the importance of that right." The Home Secretary explained at the Committee stage of the Bill, that the purpose of this clause was to reassure religious organisations "against the Bill being used to intrude upon genuine religious beliefs or practices based on their beliefs."<sup>120</sup>

However, Article 9 does not provide for equal treatment; the principle of non-discrimination is dealt with only in Article 14 of the ECHR, which provides that the

<sup>117</sup> K. Khan, "Where's the Muslim in MacPherson's Black and White Britain?" *Q-News*, March 1999, p. 26.

<sup>118</sup> Forum Against Islamophobia and Racism, *Towards Equality and Diversity*, p. 13.

<sup>119</sup> HRA, s. 6.

<sup>120</sup> House of Commons, Deb. 20 May 1998, cols. 1023-24

exercise of the rights and freedoms must be secured without discrimination on any grounds including religion. This is not a free-standing right to protection against discrimination; it is ancillary to other Convention rights. No claim of religious discrimination can be made except in conjunction with one of the specified Convention rights. In order to remedy this deficiency, the Council of Europe adopted Protocol 12, which would provide a freestanding prohibition on discrimination. However the Government has so far refused to sign the Protocol.<sup>121</sup> In their view the Protocol is “too general and open ended” and “it does not make clear whether ‘rights set forth in law’ includes international law as well as national law.”<sup>122</sup> They are concerned that “the European Court of Human Rights might hold that a right set out in an international agreement, but not incorporated into United Kingdom law is covered by Protocol 12.”<sup>123</sup> They also note “new rights are not necessarily cost free (especially when they are economic, social and cultural rights) and may affect the rights of others, as many rights have to be balanced against each other.”<sup>124</sup> The heads of the CRE, EOC and DRC, among others, believe that these arguments are misconceived and have urged the Government to sign and ratify Protocol 12.<sup>125</sup>

In the absence of protection against religious discrimination in existing anti-discrimination law, other than in Northern Ireland, the HRA provides an important added measure of protection. However, the HRA only applies directly to public bodies; it does not directly cover private bodies. Moreover, it only applies to discrimination in relation to Convention rights. Thus, important areas where discrimination may be experienced, such as allocation of housing or access to goods or services, remain outside the reach of the HRA. Furthermore, only in Northern Ireland is there a Human Rights Commission with powers to assist those claiming violation of their rights and with responsibility for ensuring compliance with Convention rights.<sup>126</sup> Outside Northern Ireland there is no organisational support for a Muslim claiming a violation of Convention rights. Thus, even with regard to violation of Convention rights by a public authority, the remedies available remain uncertain. The United Kingdom should sign Protocol 12 to the ECHR; this will ensure comprehensive protection from religious discrimination in all areas that are not currently covered by the HRA.

<sup>121</sup> House of Lords, 9 November 2000, WA 174, see also House of Lords, 11 October 2000, WA 37; House of Lords, 23 October 2000, WA 14 and House of Lords, 25 October 2000, WA 45.

<sup>122</sup> House of Lords, 11 October 2000, WA 37.

<sup>123</sup> House of Lords, 23 October 2000, WA 14.

<sup>124</sup> House of Lords, 25 October 2000, WA 45.

<sup>125</sup> *The Times*, 3 November 2000.

<sup>126</sup> There are proposals for the creation of a Human Rights Commission for Scotland.

*Pressures for change to existing legislation and policy*

The United Nations Human Rights Committee in its concluding observations on the UK's fifth periodic report has said that the UK should take steps "to ensure that all persons are protected from discrimination on account of their religious belief."<sup>127</sup> The most immediate pressure for amendments to existing legislation and policy for tackling discrimination on the grounds of religion or belief comes from the European Union. The Government is currently in the process of consultation for the implementation of the Employment Directive,<sup>128</sup> which covers discrimination on the grounds of religion or belief; new legislation must be in place by December 2003. However, even after the Employment Directive is implemented, Muslims will not be protected from direct discrimination in areas outside employment, such as the provision of goods, services and facilities. The Government has said that it has no plans at present to extend the legislation to cover these areas because of the need to maintain a clear focus on preparing and implementing legislation needed for the Employment Directive.<sup>129</sup> The Government should state its commitment in principle to legislation prohibiting religious discrimination in all areas covered by the existing anti-discrimination laws. This can be introduced once it has implemented the Employment Directive. In the meantime, the Government should publish non-statutory codes of practice that provide practical advice and assistance to prevent direct and indirect religious discrimination in education, housing and the provision of goods, services, and facilities.

The anti-discrimination framework has also been criticised for focusing on a negative prohibition on discrimination rather than a positive duty to promote equality. Critics have called for the development of a new generation of equality legislation, which would incorporate promotion of equality of opportunity for all groups into the Government's performance management framework.<sup>130</sup> The new legislation would create a positive duty on public authorities to promote equality and eliminate unlawful discrimination. This duty would apply to their procurement, grant and subsidy, licensing, and franchising functions. It would require employers to take responsibility for achieving equality through developing equal employment and pay equity plans.

<sup>127</sup> *Concluding Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland*, CCPR/CO/72/United Kingdom, para. 14.

<sup>128</sup> *Towards Equality and Diversity: Implementing the Employment and Race Directives*, London: Department of Trade and Industry, 2002.

<sup>129</sup> House of Lords, 17 June 2002, WA 53.

<sup>130</sup> B. Hepple, M. Coussey, T. Choudhury, *Equality: A New Framework, Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation*, Oxford: Hart Publishing, 2000, para. 1.46–1.52.



Professor Sandra Fredman has made the argument for this proactive approach persuasively:<sup>131</sup>

At the root of the positive duty is a recognition that societal discrimination extends well beyond individual acts of prejudice. Equality can only be meaningfully advanced if practices and structures are altered proactively by those in a position to bring about real change, regardless of fault or original responsibility. Positive duties are therefore proactive rather than reactive, aiming to introduce equality measures rather than to respond to complaints by individuals ... in order to trigger the duty, there is no need to prove individual prejudice, or to link disparate impact to an unjustifiable practice or condition. Instead, it is sufficient to show a pattern of under-representation or other evidence of structural discrimination. Correspondingly, the duty bearer is identified as the body in the best position to perform this duty. Even though not responsible for creating the problem in the first place, such duty bearers become responsible for participating in its eradication. A key aspect of positive duties, therefore, is that they harness the energies of employers and public bodies. Nor is the duty limited to providing compensation for an individual victim. Instead, positive action is required to achieve change, whether by encouragement, accommodation, or structural change.

Up until 1999 the Government's policy approach to modernisation and tackling social exclusion did not address issues of disadvantage faced by minority ethnic communities. The assumption was that measures in these areas would benefit all communities. As the Parekh report notes:<sup>132</sup>

There was initially no reference to race and diversity issues in the government's strategy to combat social exclusion; no explicit focus on them in the raft of new educational measures and initiatives, and no reference in early documents about cultural policy ... there was no requirement in the first round of Public Service Agreements (PSAs) to consider race equality objectives, or to take into account cultural diversity. Likewise there was no reference in the 1998 White Paper on local government or in the founding documentation about the best-value regime for such government.

However, since 1999 measures have been taken which indicate an increased importance attached to tackling racial discrimination but have not explicitly addressed the issues of Islamophobia, or religious discrimination. The Cantle Report highlighted the need to include this as a consideration within programmes for dealing with social deprivation and disaffection.<sup>133</sup> There has been valuable Government research on tackling social exclusion of minority ethnic communities. Evidence in the areas of

<sup>131</sup> S. Fredman, "Equality: A New Generation?" *Industrial Law Journal*, Vol. 30, No. 2, 2000, pp. 145–168, at p. 164.

<sup>132</sup> Runnymede Trust, *The Parekh Report*, p. 251.

<sup>133</sup> Cantle report, p. 40.

education, healthcare, social protection, housing, public service provision, employment and criminal justice indicate that Pakistani and Bangladeshi Muslim communities experience particularly high levels of disadvantage, deprivation and discrimination even in comparison to other minority ethnic communities. Such experiences created the alienation and disengagement, particularly among the younger generation, that were a key underlying cause in the civil disturbances in Summer 2001. Research is urgently needed to investigate the levels of social exclusion of Muslims so that effective policy responses can be developed to tackle this problem. The Social Exclusion Unit should undertake this task.<sup>134</sup>

### 3.1.1 Education

There are no education statistics available on the basis of religious affiliation. However, statistics collected on the basis of ethnic origin reveal that pupils from the Pakistani and Bangladeshi communities perform less well than other pupils at all stages of compulsory education. Both communities are over-represented among pupils with the poorest qualifications.<sup>135</sup> In 2000 only 29 percent of Pakistani and Bangladeshi pupils gained five or more GCSE grades A\*-C.<sup>136</sup> This is the lowest of any ethnic group and far below the national average of 49 percent.<sup>137</sup> At the same time, they are well represented proportionately in terms of entry to university, particularly in London and Scotland.<sup>138</sup>

In some towns and cities Muslim pupils attend effectively segregated schools. This segregation is not a consequence of Muslim pupils attending Muslim schools: it is estimated that at most only five percent of Muslim pupils attend a Muslim school.<sup>139</sup> The remaining 95 percent of Muslim pupils attending their local State school can find themselves in schools that are segregated in practice. The reports on the 2001 Summer riots cited segregation in schools as a key concern, attributing it to the “segregated nature of catchment areas, feeder schools, family designations, admission policies and

<sup>134</sup> Forum Against Islamophobia and Racism, *Towards Equality and Diversity*, p. 28.

<sup>135</sup> Performance and Innovation Unit, *Improving Labour Market Achievements for Ethnic Minorities in British Society*, London: Cabinet Office, 2001, p. 5, (hereafter, “Performance and Innovation Unit, *Improvement Labour Market Achievements*”).

<sup>136</sup> General Certificate of Secondary Education (GCSE) examinations are usually taken by schools children at the age of 16.

<sup>137</sup> *Youth Cohort Study: The Activities and Experiences of 16 Year Olds: England and Wales 2000*, London: Department for Education and Skills, 2001.

<sup>138</sup> Runnymede Trust, *The Parekh Report*, p. 146.

<sup>139</sup> Interview with organisation G, London, 6 June 2002.

parental choice.”<sup>140</sup> The Cantle Report made several recommendations to alleviate the effects of segregation:

- The creation of inter-school twinning between schools representing the principle cultures. This could involve three or four schools.
- The development of joint sports, arts and cultural programmes between these schools.
- Teacher exchanges and joint working between schools.
- Joint curriculum activities and learning programmes, with perhaps part of the week spent in another school.
- Joint parental activities – e.g. cultural events and skills programmes.
- Planned intake across the partnered schools, so that joint intake may eventually lead to a more mixed intake for each school.
- Technological links between schools, including video conference and Internet work.<sup>141</sup>

In response to this the Government has announced a series of measures including:<sup>142</sup>

- Selecting two or three local education authorities to focus specifically on area-wide strategies to address segregation as Diversity Pathfinders.
- Ensuring that when decisions are made on proposals for a new school (including faith schools) the potential for inclusiveness is a factor that will be taken into account.
- Providing funding for partnerships between two or more schools for partnerships dedicated to cross-cultural issues.

Two-thirds of Muslim organisations reported unfair treatment resulting from school policies and practices and in institutions of higher education.<sup>143</sup> Discrimination in education is prohibited in the RRA, providing a limited form of protection for some

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<sup>140</sup> Cantle Report, p. 34.

<sup>141</sup> Cantle Report, p. 35.

<sup>142</sup> A Report of the Ministerial Group on Public Order and Community Cohesion, *Building Cohesive Communities*, London: Home Office, 2001, p. 24.

<sup>143</sup> P. Weller, A. Feldman, K. Purdam, *Religious Discrimination in England and Wales: Home Office Research Study 220*, London: Home Office, 2001, pp. 23–36.

British Muslim communities through the concept of indirect race discrimination.<sup>144</sup> Again, the RRA does not provide a basis for challenging such policies and practices unless the complainant is from a distinct racial or ethnic group. For example, a school regulation requiring female students to wear skirts as part of the school uniform may discriminate against Muslims, as this runs counter to religious practice. However, under the RRA the regulation could only be challenged as indirect race discrimination if the complainant belongs to a distinct ethnic group where Muslims are predominant (i.e. Pakistani or Bangladeshi); if the pupil is a Chinese or white Muslim, it is not possible to bring a complaint under the RRA.

The HRA 1998 may provide for a remedy in such situations.<sup>145</sup> As noted above, the Act makes it unlawful for a public authority – including schools and local education authorities<sup>146</sup> – to act in a way that is incompatible with the Convention rights.<sup>147</sup> The Act has already resulted in a local authority having to review its procedure for allocating places in secondary schools.<sup>148</sup> The education authority in the London Borough of Newham sent out pamphlets to parents of prospective pupils setting out its policy on the allocation of places in secondary schools. The preference of parents for single sex schools was one criterion for selection. The applicant, K., had put down single sex schools for his first, second and third preference. The authority offered Z. (K's child) a place in a co-educational (mixed sex) school. In his appeal to the High Court the applicant argued that under the HRA the education authority was required by Article 2 of the First Protocol to the Convention to respect the right of parents to education and teaching in conformity with their religious convictions. The Court accepted that in order to secure this right there were some positive duties on the State authorities. In particular, the education authority had to ascertain a parent's religious conviction and take this on board in formulating its admissions policy. In practical terms, this meant that the application form for places in secondary schools should have included space in which parents could give reasons for their preferred option. As the

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<sup>144</sup> In Northern Ireland religious discrimination is prohibited in relation to post 16 further and higher education institutions but not primary and secondary education. Furthermore, the prohibition of religious discrimination in employment contains an exception to allow discrimination in the employment of schoolteachers. This allows faith-based schools to recruit teachers from within their faith community; FETO, Art. 71.

<sup>145</sup> A. Bradley, "The Convention Right to Education and the Human Rights Act 1998," *European Human Rights Law Review*, N. 4, (1999), pp. 395–410, at p. 407.

<sup>146</sup> Arguably, private schools may also be counted as "public authorities" when they are discharging duties under the Education Acts, thus forming part of the State's system for providing education.

<sup>147</sup> Human Rights Act 1998, s. 6.

<sup>148</sup> *R. v. Newham London Borough Council and Another ex parte. K*, Times Law Report, 28 February 2002.

education authority in this case had not done so, its decision was quashed and remitted for reconsideration.

In Scotland, schools are required, in their annual statement on improvement objectives, to include an account of the ways in which they will, in providing school education, encourage equal opportunities.<sup>149</sup> The creation of this obligation was the first time the Scottish Parliament exercised its powers to legislate on equal opportunities. It is yet to be seen what impact this will have in combating religious discrimination and delivery of educational services to Scottish Muslim communities.

### 3.1.2 Employment

Legislation in Northern Ireland prohibits discrimination on the grounds of religious belief, but otherwise only limited protection against religious discrimination is available to Muslims through the medium of the RRA. Adoption of legislation prohibiting discrimination in employment in light of the EU Employment Directive should be in place by December 2003. The legislation will specifically and explicitly prohibit direct and indirect religious discrimination in employment and so remove the need for Muslims to rely on indirect racial discrimination. Indirect religious discrimination will occur where an apparently neutral provision criterion, or practice disadvantages a substantially higher proportion of the members of a faith group. Employers should take reasonable steps to accommodate the needs of religious groups. Employers must monitor their employment decisions on the basis of religious affiliation. This is the only way for employers to ensure that a policy, practice, provision or criterion does not have the unintended effect of disadvantaging Muslims or employees of any other faith.

There are of course difficulties in monitoring on the basis of faith identities. For example, what groups should be monitored? How do you monitor people who do not identify themselves through their faith identities? How does one monitor where individuals do not wish to identify any religious affiliation? In Northern Ireland this is overcome by looking at the school or residential area from which a person comes from. What methods could be used in Britain? The government should fund research into developing practical and effective guidance to assist monitoring faith identities.

The Employment Directive requires measures that ensure effective implementation of the legislation adopted through dissemination of information, social dialogue, and dialogue with non-governmental organisations.<sup>150</sup> Both individuals and employers need

<sup>149</sup> Standards in Scotland's Schools Act 2000, s. 5(2)(b). 'Equal Opportunities' as defined in Schedule 5 of the Scotland Act 1998 means the prevention, elimination or regulation of discrimination between persons on grounds which include religious belief.

<sup>150</sup> Arts. 12-14.

to have access to practical information, advice and support. Support for the legislation on religious discrimination should include providing a code of practice for employers and an education campaign to inform communities, employers and employees of their rights and responsibilities under the new legislation.

Home Office research shows that compared to other faith communities Muslims report the highest levels of unfair treatment in the area of employment.<sup>151</sup> Labour market statistics are not collected on the basis of religion. However, data on ethnic minority participation in the labour market show that Pakistani and Bangladeshi Muslims are consistently the most disadvantaged group, with lower rates of economic activity and employment and higher rates of unemployment than other ethnic minority groups.<sup>152</sup> In relation to differences in earning levels, Bangladeshi men were the most disadvantaged group. Just over a quarter of white households have incomes at or below the national average in comparison with four-fifths of Pakistani and Bangladeshi households and two-fifths of other ethnic minority households.<sup>153</sup>

A Cabinet Office report found that there were clear differences in employment rates within the Asian community when figures were disaggregated on the basis of religion. For example, Hindus were the most likely – and Muslims (men and women) the least likely – to be engaged in paid employment. The report found that “even after controlling for a range of factors ... Indian Muslims remain almost twice as likely to be unemployed as Hindus. Pakistani Muslims were more than three times as likely to be unemployed.” But the report also found that the “relationship between religious groups and employment levels are not simple. Despite overall high Muslim unemployment rates, Indian Muslims have a higher employment rate than Sikh men ... it should not automatically be assumed that a ‘religious effect’ necessarily exists. Religion may simply be a proxy for other factors determining employment.”<sup>154</sup> This data demonstrates differences in the outcomes experienced by different religious groups, but provides no basis for a demonstration of causality. Still, the disaggregation of data on the basis of religion indicates recognition that religious communities may be particularly disadvantaged, marking a step forward in the process of development and delivery of policy solutions.

<sup>151</sup> P. Weller, A. Feldman, K. Purdam, *Religious Discrimination in England and Wales: Home Office Research Study 220*, London: Home Office, 2001, pp. 37–50.

<sup>152</sup> Performance and Innovation Unit, *Improvement Labour Market Achievements*, p. 40.

<sup>153</sup> Performance and Innovation Unit, *Improvement Labour Market Achievements*, pp. 44–45.

<sup>154</sup> Performance and Innovation Unit, *Improvement Labour Market Achievements*, p. 82.

### 3.1.3 Housing and other goods and services

In Northern Ireland the prohibition on religious discrimination extends to the provision of goods, services, and facilities. Outside Northern Ireland there is no explicit provision prohibiting direct discrimination against Muslims in these areas. The RRA covers housing and the provision of goods, services, and facilities and so provides limited protection from indirect discrimination for some Muslim communities. The Scottish Housing Act 2001 places an obligation on ministers and local authorities, as well as registered social landlords, to exercise their functions in relation to housing in a manner that encourages equal opportunities.<sup>155</sup>

#### *Housing*

Statistics are not collected on the basis of religion. Statistics collected on the basis of ethnicity reveal particular disadvantage experienced by the Muslim Pakistani and Bangladeshi communities in relation to housing:

- Around one-third of Pakistani and Bangladeshi households live in unfit properties in the private sector, compared to around 13 percent of Black Caribbean and six percent of White and Indian households.
- Over a quarter of Bangladeshi and 20 percent of Pakistani households are overcrowded compared with eight percent of Indian, seven percent of Black Caribbean and two percent of White households.
- 64 percent of Pakistani and Bangladeshi households live in areas where the housing was mainly built before 1919, compared with 39 percent of Indian, seven percent of Black Caribbean and two percent of White households.
- Around thirty percent of Pakistani and Bangladeshi households live in “poor neighbourhoods” compared to 18 percent of Black Caribbean, 12 percent of Indian and six percent of White households.
- More than half of Pakistani and Bangladeshi households are in the ten percent most-deprived wards in England.<sup>156</sup>

<sup>155</sup> Housing (Scotland) Act 2001, s. 106. ‘Equal Opportunities’ as defined in Schedule 5 of the Scotland Act 1998 means the prevention, elimination or regulation of discrimination between persons on grounds that include religious belief.

<sup>156</sup> Cited in Performance and Innovation Unit, *Improving Labour Market Achievements*, p. 10. The 2001 English Housing Condition Survey is due to be published at the end of 2002.

*Delivery of services*

Public services play an essential role in supporting individuals, families and communities. Accessible public services are vital to ensuring participation and inclusion of all members of the community. The Government acknowledges the importance of consultation with faith groups in the development of local public services; in their view “modern local authorities are those in touch with all the people they serve, with an open decision making structure and service delivery based on the needs of users rather than providers.”<sup>157</sup> Despite this, the failure of public service providers to take their needs into account in service delivery is a common and key concern expressed by many Muslim community groups.

There must be recognition that women and men, people with disabilities, and people from different age, ethnic, and faith groups have different needs and use services in different ways. The needs of minority communities are taken into account only in terms of race and ethnic origin. The lack of information and statistics about the experience of Muslims is identified by many in the Muslim community as the “biggest obstacle” to developing policies and ensuring service delivery appropriate to Muslim communities. Ethnic monitoring is an important and valuable tool in preventing racial discrimination in service provision. It is only through monitoring that service providers ensure that their policies do not indirectly discriminate and that they are providing an equal service to all. Without monitoring it would be difficult to identify indirect, often unintended, ways in which policies disadvantage communities or to see whether policies aimed at reducing inequality are succeeding.

However, ethnic monitoring will not register ways in which policies disadvantage people because of their religion. Through ethnic monitoring alone the needs of Muslims become invisible and service providers are unable to say whether Muslims are accessing public services. For example, “if Muslims weren’t taking part in a cancer screening programme, you wouldn’t know because the local health authority’s information would only show the number of Asian and black people that took part.”<sup>158</sup>

In some situations, a person’s religion can be more important than their ethnicity in ensuring that appropriate services are provided. Ethnic monitoring may pick up the fact that Pakistani and Bangladeshi patients at an out-patient department of an NHS trust are missing appointments on certain days, for example on *Eid* or Friday afternoons. A policy response to prevent appointments being made on these days for Pakistani and Bangladeshi patients would still be failing Indian, Somali, Turkish, Cypriot, Malaysian, Chinese, Indonesian, Nigerian and Bosnian Muslims. Ethnic

<sup>157</sup> Local Government Association, *Faith and Community*, London: LGA Publications, 2002, p. 3.

<sup>158</sup> Interview with organisation A, London, April 2001.



monitoring alone means that a tool for ensuring sensitive services can make a service insensitive. For example:

A Pakistani Muslim woman with severe depression approaches a social service department. Concerned social workers allocate her an “Asian” Home Help thinking this would cater for her “Asian” needs. No consideration is given to her religious requirements; hence the “Asian” Home Help sent is a Hindu and a vegetarian. This mismatch of religion results in distress for both women: the Hindu woman finds the smell of meat cooking offensive, hence, she is unable to perform her duties particularly in the kitchen. Soon, the Muslim woman is convinced that having the Home Help is more of a burden than a relief. Finally, she is convinced that she would be better off not having the worker ... the ill Muslim, unable to articulate her problem to the local authorities ... ends up deprived of a service she desperately needs. And by ignoring the religious sensibilities, the Social Services – however well intentioned – aggravated the problem instead of alleviating it.<sup>159</sup>

Monitoring is needed to ensure that services are effectively and efficiently delivered; it prevents wasteful and inappropriate allocation of limited resources. Monitoring of religion needs to be done within a wider framework of “diversity monitoring” and an awareness that “monitoring is good for everyone so that a more sensitive and accurate picture is built up of diverse communities, e.g. faith communities, women, elderly, etc. ... diversity monitoring will enable service providers to fine-tune their services for everyone.”<sup>160</sup> In order to offer the best services possible, public service providers should engage in diversity monitoring that includes monitoring on the basis of religion.

There are many individual examples of local councils developing ways to ensure that they are able to deliver services to diverse faith communities. The Beacon Council Scheme provides one avenue through which practical policies for meeting the needs of Muslim and other faith communities could be developed and good practice shared. The scheme, launched in 1999, identifies centres of excellence in local government from which other councils can learn. Ministers select themes in service areas that have a direct impact on the quality of life of local communities. Councils awarded Beacon status are given grants to support the dissemination of good practice across local government. Delivering services to diverse religious communities should be identified as a theme for the fifth round of the Beacon Council Scheme.

Performance targets are also an important driver of improvement in public service delivery. They allow authorities, their auditors and service users to judge how well a

<sup>159</sup> *Second Review of the Race Relations Act 1976 – A Response*, Wembley: An-Nisa Society, 1992, p. 8.

<sup>160</sup> Quote from Muslim Women’s group, the An-Nisa Society, cited in Commission on British Muslims and Islamophobia, *Addressing the Challenge of Islamophobia, Progress Report 1999–2001*, London: Commission on British Muslims and Islamophobia, 2001, p. 20.

service is performed and what needs to be done to bring performance up to the levels that are being achieved elsewhere. The Government is able to issue guidance to best value authorities on setting performance targets.<sup>161</sup> The Audit Commission is another body that is able to set performance indicators.<sup>162</sup> The Government and Audit Commission should develop guidance, performance standards, and performance indicators that assist local authorities and other public bodies in delivering services to Muslim and other faith communities.

### 3.1.4 Healthcare and other forms of social protection

In Northern Ireland the prohibition of discrimination by public bodies on the grounds of religious belief would guard against discrimination in social protection. Outside Northern Ireland, however, there is no legislation to protect the Muslim community from discrimination in these areas. The RRAA imposes upon public authorities the duty to eliminate discrimination and promote equality of opportunity between persons of different racial or ethnic groups. Although these provisions mean that the needs of ethnic-religious communities must be taken into consideration, there are some indications that the needs of Muslim communities may in fact be overlooked. In Scotland the Commission for the Regulation of Care has a duty to exercise its functions in a manner which encourages equal opportunities.<sup>163</sup>

At the same time, inequalities in health outcomes between different minority groups suggest that health service providers fail to reach minority communities or to meet their needs.<sup>164</sup> Although there are no statistics collected on the basis of religion, ethnic data show that Pakistanis and Bangladeshis are one and half times more likely to suffer from ill health compared to white people. Infant mortality is a staggering 100 percent higher for Pakistani mothers compared to white mothers.<sup>165</sup> They are also more likely

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<sup>161</sup> Local Government Act 1998, s. 5.

<sup>162</sup> Audit Commission Act 1998, ss. 44–46.

<sup>163</sup> Regulation of Care (Scotland) Act 2001, s. 1(2)(b). ‘Equal Opportunities’ as defined in Schedule 5 of the Scotland Act 1998 means the prevention, elimination or regulation of discrimination between persons on grounds which include religious belief.

<sup>164</sup> Social Exclusion Unit, *Minority Ethnic Issues in Social Exclusion and Neighbourhood Renewal*, London: Cabinet Office, 2000, para. 2.39, which cites the example of sexual health services that do not meet the needs of minority communities.

<sup>165</sup> Social Exclusion Unit, *Minority Ethnic Issues in Social Exclusion and Neighbourhood Renewal*, London: Cabinet Office, 2000, para. 2.37.

to suffer from coronary heart disease than any other group. 20 percent of Muslims report a long-standing illness, compared with 16 percent for Hindus and Sikhs.<sup>166</sup>

Complaints by Muslims regarding unfair treatment in National Health Service hospitals focus on treatment by staff. Three quarters of Muslim organisations in a Home Office study reported unfair treatment from social services staff and from practices in social services departments.<sup>167</sup> The Islamophobia Commission report recommended the development of guidelines on good practice in healthcare relating to religious and cultural needs, which would include “the employment and use of non-Christian Chaplains; religious observance; diet and food, respect for cultural and religious norms and injunctions relating to modesty, for example to do with mixed sex wards and the examination of female patients by male doctors; consultation and contact with faith communities; advocacy and befriending services; general pastoral care in multi-faith settings.”<sup>168</sup> The Commission’s *Progress Report* found that the Department for Health “had been active in funding initiatives and raising awareness to promote good practice in healthcare related to religious and cultural needs.”<sup>169</sup> But the Commission was only aware of one Imam employed on a full-time basis in the National Health Service.<sup>170</sup>

### 3.1.5 Access to justice

#### *Experience of crime and policing*

One indirect effect of the disadvantage and discrimination experienced by Pakistani and Bangladeshi Muslim communities is that they live in areas with the highest levels of crime and lack the financial means to protect themselves against crime. Studies of the experience of crime and policing focus on racial and ethnic rather than religious identities. For example, the British Crime survey reveals that the Pakistanis and Bangladeshis were more likely than any other group to be victims of household crime

<sup>166</sup> See Appendix A, “A Map of Muslim Britain,” *The Guardian*, 17 June 2002.

<sup>167</sup> P. Weller, A. Feldman, K. Purdam, *Religious Discrimination in England and Wales: Home Office Research Study 220*, London: Home Office, 2001, p. 72.

<sup>168</sup> Commission on British Muslims and Islamophobia, *Islamophobia – a Challenge for Us All*, London: The Runnymede Trust, 1997, pp. 36–37.

<sup>169</sup> Commission on British Muslims and Islamophobia, *Addressing the Challenge of Islamophobia, Progress Report 1999–2001*, London: Commission on British Muslims and Islamophobia, 2001.

<sup>170</sup> Commission on British Muslims and Islamophobia, *Addressing the Challenge of Islamophobia, Progress Report 1999–2001*, London: Commission on British Muslims and Islamophobia, 2001.

and racially motivated crime. Not surprisingly, they also reported the highest levels of anxiety about crimes such as burglary and robbery.<sup>171</sup>

Good relations between the police and local communities are essential for gathering intelligence and tackling crime. The British Crime survey indicates that there is a significant level of distrust between the police and Pakistanis and Bangladeshis. Compared to all other groups they expressed the lowest levels of satisfaction with the service they received after contacting the police and the lowest levels of confidence in the policing of their areas. Cultural sensitivity is an essential element of good community policing. Issues that can cause tensions include traffic congestion at large mosques at Friday and *Eid* prayers, cross-gender behavioural norms, behaviour on entering Muslim homes and mosques, and opening hours for *halal* restaurants during Ramadan. The Association of Muslim Police Officers and representatives of the Muslim community should work together to produce guidelines to assist sensitive community policing.

Muslim community groups report that anxiety about crime and policing has increased significantly following 11 September. First, there was a massive increase in violence directed at Muslims and those perceived to be Muslim.<sup>172</sup> Second, implementation of parts of anti-terrorism legislation has created a growing perception in Muslim communities that they are being stopped, questioned, and searched not on the basis of evidence and reasonable suspicion but on the basis of “looking Muslim,” and there is concern about the negative impact this could have on community relations: “The Muslim community is as concerned about terrorism as the rest of the British community but the way the police are acting is alienating the very people that can help them.”<sup>173</sup> In August 2002 the Home Secretary wrote to Muslim leaders expressing regret that a number of individuals questioned by the security services had complained of harassment and intimidation. He acknowledged the need to ensure that “nothing is done to undermine good community relations” and asked the police to “consult community leaders whenever they are able to do so”<sup>174</sup> The British Crime Survey should monitor the Muslim communities’ experiences of crime and policing.

<sup>171</sup> A. Clancy, M. Hough, R. Aust, C. Kershaw, *Ethnic Minority Experience of Crime and Policing: Findings from the 2000 British Crime Survey*, Home Office Research Findings 146, London: Home Office, 2000, pp. 2–5.

<sup>172</sup> EUMC, *Summary Report on Islamophobia in the EU after September 11 2001*, Vienna, May 2002, pp. 28–29; Islamic Human Rights Commission, *UK Today: The Anti-Muslim Backlash in the Wake of 11<sup>th</sup> September 2001*, London: Islamic Human Rights Commission, 2001.

<sup>173</sup> Interviews with organisation E, London, 19 April 2002, and organisation G, London, 6 June 2002.

<sup>174</sup> A. Versi, “Muslims Complain of ‘Harassment’ by Security Services,” *The Muslim News*, 24 August 2002; also K. Ahmed, M. Bright, S. Ward, “Blunkett ‘Sorry’ for MI5 Harassment,” *The Observer*, 25 August 2002.

*Advice and assistance in criminal and civil cases*

In England and Wales public funding for advice and assistance in judicial proceedings is the responsibility of the Legal Services Commission (LSC)<sup>175</sup> The LSC runs two schemes: the Community Legal Service (CLS) which covers civil cases, and the Criminal Defence Fund (CDF) which covers criminal cases.

In respect of civil cases funding is available for a range of legal services which range from “legal help” and “help at court,” through to “support funding” and “legal representation.” The extent of public funding for legal action depends on the type and circumstances of the case. The availability of support is also dependent upon income and access to disposable capital.

There is no funding through the CLS of discrimination cases before an Employment Tribunal; funding is only available for appeals to the Employment Appeal Tribunal. Applicants in discrimination cases are therefore reliant upon other sources of public funding; these can be local law centres, the Free Representation Unit and, in cases of racial discrimination, the Commission for Racial Equality.

In Northern Ireland the Equality Commission is able to provide advice and assistance in cases of religious discrimination. The Government has not announced what, if any, support will be given outside Northern Ireland to assist in cases of religious discrimination. In the medium term, there are two options for providing support in religious discrimination cases. The first option places primary responsibility on the faith communities themselves by allowing local Muslim community organisations that possess the necessary expertise and understanding to deliver legal advice and assistance in a way that meets the needs of the Muslim communities. However,

setting up such bodies in areas that are heavily populated by certain religious groups would deny access to protection on such grounds to those living in isolation or in smaller religious communities. It would not be cost effective to set up such bodies in every town. There is also the risk of marginalising certain minority groups within a faith community by allocating the responsibility and resources to an organisation that may represent the majority group within that faith community.<sup>176</sup>

The second option is to place primary responsibility for enforcement of religious discrimination legislation with the CRE. This would be a logical extension of its present activities, particularly given the blurred lines between discrimination on the grounds of race and religion. However, there is a danger that claims of religious

<sup>175</sup> In Scotland, the Scottish Legal Aid Board administers legal aid for civil cases and the Public Defence Solicitor’s office administers criminal legal aid; in Northern Ireland, the Legal Aid department of the Law Society of Northern Ireland administers legal aid.

<sup>176</sup> Forum Against Islamophobia and Racism, *Towards Equality and Diversity*, p. 24.

discrimination will be marginalised within an organisation with an established tradition and experience in tackling racial discrimination. One recommendation is that “a specialist unit, with its own Commissioners and budget, be set up within the CRE dedicated solely to dealing with religious discrimination.”<sup>177</sup>

There is no clear agreement among Muslim community groups as to which of the options are most appropriate. In the long term, advice and assistance for religious discrimination cases could be the responsibility of a new Single Equality Commission that covers all the strands of discrimination under the EU Employment Directive.<sup>178</sup> Effective implementation of the Employment Directive will require publicly funded support for advice, assistance and representation in religious discrimination cases.

In respect of criminal cases the CDF provides three levels of service: advice and assistance, advocacy assistance and representation. Access to advice and assistance and advocacy assistance are dependent on a person’s income and capital. When the police question a person about an offence – whether or not they have been arrested – they have a right to free advice and assistance from a contracted solicitor. Access to representation is not based on income but on the “interests of justice.” Examples of where access to representation would be in the interests of justice include where, if the defendant is found guilty, he or she is likely to go to prison or be dismissed from employment, or where there are substantial questions of law to be argued, or where defendants are unable to follow the proceedings or explain their case because they do not speak English well enough.<sup>179</sup>

The Stephen Lawrence Inquiry Report confirmed the existence of institutional racism within the Police Service.<sup>180</sup> Institutional discrimination combined with “severe levels of police racism” and the actions of a senior police officer were seen as creating the disillusionment and distrust that existed in the Muslim communities of Oldham prior to the riots in the Summer of 2001.<sup>181</sup> In Oldham, the *Guardian* argued:

[A] local chief superintendent, Eric Hewitt, is regarded with deep suspicion by a chunk of the community he is meant to serve and protect. Their first complaint is that the police simply do not come to their aid when they are in trouble. Every street corner has a story to tell of a call for help which went

<sup>177</sup> Forum Against Islamophobia and Racism, *Towards Equality and Diversity*, p. 25.

<sup>178</sup> See Section 4.

<sup>179</sup> *A Practical Guide to Criminal Defence Services*, London: Legal Services Commission, 2002.

<sup>180</sup> *Stephen Lawrence Inquiry*, Report of an Inquiry by Sir. William MacPherson of Cluny, Cm. 4262-I, London: HMSO, 1999.

<sup>181</sup> Ahmed et al., *The Oldham Riots*, p. 6.

unaided, a racist attack that went unhalted. Many have turned to communal vigilantism to protect themselves.<sup>182</sup>

Since 1995 the Crown Prosecution Service for England and Wales (CPS) has been found guilty in several cases of racial discrimination in the treatment of its own employees.<sup>183</sup> This led to a report into institutional racism within the CPS which found, *inter alia*, that there was “unwarranted complacency over the possibility of race discrimination in the prosecution process.”<sup>184</sup> A recent report found that the CPS, in relation to racially aggravated crimes, regularly charged non-white defendants with more serious offences than was warranted by their crime.<sup>185</sup>

Studies also show differences in sentencing and imprisonment between black and white people, for example, black people are six times more likely to be in prison than white people and are more likely to receive higher sentences than white people.<sup>186</sup>

There is particular concern about discrimination in the sentencing and charging of Muslims involved in the Summer 2001 riots. In Bradford, 46 persons have been convicted and given substantial custodial sentences of an average of four and a half years.<sup>187</sup> Many of those sentenced had no criminal record and had voluntarily given themselves up in response to police appeals. For example, 17-year-old Imran Ghafoor was given an initial sentence of four years; this was only reduced on appeal to 18 months as a consequence of his age.<sup>188</sup> These sentences are much more severe than those given in Belfast “where a first offence of riot gets you a fine, a second a heavier fine or a suspended sentence.”<sup>189</sup> The “Fair Justice for All” campaign has emerged as a grassroots response to the severe sentences; campaigners argue that sentences of five years were damaging community relations.<sup>190</sup>

<sup>182</sup> “When Frustration Erupts,” *The Guardian*, 28 May 2001.

<sup>183</sup> S. Denman, *Race Discrimination in the Crown Prosecution Service*, London: Crown Prosecution Service, 2001, p. 1.

<sup>184</sup> S. Denman, *Race Discrimination in the Crown Prosecution Service*, London: Crown Prosecution Service, 2001, p. 14.

<sup>185</sup> C. Dyer, “CPS Found to Be Lenient in Cases of Race Crime,” *The Guardian*, 10 May 2002.

<sup>186</sup> Runnymede Trust, *The Parekh Report*, p. 130.

<sup>187</sup> F. Bodi, “Muslims Got Cante. What They Needed Was Scarman,” *The Guardian*, 1 July 2002.

<sup>188</sup> M. Wainwright, “Bradford Rioter’s Jail Sentence Cut To 18 months,” *The Guardian*, 13 July 2002.

<sup>189</sup> F. Bodi, “Muslims Got Cante. What They Needed Was Scarman,” *The Guardian*, 1 July 2002.

<sup>190</sup> M. Wainwright, “Bradford Rioter’s Jail Sentence Cut To 18 months,” *The Guardian*, 13 July 2002.

The treatment of prisoners once they are in jail is also a concern. In March 2000, a racist skinhead, Robert Stewart, whilst in Feltham Young Offenders institution, murdered Zahid Mubarak after the two were put in the same cell together. The murder led to a formal investigation of the Prison Service by the CRE, which is due to report at the end of 2002.<sup>191</sup>

In 2001, Muslims accounted for seven percent of the prison population.<sup>192</sup> The needs of Muslim prisoners are the specific concern of the National Council for the Welfare of Muslim Prisoners and the Iqra Trust. The Commission on British Muslims has also drawn attention to the needs of Muslim prisoners.<sup>193</sup> One of the central issues they raise is the privileged status given to the Anglican Church within the prisons Chaplaincy service under the Prisons Act 1952. There have been some positive developments. In 1999, Maqsood Ahmed was appointed as the first Muslim advisor to the prison service.<sup>194</sup> There are also Muslim Imams working in the prison service. The Commission on British Muslims remains concerned “about the capacity of the Prison Service to address the issue of religious diversity. One of the reasons for this scepticism is that progress is dependent on the discretion of individual chaplains, governors and prison officers. Whilst there is a lot of good will among staff from all community backgrounds this does not deal with the main problem of structural inequality.”<sup>195</sup>

### 3.2 Protection from Religiously and Racially Motivated Violence

As a consequence of the rise in violence directed at Muslims and those perceived to be Muslims after 11 September, a provision was included in the 2001 Anti-Terrorism, Crime and Security Act ensuring that, in England and Wales, religious motivation for some violent offences will constitute a racially or religiously aggravated form of that offence (i.e. a separate offence).<sup>196</sup> The maximum sentence for such offences is seven

<sup>191</sup> A. Travis, “CRE Loses Prison Race Inquiry Tapes,” *The Guardian*, 15 June 2002.

<sup>192</sup> *Prison Statistics England and Wales 2000*, Cm. 5250, London: Home Office, 2001, p. 107.

<sup>193</sup> *Addressing the Challenge of Islamophobia: Progress Report 1999–2001*, London: Commission on British Muslims and Islamophobia, 2001, p. 15.

<sup>194</sup> *Prison Service Appoints First Muslim Advisor*, Prison Service Press Release, see: <<http://www.hmprisonservice.gov.uk/news/newstext.asp?54>>, (accessed 21 September 1999).

<sup>195</sup> *Addressing the Challenge of Islamophobia: Progress Report 1999–2001*, London: Commission on British Muslims and Islamophobia, 2001, p. 16.

<sup>196</sup> Crime and Disorder Act 1998, s. 28-32, as amended by the Anti-terrorism, Crime and Security Act 2001, s. 39.



years.<sup>197</sup> Furthermore, the Act defined racial or religious motivation as an aggravating factor in sentencing for all offences; if such a motivation is determined, there must be an announcement to that effect in open court.<sup>198</sup> Similar changes were made to the equivalent legislation in Northern Ireland,<sup>199</sup> but not to the legislation in Scotland.<sup>200</sup>

The Government also planned to introduce legislation prohibiting incitement to religious hatred. However, politicians, commentators and human rights NGOs expressed concern about the implications of this measure for free speech.<sup>201</sup> Muslim groups were split over the introduction of such an offence.<sup>202</sup> Some welcomed the protection the legislation provided, while others thought that it would be used to “gag Muslims.”<sup>203</sup> There was also concern that they had not been adequately consulted and that religious incitement sections had been tagged on to the more substantive anti-terrorism legislation.<sup>204</sup> This part of the Bill was dropped after it met with opposition in the House of Lords.

In January 2002, Lord Avebury introduced a Religious Offences Bill in the House of Lords.<sup>205</sup> In June 2002, the House of Lords Select Committee on Religious Offences began examining the Bill. The Committee has made a call for evidence from interested parties, including Muslim groups, and Muslim organisations plan to respond.<sup>206</sup> The Bill seeks to abolish several of the existing religious offences, most notably the offence of blasphemy, and to create a new offence of incitement to religious hatred.

<sup>197</sup> Public Order Act 1986, s. 27(3), as amended by the Anti-terrorism, Crime and Security Act 2001, s. 40.

<sup>198</sup> Powers of Criminal Courts (Sentencing) Act 2000, s. 153, as amended by the Anti-Terrorism, Crime and Security Act 2001, s. 39.

<sup>199</sup> Anti-Terrorism, Crime and Security Act 2001, ss. 38 and 41.

<sup>200</sup> Anti-Terrorism, Crime and Security Act 2001, s. 128.

<sup>201</sup> Home Affairs Select Committee, *First Report: The Anti-Terrorism, Crime and Security Bill 2001*, HC 351, 2001, para. 56-61, the Committee reports the concerns of Human Rights groups and Muslim organisations that submitted evidence to the Committee, see: <<http://www.publications.parliament.uk/pa/cm200102/cmselect/cmhaff/351/35108.htm>>, (accessed 16 June 2002).

<sup>202</sup> V. Combe, “Muslim Leaders Split over Bill,” *The Telegraph*, 18 October 2001.

<sup>203</sup> V. Combe, “Muslim Leaders Split over Bill,” *The Telegraph*, 18 October 2001

<sup>204</sup> Z. Kazimi, Y. Al-Khoei, *The Aftermath of 11 September and Muslim Communities in the West*, unpublished, 2002.

<sup>205</sup> House of Lords, Deb. 30 January 2002, col. 314-340.

<sup>206</sup> Interview with organisation G, London, 6 June 2002.

In Scotland MSP Donald Gorrie proposed a Bill on protection from sectarianism and religious hatred.<sup>207</sup> The Bill does not propose to create any new offences but to define religious or sectarian motivation as an aggravating feature to existing offences. The Bill also aims to “compel organisations to draw up their own code of conduct to combat sectarian or religious hatred.”<sup>208</sup> As a consequence of the Bill the Scottish Executive has established a working group to consider the need for legal reform in this area.

As the religiously aggravated offences have only just been introduced it is not possible to assess their effectiveness. However, the experience of black and minority ethnic communities in the use of racially aggravated offences creates concern for Muslims. A report into the CPS handling of crimes with a race element found that they regularly downgraded charges of racially aggravated crimes to remove the race element. The report also finds that “police over charged non-white defendants – charging them with more serious offences than warranted – more often than whites.”<sup>209</sup>

Still, several Muslim community organisations believe that the Act may contribute towards reducing and deterring anti-Muslim violence, though emphasising that effective enforcement will require careful monitoring of implementation of the legislation by law enforcement agencies.<sup>210</sup> In particular, it will be important to ensure that there is appropriate training of law enforcement officials on policing issues arising from “religious” hate crimes. To be effective, the training of officers needs to be “placed as a professional development opportunity within the mainstream of professional development. It must become part of someone’s basic competences. If it features as part of the basic competences that are required to be an effective copper on the street then it will bite as an issue, and if it doesn’t then it won’t.”<sup>211</sup> Muslim organisations have also emphasised the importance of political will in ensuring the success of the legislation: “If the political will is there, then it will be used to the benefit of those communities it was originally intended to protect. But if the political will is not there then this will filter down to the police officer at the ground level.”<sup>212</sup>

<sup>207</sup> D. Gorrie, *Protection from Sectarianism and Religious Hatred – A Proposed Bill* (Consultation Document), Edinburgh, 2001.

<sup>208</sup> D. Gorrie, *Protection from Sectarianism and Religious Hatred – A Proposed Bill* (Consultation Document), Edinburgh, 2001.

<sup>209</sup> C. Dyer, “CPS Found to Be Lenient in Cases of Race Crime,” *The Guardian*, 10 May 2002.

<sup>210</sup> Submission to the Home Affairs Select Committee considering the statement of the Home Secretary to the House of Commons on Monday 15 October 2001, *The Muslim Response*, coordinated and prepared by FAIR, London, 2001, p. 4.

<sup>211</sup> Interview with organisation D, Edinburgh, May 2002.

<sup>212</sup> Interview with organisation A, London, April 2002.

There are some encouraging indications that the political will to confront religiously motivated violence is present. The large-scale violence which was unleashed after 11 September has diminished, a fact which the EUMC credits to “sensitive policing and co-operation in crime prevention between police forces and local Muslim communities.”<sup>213</sup>

### 3.3 Minority Rights

The United Kingdom is a party to the Framework Convention on National Minorities (FCNM)<sup>214</sup> and the European Charter for Regional or Minority Languages (CRML).<sup>215</sup> The term “national minority” is not defined within domestic law. In its report under the FCNM the Government adopted the definition of a “racial group” used in the RRA, as interpreted by the courts. The Advisory Committee welcomed the inclusive approach of the United Kingdom in its interpretation of the term national minority,<sup>216</sup> but pointed out that this definition raised issues of inequalities between groups. In particular, while including Sikhs and Jews, it excludes Muslims and other religious groups.<sup>217</sup> The Committee recommended considering the inclusion of persons belonging to these groups in the application of the Framework Convention.<sup>218</sup> The Government emphasises that the courts are responsible for determining what constitutes a racial group.<sup>219</sup> The effect of this approach is that consideration of the situation of Muslims as a group is excluded. Future FCNM reports should cover the situation of British Muslim communities along with those of other minority faith communities.

<sup>213</sup> EUMC, *Summary Report on Islamophobia in the EU after 11 September*, Vienna, 2002, p. 28.

<sup>214</sup> Signed 1 February 1995, ratified 15 January 1998, came into force 1 May 1998, first report submitted 26 July 1999, and first Advisory Committee Opinion adopted 30 November 2001.

<sup>215</sup> Signed 2 March 2000, ratified 27 March 2001, came into force 1 July 2001, first report due 1 July 2002.

<sup>216</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on the United Kingdom*, Strasbourg, 2001, para. 14 (hereafter “*Advisory Committee Opinion on the UK, 2001*”).

<sup>217</sup> *Advisory Committee Opinion on the UK, 2001*, para. 15.

<sup>218</sup> *Advisory Committee Opinion on the UK, 2001*, para. 17.

<sup>219</sup> Framework Convention for the Protection of National Minorities, *Comments of the Government of the United Kingdom on the Report on the Implementation of the Framework Convention for the Protection of National Minorities in the United Kingdom, 2002*, p. 4 (hereafter, “*Government Comments on the FCNM Report, 2002*”). See: <<http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/AdvisoryCommittee/Opinions/UK.Comments.htm>>, (accessed 25 September 2002).

The Government's integration policy "is based on the principle that cultural diversity should be valued and promoted."<sup>220</sup> In respect of Article 5 of the FCNM, the Advisory Committee took the view that more could be done by the Government to demonstrate, recognise and value the cultural diversity of ethnic minority communities. In its opinion, "policies on ethnic minorities need to be focussed more on valuing diversity and culture if an all round strategy is to be productive and if new strategies are to be developed to avoid ethnic tensions and conflicts."<sup>221</sup> The HRA provides significant protection to individuals belonging to minorities of their rights under the ECHR. However, the ECHR provides limited minority group rights or positive obligations in relation to minority groups.<sup>222</sup> In the previous section the report identified ways in which disadvantage and discrimination can operate as obstacles to Muslims' integration. This section examines minority rights in the areas of education, language, participation in public life, media and religion, and suggests steps that can be taken to facilitate, include and encourage participation in these areas by Muslims.

### 3.3.1 Religion

Muslims in Britain generally enjoy the right to practice their religion. Section 13 of the HRA makes special provision for freedom of religion. It requires that any court or tribunal determining any question arising under the HRA which might affect the exercise by a religious organisation (itself or its members collectively) of the right to freedom of thought, conscience or religion must have "particular regard to the importance of that right."

British Muslims enjoy both legal and practical access to religious institutions. State permission is not necessary in setting up a place of worship but official registration confers tax benefits and ensures recognition of marriage ceremonies performed there. There are

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<sup>220</sup> *UK Report on the Council of Europe Framework Convention for the Protection of National Minorities*, ACFC/SR (99)13, London, 1999, para. 92 (hereafter, "State FCNM Report"). Available at: <<http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/StateReports/1999/uk/uk.htm>>, (accessed 25 September 2002).

<sup>221</sup> *Advisory Committee Opinion on the UK*, 2001, para. 39.

<sup>222</sup> See M. Malik, "Minority Protection and Human Rights," in T. Campbell, K. D. Ewing, A. Tomkins, eds., *Sceptical Essays on Human Rights*, Oxford: Oxford University Press, 2001.

presently over 500 mosques registered as places of worship.<sup>223</sup> Many of these provide a visible symbol of the presence of Muslim communities in urban neighbourhoods.<sup>224</sup>

Obstacles arise from the fact that many social practices in Britain are already structured around basic Christian assumptions and therefore already accommodate the needs of Christians but not those of Muslims or other minority faiths. For example, Christmas and Easter are recognised as public holidays, and shop workers have the right to object to working on Sunday.<sup>225</sup> Social practices can operate to disadvantage and exclude Muslims; for example, in some professions social capital is accumulated and relationships and networks are developed in social gatherings after work in bars and pubs. This can often operate to exclude Muslims who feel uncomfortable in such an environment.

Some attempts have been made to adapt British law to accommodate the needs of Muslim and other faith communities.<sup>226</sup> As far back as 1764, a case decided that a Muslim could swear an oath on the Qur'an in giving evidence in court.<sup>227</sup> Statutory exemptions allow for the slaughter of animals in a manner required for the preparation of *halal* meat.<sup>228</sup> During the 1970s the Union of Muslim Organisations campaigned unsuccessfully for the recognition and application of Muslim personal laws to Muslim communities.<sup>229</sup>

In the absence of official recognition for Muslim personal laws, informal *shari'ah* (Islamic law) courts emerged as a forum for the informal settlement of disputes between Muslims on the basis of Islamic legal principles and ethical precepts.<sup>230</sup> The Islamic *Shari'ah* Council (ISC) emerged from attempts in 1978 by a group of London Imams to resolve issues of conflicts of laws.<sup>231</sup> Its principal functions include: resolving disputes between British Muslims, providing religious opinions in answer to questions

<sup>223</sup> P. Weller, *Religions in the UK – Directory 2001–2003*.

<sup>224</sup> See J. Eade, "Nationalism, Community and the Islamisation of Space in London," in B. Metcalf, ed., *Making Muslim Space*, University of California Press, 1996, pp. 217–233.

<sup>225</sup> Employment Rights Act 1996, Part IV.

<sup>226</sup> S. Poulter, *Ethnicity, Law and Human Rights: the English Experience*, Oxford: Oxford University Press, 1998.

<sup>227</sup> *R v. Morgan* (1764) 1 Leach 54.

<sup>228</sup> Slaughter of Poultry Act 1967, s. 1 and Slaughterhouses Act 1974, s. 36.

<sup>229</sup> S. Poulter, *Ethnicity, Law and Human Rights: the English Experience*, Oxford: Oxford University Press, 1998, pp.195–236.

<sup>230</sup> I. Yilmaz, "Law as Chameleon: The Question of Incorporation of Muslim Personal Law in the English Law," *Journal of Muslim Minority Affairs*, Vol.21, No. 2, 2001, pp. 297–308.

<sup>231</sup> Yilmaz, p. 304.

submitted by organisations or individuals, and resolving conflicts of law between the civil and *shari'ah* law, particularly in areas of family law.<sup>232</sup>

There are significant differences in the relationship of the State with different faiths: “each religious community, in its institutional form has a unique position in relation to the State.”<sup>233</sup> The Church of England is the established church in England. The Sovereign, who must be in communion with the Church of England, is Supreme Governor. Her role includes the appointment, on the advice of ministers, of bishops and other senior positions in the church. In Scotland there is no official established church, but the Church of Scotland is the national church; its position is guaranteed by the Acts of Union. There is no established church in Wales or Northern Ireland. The Parekh report recommended the need for a “commission on the role of religion in the public life of a multi-faith society.”<sup>234</sup> Such a commission would have to look at the Act of Settlement, the Prisons Act 1952, the Law of Blasphemy,<sup>235</sup> and the Coronation oath. It would also examine customs related to civic religion, for example, daily prayers at Westminster and various religious ceremonies, including memorial events and ceremonies in local government.<sup>236</sup>

### 3.3.2 Language

English is the language of the State and administration in England, Northern Ireland and Scotland. In Wales, both English and Welsh are recognised as official languages.<sup>237</sup> Irish and Ulster-Scots have been recognised for Part III and Part II respectively of the CRML. There are no official minority languages in Scotland, but the Scottish Executive has committed itself to support of the Gaelic language. Under the British Nationality Act 1981, knowledge of English, Welsh or Scottish Gaelic satisfies one of the conditions for naturalisation as a British citizen. In Northern Ireland the Belfast (Good Friday) Agreement makes express provision for the recognition and promotion of both Irish and Ulster-Scots.

<sup>232</sup> See: S. N. Shah-Kazemi, *Untying the Knot – Muslim Women, Divorce and the Shariah*, London: The Nuffield Foundation, 2001.

<sup>233</sup> J. S. Nielson, *Towards a European Islam*, Basingstoke: Macmillan Press, 1999, p. 39.

<sup>234</sup> Runnymede Trust, *The Parekh Report*, p. 243.

<sup>235</sup> See also Advisory Committee *Opinion on the UK*, 2001, para. 117, where the Committee recommended that the blasphemy laws were discriminatory and should either be abolished or extended to other religions.

<sup>236</sup> Runnymede Trust, *The Parekh Report*, pp. 242–243.

<sup>237</sup> Welsh Language Act 1967 and 1993.

The diversity of the British Muslim communities means that they have no single “minority language.” There are generational differences in the ability of members of the British Muslim communities to speak English. The second and third generation children of Muslim migrants have English as a first language, while the language skills of first generation migrants vary greatly. Muslims recognise the importance of learning English towards ensuring educational success for the second and third generation: an opinion poll of British Muslims found that 65 percent approved of Government proposals for those applying for nationality to demonstrate a certain level of achievement in the English language.<sup>238</sup> However, Muslim community organisations also place importance on opportunities for learning Arabic.<sup>239</sup>

There are no language restrictions on the use of names and surnames or in displaying road signs or public notices.<sup>240</sup> The Government’s policy is “to deal with non-English speakers on the basis of courtesy and respect for their linguistic preference. Government departments often produce leaflets in minority ethnic languages. Persons from ethnic minorities may use their own language in their contacts with administrative authorities and public services ... national public services have access to translation services.”<sup>241</sup> However, the availability of such services remains a problem; for example, in healthcare there are still instances where children have to interpret sensitive medical matters for their parents.<sup>242</sup>

Through the medium of the HRA, the ECHR provides a further measure of legal protection of the right to use minority languages. Article 10 (freedom of expression) would provide a basis for challenging any attempt to restrict the use of a language by a person for their own private purposes. Article 6 (the right to a fair trial), provides that individuals charged with a criminal offence have a right to be informed promptly in a language which they understand of the charges against them, and to the free assistance of an interpreter if they cannot understand or speak the language used in court.

### 3.3.3 Education

Research by the Muslim Council of Britain found that Muslims identified access to quality education as the issue most important to them; it was more important than all

<sup>238</sup> A. Travis, “The Need to Belong – But with a Strong Faith,” *The Guardian*, 17 June 2002.

<sup>239</sup> Interviews with organisation A, London, 16 April 2002, and organisation H, London, 16 April 2002.

<sup>240</sup> *UK Report on the FCNM*, para. 168.

<sup>241</sup> *UK Report on the FCNM*, paras. 157–158.

<sup>242</sup> *Advisory Committee Opinion on the UK*, 2001, para. 74.

other issues put together.<sup>243</sup> For young Muslims the education system is their earliest and most significant point of contact with the wider community. The messages that the school system provides in respecting and accommodating their needs will be a vital influence on their attitude to integration and participation in society. The majority of Muslims continue to be educated in non-Muslim State schools and many Muslim community organisations express concern about the ability of these schools to meet the needs of Muslim pupils.<sup>244</sup>

### *Arabic as a modern language option*

English is the main medium of instruction in schools in all parts of the United Kingdom except Wales, where the medium of instruction is English or Welsh. Over 500 primary and secondary schools in Wales use Welsh as their medium of instruction, and local education authorities are required to prepare Welsh language education schemes, setting out their plans for providing education through the medium of both languages.<sup>245</sup> In Scotland, £2.8 million (€4.3 million) was provided for Gaelic-medium education in the year 2001/2002.<sup>246</sup> In Northern Ireland, there is a duty on the administration to encourage and facilitate the development of Irish-medium education; there are seven primary schools and one secondary school that provides Irish-medium education.<sup>247</sup> In the Government's view, a good command of English is essential to ensure pupils are able to fully participate in the opportunities schools have to offer.<sup>248</sup>

The main responsibility of maintaining the mother tongue remains with the minority communities, although local education authorities are able to support ethnic minority communities to set up supplementary schools, which provide education in the evening or on Saturdays, to maintain linguistic and cultural traditions.<sup>249</sup> The diversity of the Muslim communities means that there is no single "community language" in which education should be delivered. Thus, access to primary, secondary and tertiary education in a single minority language is not a specific concern of Muslim communities, although it may be an issue for particular Muslim communities that are also minority linguistic communities such as the Bangladeshi or Turkish communities.

<sup>243</sup> Interview with Mahmood Al-Rashid, Muslim Council of Britain, 17 April 2002.

<sup>244</sup> Interviews with organisation G, London, 6 June 2002, and organisation H, London, 16 April 2002.

<sup>245</sup> *UK Report on the FCNM*, para. 201.

<sup>246</sup> *UK Report on the FCNM*, para. 198.

<sup>247</sup> Education (Northern Ireland) Order 1998, SI 1759 (NI 13), Art. 89.

<sup>248</sup> *UK Report on the FCNM*, para. 193.

<sup>249</sup> *UK Report on the FCNM*, para. 197.



The more important issue for Muslim communities is access to classes for learning Arabic. Schools are required to offer pupils the option of studying an official EU language, but it is left to their discretion to offer other languages. Learning Arabic might be an option but the availability of such classes is dependent upon circumstances and resources. Many Muslim children will learn to read Arabic in order to read the Qur'an, irrespective of its availability as a curriculum option. Such classes take place in mosques but the quality of the language tuition is unregulated. The time spent in such after-school classes reduces the amount of time spent on school homework and may affect the educational attainment of Muslim pupils. Providing Arabic classes in the context of modern language classes in State schools creates an opportunity to develop the interests and skills of Muslim pupils and parents. It also offers a chance to integrate learning about Arabic-speaking communities and cultures into the curriculum. Arabic language classes would not represent an extra burden for pupils who already learn Arabic in after-school classes. Teaching the Arabic language in schools would in fact ensure a better balance in the overall educational burden placed on Muslim pupils and contribute towards improving achievement levels. Where there is demand, schools should consider offering Arabic as a modern language option alongside modern European languages.

### *Faith schools*

Religious communities have a right to establish their own independent schools, although such schools must be registered with the Registrar of Independent Schools and must meet certain minimum standards. In England and Wales, there has traditionally been State funding for Church of England, Roman Catholic and Jewish faith schools. In Northern Ireland and Scotland, there has traditionally been State funding for Roman Catholic schools.<sup>250</sup> Since 1997, the Labour Government has extended this funding to other minority faith schools, including Muslim schools. At the moment there is State funding of four Muslim schools.<sup>251</sup>

Proposals to increase the role of faith schools in the State education sector have generated much debate.<sup>252</sup> The Commission for Racial Equality has expressed concern

<sup>250</sup> In Scotland, denominational schools are mainly Catholic although there is funding for a Jewish primary school and several Episcopalian schools.

<sup>251</sup> *The Guardian*, 12 December 2001. For England and Wales, the figures for faith schools in the State sector are: 4,716 Church of England, 2,110 Roman Catholic, 27 Methodist, 32 Jewish, four Muslim, two Sikh, one Greek Orthodox, and one Seventh Day Adventist.

<sup>252</sup> *Schools – Achieving Success*, London: Department for Education and Skills, 2001, p. 37: A call for more faith schools in Scotland was also made by Member of Scottish Parliament Murdo Fraser, see "Tory Calls for More Religious Schools," *BBC News*, 17 May 2002, <[http://news.bbc.co.uk/hi/english/uk/scotland/newsid\\_1993000/1993684.stm](http://news.bbc.co.uk/hi/english/uk/scotland/newsid_1993000/1993684.stm)>, (accessed 10 July 2002).

that single faith schools could damage multi-culturalism,<sup>253</sup> and the Cantle Report cautioned that funding of faith schools would increase social segregation between different minority communities. One response to this is a proposal by faith communities for “multi-faith” schools that would appreciate faith but would not be targeted at a particular faith.<sup>254</sup> Muslims express frustration that the debate about segregation focuses on faith schools. They see no link whatsoever between Muslim schools and the Summer 2001 riots as those involved did not attend Muslim schools but racially segregated non-Muslim schools. They point out that at most five percent of Muslim pupils attend Muslim schools; the remaining 95 percent attend non-Muslim State schools. In their view, having faith schools does not create problems of segregation, but they acknowledge that the policies and practices of some faith schools may exacerbate such problems. Furthermore, focusing the criticism on Muslim faith schools draws attention away from *de facto* racial segregation in the State schools of some towns and cities where there are no State-funded Muslim schools. Such segregation is the consequence of housing, admissions policies and parental choice.<sup>255</sup>

For Muslims, the issue of State funding of faith schools is one of equality; if the State provides funding for faith schools then it should not discriminate between different faiths. Prime Minister Blair supported this view during a television interview: “It would be wrong to tell the Muslim Community that you are the one community that can’t have [faith] schools.”<sup>256</sup> The Government remains committed to increasing the role of faith schools in the State sector but has said that new faith schools will have to “demonstrate how they will be inclusive and work in partnership with other schools.”<sup>257</sup> The Government rejected a proposal in the Cantle Report that at least 25 percent of the intake in a faith school reflect the other cultures and ethnicities within the local area,<sup>258</sup> but they want to “encourage all schools to ensure that their intake reflects the local community in all their diversity.”<sup>259</sup>

### *Sensitivity to Muslim history and culture*

Education provides an important arena in which to counter negative stereotypes about Muslims which they feel are prevalent in the media and popular discourse. “Citizenship”

<sup>253</sup> P. Wintour, “Religious Schools Must Integrate in the Community,” *The Guardian*, 14 November 2001.

<sup>254</sup> N. Pyke, “Four Religions’ Plan for Multi-Faith Schools Aims to Establish a Trend,” *The Guardian*, 8 July 2002.

<sup>255</sup> Interview with organisation G, London, 6 June 2002.

<sup>256</sup> BBC Newsnight interview with Prime Minister Blair, broadcast 16 May 2002.

<sup>257</sup> House of Lords, 20 December 2001, WA 85.

<sup>258</sup> Cantle Report, p. 33.

<sup>259</sup> House of Lords, 18 December 2001, Deb. c. 138.

became part of the non-statutory framework for Personal, Social and Health Education in English primary schools from September 2000 and part of the national curriculum in secondary schools in September 2002. Citizenship classes include education about “the diversity of national, regional, religious and ethnic identities in the United Kingdom and the need for mutual respect and understanding.”<sup>260</sup> There are concerns that “such classes could be about erasing difference and universalising the experiences of the dominant racial and cultural group within society. Within this process there is a danger that the experience of Muslims and other minorities are marginalised and silenced.”<sup>261</sup> However, Muslim organisations see a potential in harnessing such classes to bring home to Muslims and other minority communities the legal rights that are in place for their protection. A positive endorsement by Ministers of the importance of schools including information and discussion about equality, anti-discrimination legislation and minority protection laws within the citizenship curriculum would be a welcome encouragement to teachers.

Muslims have emphasised the importance of integrating, into all aspects of the curriculum – history, science, mathematics, technology, art, literature, philosophy and politics – the contribution made by Muslims.<sup>262</sup> Education departments should conduct a review to ensure that this takes place.

Schools must provide religious education for all registered pupils, although parents can choose to withdraw their children.<sup>263</sup> In England and Wales, schools other than voluntary aided schools and those of a religious character<sup>264</sup> must teach religious education according to the locally agreed syllabus. Each agreed syllabus must reflect the fact that the religious traditions in Great Britain are in the main Christian, while taking account of the teachings and practices of the other principal religions represented in Great Britain.<sup>265</sup> In Northern Ireland, the Department for Education outlines a core syllabus for religious education.<sup>266</sup> The current core syllabus is exclusively Christian.

<sup>260</sup> *Government Comments on the FCNM Report*, 2002, pp. 13–14.

<sup>261</sup> Interview with organisation H, London, 17 April 2002.

<sup>262</sup> Interviews with organisation F, London, 19 April, organisation G, London, 6 June 2002, and organisation H, London, 17 April 2002.

<sup>263</sup> For England and Wales, Education Act 1996, s. 386; for Northern Ireland, see Education Reform (Northern Ireland) Order 1989 SI 2406 (NI 20) and Education and Libraries (Northern Ireland) Order 1986 (NI 3); for Scotland, see Education (Scotland) Act 1980 and Scottish Office Education Department Circular 6/91.

<sup>264</sup> Religious education in foundation, voluntary controlled and voluntary aided schools is regulated under the School Standards and Framework Act 1998.

<sup>265</sup> Education Act 1996, s. 375. Similar guidance is given in Scottish Office Education Department Circular 6/91.

<sup>266</sup> Education Reform (Northern Ireland) Order 1989, SI 1989/2406 (NI 20).

Pupils in State schools are required to take part in daily collective worship, which shall be “wholly or mainly of a broadly Christian character.”<sup>267</sup> Parents have the right to withdraw their children from attending collective acts of worship.<sup>268</sup> Furthermore, schools can seek an exemption from the requirement for broadly Christian worship, for the school or for some pupils within the school where it is inappropriate because of the pupils’ faith background.<sup>269</sup> The Cante Report found that “despite previous advice to schools on this matter, a rather Euro-centric curriculum and pervasive Christian worship (even in schools with few, if any, Christians), is still evident.”<sup>270</sup> It is possible for pupils to take an examination in religious studies that covers Islam.

The British Humanist Association (BHA) argues that “core and compulsory activities in schools should be acceptable to people of all beliefs and none, but that schools should make ‘accommodations’ to meet the legitimate wishes of religious parents.”<sup>271</sup> Traditional areas of concern, such as school uniforms, access to facilities for prayer rooms, time off for religious holidays, and the provision of *halal* meat in school are addressed in the BHA policy document.

Government is also addressing some of these concerns. For example, guidance on school uniforms provides that children with particular dress requirements based on religious or cultural grounds should not be penalised by schools and their dress should be accommodated within the school uniform policy.<sup>272</sup> In respect of school meals, there is no particular reference to the needs of Muslim children in school meals legislation; there is guidance for minimum nutritional standards in school lunches but these do not include reference to special dietary requirements. However, the “Healthy School Lunches” guidance to school caterers on implementing the national standards includes a section covering vegetarianism and special diets of pupils from religious and ethnic groups.<sup>273</sup>

However, in the experience of several Muslim organisations, provisions are uneven and dependent upon decisions at local level. It is important to have clearer and stronger

<sup>267</sup> Education Act 1996, s. 386; School Standards and Framework Act 1998, s. 70; Scottish Office Education Department Circular 6/91.

<sup>268</sup> Education Act 1996, s. 389; Scottish Office Department for Education Circular 6/91; Education and Libraries (Northern Ireland) Order 1986.

<sup>269</sup> State FCNM Report, para. 142.

<sup>270</sup> Cante Report, p. 35.

<sup>271</sup> *A Fresh Way Forward: Consultation on Accommodating Religious and Other Beliefs within Schools*, London: British Humanist Association, May 2002.

<sup>272</sup> School Uniform Guidance DfES/0264/2002.

<sup>273</sup> Communication with the Department for Education and Skills, School Inclusion Division, 14 June 2002.

guidance from education departments to ensure that the needs of Muslim pupils, as well as those of other faiths, are adequately met across the United Kingdom.<sup>274</sup> The BHA recommends that all guidance be brought together, strengthened and reissued under one cover.<sup>275</sup> The guidance should be given not only to schools but also to parents and community organisations so that they too are aware of what they can legitimately expect from their schools. The Office for Standards in Education (Ofsted)<sup>276</sup> could use this guidance as a benchmark when reporting on the spiritual, moral, social and cultural development of pupils at a school.<sup>277</sup> Information about accommodation of religious diversity could be included in school prospectuses. Schools that are successful in accommodating the needs of their diverse communities, including the needs of their Muslim pupils, could be given the status of “beacon” schools and play a role in spreading good practice. All guidance on accommodating the religious needs of pupils should be brought together, strengthened and reissued under one cover. School inspection bodies should include in their reports the ways in which a school accommodates the religious needs of pupils from different faith communities. School inspection bodies should use such guidance as a benchmark for evaluation in their reports.

For many Muslims the need to integrate education about Islam into the general schooling process and syllabi is seen as the most urgent task for the Government in relation to the education of young people.<sup>278</sup> At the moment, the majority of Muslim children learn about Islam in after-school classes, usually delivered through the local mosque. The quality of education delivered through the mosque sector varies considerably. The method of teaching is often based on a system that does not complement the styles and teaching methods to which the children are exposed in their formal State education. The delivery of education about Islam solely through after-school classes in mosques also reduces the time that Muslim children can spend with family or on school homework and so may affect their overall educational performance.

Muslim children who complete their religious education in the mosque sector are able to recite prayers and read the Qur’an and have a very basic knowledge of Islam. However, they often lack knowledge about the history and traditions of Islam – knowledge that would provide them with the tools to fully engage with their religion. One consequence

<sup>274</sup> Interviews with organisation A, London, 16 April 2002, organisation E, London, 19 April 2002, organisation G, London, 6 June 2002, and organisation H, London, 17 April 2002.

<sup>275</sup> *A Fresh Way Forward: Consultation on Accommodating Religious and Other Beliefs within Schools*, London: British Humanist Association, May 2002, p. 6.

<sup>276</sup> In Scotland this could be done by Her Majesty’s Inspectorate of Education, and in Northern Ireland by the Teaching and Education Inspectorate.

<sup>277</sup> School Standards Act 1996, s. 10(5)(d).

<sup>278</sup> Interviews with organisations E and F, London, 19 April 2002, organisation G, London, 6 June 2002, and organisation H, London, 17 April 2002.

of this is that young people are left knowing they are Muslims but with little understanding of Islam, creating a space into which organisations with differing interpretations of Islam can step. Without adequate education and knowledge of Islam young Muslims are ill-equipped to engage in debate and dialogue with such groups.

The integration of religious education for Muslim pupils into the schooling process would have several advantages. Young Muslims would be given the tools and knowledge with which to develop their understanding of Islam. It would provide an important avenue for participation by Muslim parents and community members in the education process. It would provide greater choice for Muslim parents who may not have access to or may not wish to have their children educated in Muslim schools, but who wish to ensure that their children have an education that meets their needs as Muslims nonetheless. It would allow for proper regulation and inspection to ensure that such education was delivered in a way that conformed to minimum educational and other standards. Integrating such education into the general schooling process would ensure a better balance in the overall educational burden placed on Muslim pupils and contribute towards improving achievement levels. The precise details of how education about Islam is integrated into the schooling process needs to be developed in more detail through consultation. Education departments should consider ways in which education about Islam can be integrated into the general schooling process. This must be done in partnership and consultation with Muslim communities.

Many Muslim pupils may benefit from policies aimed at improving the standards of education among all pupils and particularly among minority ethnic pupils. As statistics are not collected on the basis of religion it is not possible to evaluate the impact of such policies on Muslim pupils. Government actions on raising the standards of minority pupils are based around racial and ethnic groups. Action is focused on closing the attainment gap for Pakistani, Bangladeshi, African, and Afro-Caribbean pupils. The Ethnic Minority Achievement Grant (EMAG) allows schools to provide more teachers and teacher assistants and will cover particularly those schools with pupils whose first language is not English. In 2001-02 the Government provided local education authorities with £154 million (c. €245,629,889) for the grant scheme. Other work includes the launch of a project to pilot innovative approaches to raising the achievement of minority ethnic pupils through the combined use of Excellence in Cities and the EMAG.<sup>279</sup>

While there may be a complex set of reasons for the underachievement of pupils from Muslim communities, recognising the Islamic dimension of their identity and working

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<sup>279</sup> Communication with the Department for Education and Skills, School Inclusion Division, 14 June 2002.

with Muslim community bodies may be important in developing innovative policies that work to improve standards in schools. An example of such innovative work can be found in East London where schools work with the local mosque to combat truancy. The Imams attend parents' evenings and speak about the importance of education during the sermon at Friday prayers. Mosque representatives make home visits and work with families identified by schools as attending inconsistently. The mosque's radio station calls children to school. The effect of this initiative has been to raise attendance for some pupils from below 90 percent to 100 percent.<sup>280</sup>

The understanding of non-Muslim teachers towards the sensitivities of Muslim children and their parents has often been criticised. In the experience of Muslim communities "it is not uncommon to find that non-Muslim staff are unaware even of the most basic of these sensitivities, in diet and dress requirements, for example." Such awareness should be a basic competence for teachers to work in a multi-faith environment. Schools should avail themselves of appropriate religious awareness training, this should be provided for all teaching and non-teaching staff and for governing bodies. Government should make funding available for such training.

### *Muslim teachers*

There are no statistics to show the number of Muslims in the teaching profession. Statistics collected on the basis of racial and ethnic origin show that seven percent of teachers are from minority ethnic backgrounds. By 2005 the Government aims to increase to nine percent the number of students from minority ethnic backgrounds entering initial teacher training.<sup>281</sup> Teacher training programmes should aim to increase the recruitment and training of teachers that are able to teach Arabic as a modern foreign language.

### *Tertiary education and research*

Courses are available at universities for the study of Islam, particularly at the postgraduate level.<sup>282</sup> There are also several Muslim educational and research institutions. In Leicester, the Islamic Foundation, established since 1973, provides academic research into Islam in Europe and provides training in Islamic cultural awareness. In London, these include: the Institute of Ismaili Studies, founded in 1977, which runs a graduate programme in Islamic Studies and Humanities, and the Muslim College, which began functioning as an educational institution of graduate studies in

<sup>280</sup> D. Taylor, "Being There," *The Guardian*, 6 August 2002.

<sup>281</sup> *Government Comments on the FCNM Report*, 2002, p. 26.

<sup>282</sup> There are institutes for Middle Eastern and Islamic Studies at the universities of Durham, Exeter, the School of Oriental and African Studies in London, Birmingham, Oxford, Cambridge, Edinburgh, Leeds, Manchester, and St. Andrews.

1987 and also offers a course for Imams to improve the ability of candidates to perform their duties as religious leaders.

### 3.3.4 Media

The media is subject to general laws placing restriction on freedom of expression such as offences of contempt of court, defamation, libel, obscenity, blasphemy and incitement of racial hatred. There are no specific restrictions on Muslims accessing the media.

Muslim concerns focus on the prejudiced and negative portrayal of Muslims and Islam in the media, particularly the press (see Section 2).<sup>283</sup> Some argue that media agencies fail to represent the full range of views within Muslim communities or to reflect their full diversity. However, others acknowledge efforts made particularly by British television to avoid offence: “The media has changed beyond recognition and ... no campaign can retain credibility if it refuses to look at the progress that has been made. None of the other EU countries pay as much attention to the portrayal of Islam and Muslims.”<sup>284</sup>

The Council of Europe has previously recommended that Governments should “encourage debate in the media and advertising professions on the image which they convey of Islam and Muslim communities and their responsibility in this respect to avoid perpetuating prejudice and biased information.”<sup>285</sup>

The importance of protecting media freedom places legitimate restrictions on State influence of media representations of Muslims. Muslims, as consumers of media products, have an important responsibility in influencing this coverage. Editors of print and broadcast media respond to complaints from their customers. The massive increase in media coverage and scrutiny of British Muslim communities since 11 September would have been a challenge to any community. The lack of any large scale Muslim response to media coverage is noticeable. Reasons for this include a lack of knowledge and information about complaints mechanisms among Muslims and a lack of capacity by community organisations to respond effectively to all but the most serious or notorious cases. As an important step in enabling Muslims to engage with media coverage, media regulatory bodies such as the Press Complaints Commission, the Independent Television

<sup>283</sup> Commission on British Muslims and Islamophobia, *Islamophobia – a Challenge for Us All*, London: The Runnymede Trust, 1997, pp. 20–30.

<sup>284</sup> Y. Alibhia-Brown, “Muslims Are Wrong to Blame the British Media,” *The Independent*, 26 August 2002.

<sup>285</sup> ECRI *General Policy Recommendation No.5: Combating Intolerance and Discrimination Against Muslims*, Strasbourg, 2000, p. 5.



Commission and the BBC should consider launching a campaign to raise awareness of their complaints mechanisms among Muslim communities.

While complaints to media bodies provide one avenue for influencing output, this remains a reactive strategy. Muslim communities should also seek to develop long-term, sustained engagement with media organisations. There are examples of individual good practice in all sectors of the media, from regular meetings between editors and community representatives to discuss the impact of local media coverage on local minority communities, to “exchanges” in which those working in the media spend some time living and working in minority communities. The Department for Culture, Media and Sport should consider funding research that would bring together and highlight models of good practice for long-term sustained engagement between media organisations and minority communities.

Diverse Muslim voices in the media will emerge through increased Muslim participation in media production. Although there are no statistics available for the exact number of Muslims working in media organisations, Muslims argue that they “are grossly underrepresented in the media.”<sup>286</sup> A report by the broadcasting trade union BECTU claimed that institutional racism exists in British television. Figures from the ITC show that 3.4 percent of senior managers in the BBC are from ethnic minorities, in Channel Four the figure is 6.6 percent. Seven ITV franchise companies had no managers from ethnic minorities.<sup>287</sup> Recruitment, retention and training policies for employment of ethnic minorities in the media should be monitored to ensure that representative numbers of Muslims are accessing them.

### *Radio/Television*

There are five terrestrial channels in the United Kingdom, BBC 1, BBC 2, ITV, Channel 4, and Channel 5. BBC channels are governed by its Royal Charter, which partly comprises a Licence Agreement.<sup>288</sup> Independent Broadcasting is governed by the Broadcasting Acts 1990 and 1996.

There have recently been a series of programmes on terrestrial television about Islam and Muslim communities. Over the Summer of 2001, the BBC ran a season of programmes on Islam.<sup>289</sup> These include a programme following pilgrims on Hajj, a

<sup>286</sup> A. Versi, “No Faith in the Media,” *The Guardian*, 17 June 2002.

<sup>287</sup> J. Doward, B. Wazir, “British television accused of institutional racism,” *The Observer*, 25 August 2002.

<sup>288</sup> Cmnd. 8233, see: <<http://www.bbc.co.uk/info/BBCcharter/agreement/index.shtml>>, (accessed 2 October 2002)

<sup>289</sup> For details see: <<http://www.bbc.co.uk/religion/religions/islam/tvandradio/index.shtml>>, (accessed 25 September 2002).

history of Islam and a programme on Islamophobia.<sup>290</sup> In 2002, Channel 4 ran a season of programmes on Muslims in Britain. Commenting on the Channel 4 season, one Muslim group argued that “attempts were made to allude to the diversity of British Muslims and to challenge some fixed views about Islam, but the series focused on extremism, segregation and corruption, the *hijab* and difference” and that the persistent focus on difference “promoted the idea that being Muslim and British is conflictual, that the two are hermetically sealed and are therefore incompatible identities.”<sup>291</sup>

While particular programmes about Islam and Muslim communities are important, it is also important that Muslims participate in mainstream media productions and in programmes discussing issues of faith and ethics: “We are never on arts shows; perhaps they think we are too busy rote-reciting the Koran to go to theatres or art galleries. On Radio 4 editors still think all Muslims ... live in mental ghettos and have no views on the euro or Anita Brookner. Once in a small precious while we are asked to talk on sex, or a painting, and oh, the relief.”<sup>292</sup> The BBC maintains a diversity database; it is important that Muslims are included in such databases. The Independent Television Commission (ITC) is responsible for regulating non-BBC television services. The ITC’s Programme Code provides that: “In general, religious programmes on Channels 3, 4 and 5 should reflect the worship, thought and action of the mainstream religious traditions present in the United Kingdom, recognising that these are mainly, though not exclusively, Christian. Religious programmes provided for a particular region or locality should take account of the religious make up of the area served.”<sup>293</sup> The BBC, ITV, and Channel 4 and 5 should undertake an audit of their programming to see the extent to which Muslims participate in programmes. The results of the audit should be published.

The Radio Authority is responsible for licensing radio stations. In selecting licensees it is required to have regard to the extent to which any proposed radio station would cater for the tastes and interests of those living in areas in which it will broadcast. Short-term licenses are granted for local community events, including religious

<sup>290</sup> In November 2001 the BBC was given an award by the Islamic Society of Britain for helping to foster a better knowledge and understanding of Islam through its season of programmes.

<sup>291</sup> *Channel 4’s British and Muslim Season: A Case Study of Islamophobia in the Broadcast Media*, London: Forum Against Islamophobia and Racism, 2002, p. 5.

<sup>292</sup> Y. Alibhia-Brown, “Muslims Are Wrong to Blame the British Media,” *The Independent*, 26 August 2002.

<sup>293</sup> ITC Programme Code Section 7.3. See: <[http://www.itc.org.uk/itc\\_publications/codes\\_guidance/programme\\_code/section\\_7.asp](http://www.itc.org.uk/itc_publications/codes_guidance/programme_code/section_7.asp)>, (accessed 25 September 2002).

festivals. Several local community radio stations allow Muslim community radio broadcasting during the month of Ramadan. In Scotland, 'Radio Ramadan' broadcasts programmes during the month of Ramadan.

### *Media broadcasting and reporting guidelines*

Even prior to 11 September there was growing media focus on Islam and Muslim communities in the United Kingdom and across the world. Reporting guidelines play an important role in ensuring reporting that does not reproduce stereotypes and prejudices. The BBC has a programme guide for its editors that deals with the coverage of religion and faith communities:

People and countries should not be defined by their religions unless it is strictly relevant. Particular religious groups or factions should not be portrayed as speaking for their faith as a whole. Thoughtless portrayal can be offensive, especially if it implies that a particular faith is hostile or alien to all outside it. For example, footage of chanting crowds of Islamic activists should not be used to illustrate the whole Muslim world. Words such as 'fundamentalist' and 'militant' should be used with great care. What may be a fair description of one group may not be true of all similar groups. Use of a term such as 'Islamic Fundamentalist' has to pass the test of whether we would talk about Christian or Hindu Fundamentalism.<sup>294</sup>

The Independent Television Commission (ITC) is responsible for regulating non-BBC television services. Under the ITC code religious programmes must not involve "any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination."<sup>295</sup>

The National Union of Journalists (NUJ) provides guidelines on race reporting, which give practical advice to reporters. The guidelines do not cover reporting of religious communities. The NUJ should consider developing guidelines for reporting about Muslim and other faith communities.

### *Muslim media*

There is State support for broadcasting for select minorities. The television channel S4C broadcasts in the Welsh language. The BBC provides a radio service in Welsh called Radio Cymru. There is also Government support for the Gaelic Broadcasting Fund, which finances the production of Gaelic programmes. The Government gives financial support to the *Muslim News* for its annual Muslim News Awards. Except for this, there is no State support for any Muslim media outlets.

<sup>294</sup> BBC Producers Guide, Chapter 9, para. 6, see: <http://www.bbc.co.uk/info/editorial/prodgl/chapter9.shtml>, (accessed 25 September 2002).

<sup>295</sup> ITC Programme Code, s. 7.1.

There is nothing in law that hinders Muslims from the creation and use of printed media. There is a diverse Muslim print media, which includes several Muslim newspapers and magazines; prominent among these are: *Muslim News*, *Trends*, *Q News*, *Discourse*, *Insight* and *Dialogue*. *Muslim News* is published monthly and 21,000 copies are distributed *gratis* to mosques and other Muslim community organisations; copies are also sent to influential opinion-formers. *Muslim News* reporters have succeeded in gaining access to politicians, including the Prime Minister, for interviews. Moreover, a number of Muslim commentators publish regularly in the national press.

Journalists from *Muslim News* claim to have experienced Islamophobia and discrimination in the course of their work. For example, they have been treated as part of the foreign press for the purpose of access to some Government briefings.<sup>296</sup> *Muslim News* claims that its journalist was prevented by police officers from interviewing those taking part in the pro-Israeli demonstrations in London. The police officer escorted the *Muslim News* journalist to the pro-Palestinian demonstration and asked two officers there to ensure that he did not leave the enclosed area.<sup>297</sup>

There are also an enormous number of Muslim websites on the Internet offering news, discussion groups, opinions and religious interpretation. The growth of such sites reflects the decentralisation of power and authority within Britain's diverse Muslim communities.

### 3.3.5 Participation in public life

"There are 1.8 million Muslims in Britain, but if you look at the country's most powerful people – in business, politics, academia, the media, the arts and sport – you wouldn't know it."<sup>298</sup> Although Muslim participation in public life is growing, Muslim figures in public life remain the exception rather than the rule. There are two Muslim Members of Parliament, five peers in the House of Lords and one Member of the European Parliament.<sup>299</sup> There are no Muslim members of the Scottish Parliament, the

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<sup>296</sup> Interview with Ahmed Versi the editor of *Muslim News*, London, 15 May 2002.

<sup>297</sup> A. Versi, "Police Islamophobic Attitude at the Pro-Israeli Rally Condemned," *Muslim News*, 21 May 2002. See: <<http://www.muslimnews.co.uk/paper/index.php?article=651>>, (accessed 25 September 2002).

<sup>298</sup> "The Winners," *The Guardian*, 17 June 2002.

<sup>299</sup> These are: MP Khalid Mahmood, MP Mohammed Sarwar, Lord Ahmed, Baroness Uddin, Lord Patel, Lord Ali, Lord Bhatia and MEP Bashir Khanbhai.

National Assembly for Wales or the Northern Ireland Assembly. Following the May 2000 local elections, there were 219 Muslim councillors in local government.<sup>300</sup>

As statistics are not collected on the basis of religion, it is not possible to say the extent to which Muslims are represented in public appointments. The Government monitors public appointments on the basis of ethnicity. It is committed to equal opportunities in public appointments, including a pro-rata representation of members of ethnic minority groups.<sup>301</sup> In 2001, members of ethnic minority communities held 4.8 percent of public appointments.<sup>302</sup> Statistics should be collected on the basis of religious affiliation to see if Muslims are represented in public appointments.

### *Citizenship*

A child born in the United Kingdom will be a British citizen if one of his or her parents is a British citizen or is settled in the UK. If neither of the child's parents is a British citizen and neither is settled in the UK, the child will not be a British citizen when he or she is born. However, if the child lives in the UK for the first ten years of his or her life, and is not absent for more than 90 days in any one of those years, he or she will be entitled to registration as a British citizen. There is no time limit for applying. If the child is a: British Dependent Territories citizen, British Overseas citizen, British subject under the 1981 Act, British protected person, or British National (Overseas), he or she will be entitled to registration as a British citizen if he or she lives legally in the UK for five years. He or she must not be absent during those five years for more than 450 days and must not be absent during the last 12 months of those five years for more than 90 days. There is no time limit for applying. Access to citizenship is not restricted on the basis of religion.

The majority of Muslims living in the UK are British citizens. The British Nationality Act 1948 gave citizens of Commonwealth countries the right to freely enter, work and settle with their families in the UK as permanent residents. It was under these provisions that the initial large-scale post-war immigration of Muslim communities into Britain took place. Beginning in the 1960s, immigration legislation restricted this right of entry. However, for those who did gain entry, and their children, the British Nationality Act 1981 confirmed their right to obtain citizenship. At present, an application for naturalisation as a British citizen is possible for those who have been resident in the UK for a period of five years.

<sup>300</sup> A. Versi, *Muslim Councillors in the UK – May 2000*, London: Muslim News, 2001. As of August 2002, statistics were not available for the number of Muslim councillors elected following the May 2002 local elections.

<sup>301</sup> *Public Bodies – Opening Up Public Appointments 2002–2005*, London: Cabinet Office, 2002, p. 3.

<sup>302</sup> *Public Bodies 2001*, London: Cabinet Office, 2002, p. 173.

The experience of the group of “East African Asians” (which included a significant Muslim community), who were British passport holders resident abroad, has been very different. The Immigration Act 1968 stripped them of their right of entry and abode. They had British Overseas Citizenship but no right of abode either in the UK or elsewhere. In July 2002 the Government announced plans to return to British Overseas Citizens the right to obtain British citizenship and the right to live in the UK. In making the announcement, Home Office Minister Hughes acknowledged that they were “righting a historical wrong.”<sup>303</sup>

### *Employment in public services*

Statistics are not collected on the basis of religion, so it is not possible to ascertain the level of Muslim employment in public service positions. Ethnic monitoring of employment in the public sector shows that minority ethnic communities are underrepresented in a wide range of public sector services.<sup>304</sup> As part of its response to the Stephen Lawrence Inquiry Report, the Home Office sought to increase ethnic minority representation in public services. The action to achieve this included the setting of recruitment, retention and progression targets for the Home Office and for employment in the other service areas, including the police, fire, and probation services, with the aim of ensuring that local public services are truly representative of Black and Asian communities.<sup>305</sup> To be “truly representative of Black and Asian communities,” the diversity strategy needs to reflect faith community distributions within minority communities. In April 2001, six percent of civil service staff were from ethnic minority backgrounds; however, they remain more highly represented in junior grades than in senior ones.<sup>306</sup>

As part of the agenda for the modernisation of the civil service, targets have been set to double the number of ethnic minorities in senior positions so that by 2004 3.2 percent of senior civil servants will be from ethnic minority backgrounds. In April 2001, 2.4 percent of senior civil service staff were from ethnic minority backgrounds. Ethnic minorities constituted 3.3 percent of Army recruits in 2000. In April 2001, ethnic minority representation across the army stood at 1.7 percent of the total strength of the Armed Forces.<sup>307</sup> In 2000, 52 appointments to the judiciary – 6.9 percent of the total appointed that year – were lawyers with ethnic minority backgrounds.<sup>308</sup> Statistics

<sup>303</sup> *British Overseas Citizens to Get Right to Live in UK*, Home Office Press-release 188/2002, London: Home Office, 2002; See also House of Commons, 4 July 2002, WA 526.

<sup>304</sup> *Advisory Committee Opinion on the UK*, 2001, para. 96.

<sup>305</sup> *Race Equality – The Home Secretary’s Employment Targets*, London: Home Office, 1999.

<sup>306</sup> *Civil Service Statistics 2001*, London: Cabinet Office, 2002, p. 12.

<sup>307</sup> *Government Comments on the FCNM Report*, 2002, p. 18.

<sup>308</sup> *Government Comments on the FCNM Report*, 2002, p. 19.

should be collected on the basis of religious affiliation to see if Muslims are represented in public service employment.

## 4. INSTITUTIONS FOR MINORITY PROTECTION

### 4.1 Official Bodies

Official bodies and institutional structures are in place which have the potential to address concerns of Muslim communities.

In Northern Ireland, the Equality Commission (ECNI) provides advice and assistance in relation to all areas of discrimination, including discrimination on the grounds of religious belief. Outside Northern Ireland, there is at present no Government body for the promotion of equal treatment of Muslims or other non-ethnic religious groups. The Government bodies in place at the moment that address issues of discrimination are: the Commission for Racial Equality (CRE), the Equal Opportunities Commission (EOC) and the Disability Rights Commission (DRC). Only three of 64 Commissioners in the four different equality bodies are Muslim. The Government has announced that it will look at the feasibility of a Single Equality Commission that would cover all strands of discrimination that are within the EU Employment Directive, including religion.<sup>309</sup>

In the absence of an official body able to address issues of religious discrimination directly, the CRE has been most involved in this area. The powers and duties of the CRE are set out in the Race Relations Act 1976. The Commission has three main powers: it can advise and assist claimants; it can issue Codes of Practice, and it can conduct formal investigations or general investigations and issue a non-discrimination notice in respect of discriminatory practices. Following the Race Relations Amendment Act 2000, the Commission can also seek to enforce specific duties on public authorities intended to create equality of opportunity for persons of different racial groups. The Commission also provides funding for organisations that support its objectives of promoting racial equality.

The remit of the CRE is limited to issues of racial discrimination and the promotion of good race relations. This places a legal limit on the ability of the CRE to address the

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<sup>309</sup> Speech by Barbara Roche, Cabinet Office Minister, at seminar held by Institute of Public Policy Research, London, 15 May 2002.  
See: <[http://www.cabinet-office.gov.uk/2002/news/020515\\_equalrev.htm](http://www.cabinet-office.gov.uk/2002/news/020515_equalrev.htm)>, (accessed 25 September 2002).

concerns of Muslims. It cannot, for example, assist in a case of religious discrimination unless there is also an element of indirect racial discrimination. Within these limitations, the CRE has been able to provide some level of support. The duty to promote good race relations also creates a space in which the CRE can be much more creative in terms of religious communities and other communities at a local level. However, Muslim community organisations have expressed concerns about the ability of an organisation that has been focused on race to address issues of religious discrimination. In their experience, religious identity has often been marginalised within the discourse of race relations and has been regarded as divisive: “For many working for racial equality, race is paramount and there is no place within it for religious needs.”<sup>310</sup>

The Equal Opportunities Commission, the main body that works on gender equality issues, has a statutory duty to work towards the elimination of sex discrimination, to promote equality of opportunity between men and women and in relation to persons undergoing gender reassignment, and to keep the relevant legislation under review. The EOC has committed itself to producing equality schemes in relation to religion.<sup>311</sup> Muslim women can face discrimination and prejudice on the grounds of religious identity, race and gender. They face stereotypes not only about women, but about Muslim women – what one Muslim women’s group called the “Afghan Women’s Syndrome.” There is no campaign for building a positive self-image for Muslim women, and this is not an issue that has been addressed by the EOC. The Equal Opportunities Commission should extend its role of challenging stereotypes and prejudice about women to problems faced by Muslim women in particular; it should consider creating a forum for networking and dialogue with Muslim women’s organisation and consider launching a campaign, in partnership with Muslim women’s groups, that challenge the stereotypes and prejudice faced by Muslim women.

Responsibility for addressing the issues raised by minority faith communities is spread across Government. All Government departments have equality and diversity units. Responsibility for the implementation of Article 13 of the Employment Directive, which includes religious discrimination in employment, lies with the Department for Trade and Industry. Within the Home Office there is a religious issues section. The Inner Cities Religious Council (ICRC) was set up in 1992 to ensure that religious groups have a say on urban regeneration policy.<sup>312</sup> It is chaired by a Government minister and includes leaders of the five largest faith communities: Christians, Hindus,

<sup>310</sup> Interview with organisation E, London, 19 April 2002.

<sup>311</sup> *Equal Opportunities Commission’s Equality Scheme*, Equal Opportunities Commission, Manchester 2002, see: <<http://www.eoc.org.uk/cseng/abouteoc/equalityscheme.asp>>, (accessed 25 September 2002).

<sup>312</sup> See <<http://www.urban.dtlr.gov.uk/community/faith/forum/index.htm>>, (accessed 25 September 2002).



Jews, Muslims and Sikhs. The Council's secretariat is based in the Urban Policy Unit of the Department of the Environment, Transport and the Regions. The Minister chairs three ICRC meetings a year to discuss issues, policies and programmes, while Members speak on behalf of their communities. Other Ministers, officials and speakers attend as appropriate.

There are Equality Units in the Scottish Executive, the National Assembly for Wales, and the Office of the First Minister and Deputy First Minister in the Northern Ireland Executive. There is no equal opportunities committee in the Northern Ireland Assembly, but the Committee of the Centre oversees the work of the Office of the First Minister and Deputy First Minister which contains the Equality Unit.

In the Scottish Parliament, a Standing Committee on Equal Opportunities has been created, with the aim to "consider and report on matters relating to equal opportunities and the observance of equal opportunities within the Parliament."<sup>313</sup> Under the rules of the Scottish Parliament, a statement regarding their impact on equality must accompany all legislative proposals from the executive. The Scottish Executive, after consultation,<sup>314</sup> published an equality strategy and created an Equality Unit within the executive to take forward its work in this area.<sup>315</sup>

There are also Equality Units in local government. There is no consistency in the extent to which these examine the needs of faith-based communities. Examples of good practice include the appointment by the London Borough of Camden of an inter-faith liaison officer whose work includes building up trust and good working relationships with faith communities to incorporate this sector into the mainstream of civic activity.<sup>316</sup>

Local education authorities (LEAs) are required to maintain Standing Advisory Councils on Religious Education (SACRE), with responsibility for collective worship and for religious education in community schools. The LEA determines the membership of these bodies. There are separate panels for the Church of England, other faith groups and other Christian churches. Muslim groups complain that some faiths are given a better standing within such Councils than others.

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<sup>313</sup> Standing Order Rule 6.9.

<sup>314</sup> *Towards an Equality Strategy*, Edinburgh: Scottish Executive, 2000.

<sup>315</sup> *Equality Strategy: Working together for Equality*, Edinburgh: Scottish Executive, 2000.

<sup>316</sup> Local Government Association, *Faith and Community*, London: LGA Publications, 2002, p. 11.

## 4.2 Civil Society

A strong civil society is vital to liberal democracy. Civil society organisations enable communities to develop solutions that meet their needs and circumstances, to speak for themselves and to articulate their own needs, rather than relying on others to speak for them. These organisations provide an essential medium for full and effective participation in the democratic process.

There are a diverse group of organisations operating under the umbrella of civil society within British Muslim communities. They range from large national bodies to small local community groups: from organisations that campaign and lobby on issues affecting Muslim communities nationally to voluntary organisations that provide services for Muslim communities within their neighbourhood and for the wider local community; others are involved in the advancement of the faith and promoting understanding of Islam.

The involvement of Muslim civil society in policy-making is critical to ensuring their participation and inclusion in governance and the development of appropriate and effective policies. Involvement of Muslim communities can be institutionalised or non-institutionalised. Institutionalised involvement “implies a structural, longer term co-operation between the local government and Muslim communities and comparatively direct access to the decision making process,” while non-institutionalised involvement “generally has less weight in the decision making process. It often implies limited, if not short term, commitment and occurs sporadically (one-off events) rather than structurally (regularly scheduled).”<sup>317</sup> Institutionalised involvement can be in an “advisory” or a “decision-making” capacity. Non-institutionalised involvement can be by *ad hoc* and contractual means. These different types of involvement can exist in parallel.

While the structures for participation and involvement are important to the inclusion of Muslim communities in policy-making, the quality of involvement is also a crucial element. Factors affecting the quality of involvement include openness of dialogue, the attitudes of the parties involved, and the degree to which their expectations are being met.<sup>318</sup> In addition to this, two further key factors influence the quality of involvement. First, the organisational strengths of community organisations are a crucial factor in the involvement of Muslim communities. As Muslim organisations become “more professional and confident with their work, they also become more effective partners for local authorities. This makes them better able to provide good sound advice and

<sup>317</sup> EUMC, *Situation of Five Islamic Communities in Five European Cities*, Vienna, 2001, pp. 32–33, (hereafter “EUMC, Situation of Five Islamic Communities, 2001”).

<sup>318</sup> EUMC, *Situation of Five Islamic Communities*, 2001, p. 34.

may subsequently lead to more direct involvement in decision making fora.<sup>319</sup> A second factor is the perception that stakeholders have about their involvement in the process of policy advice and decision-making. Muslim communities need to know and see that their efforts are taken seriously and that they are regarded as equal partners in the process. The involvement of the Muslim community is also affected by the perceptions of policy-makers of the value of Muslim community contributions to the policy-making process.

### *The development of the Muslim voluntary sector*

The Muslim communities are only in the early stages of developing a vibrant civil society. Several factors can be identified to account for this. The Muslim communities have been organising in a significant way for less than 40 years. Most Muslims migrated from countries where Muslims formed the majority community, and their needs were accommodated automatically. They did not have experience of organising, as a minority, to gain access to social resources or to provide for community needs.

The initial immigrants were young immigrant workers with low educational levels and few professional skills: “It wasn’t apparent to them that they needed social welfare support; that they would be dependent on the local authority for those services.”<sup>320</sup> The community’s focus was on providing mosques, *halal* butchers and Islamic schools: “What they didn’t realise is that there was no point in sending a child to an Islamic school if that child goes to a bed and breakfast to live or if the couple has marital difficulties or there’s domestic violence or there’s child abuse or there is something else happening in that family which is not going to give that child the secure background needed to prosper. It just seemed imbalanced to say that the mosque and education were going to make us all healthy – spiritually, mentally, physically – it wasn’t.”<sup>321</sup>

The Muslim voluntary sector is young. It has much emotional and social capital, in terms of people’s energy and commitment, but it has not yet built up a substantial asset base. For example, few organisations have their own premises. The lack of a secure asset base makes it difficult to plan and adapt to changing circumstances.

Muslim voluntary sector bodies face difficulties in accessing funding. Minority communities have been seen predominantly in terms of their racial and ethnic identities, and as a consequence funding has focused on organisations that identified themselves in terms of their ethnic identity. To gain funding some Muslim organisations were forced to hide or disguise their identity behind an ethnic label. Others that “came out” as Muslim organisations were still perceived in terms of ethnic

<sup>319</sup> EUMC, *Situation of Five Islamic Communities*, 2001, p. 35.

<sup>320</sup> Interview with organisation A, London, 16 April 2002.

<sup>321</sup> Interview with organisation A, London, 16 April 2002.

identities. A Muslim community group had its application for funding of a nursery rejected because it was thought that it would be serving a subset of the Asian community, and that funding for such a small group could not be justified. However, this evaluation ignored the fact that the Muslim community in that area was much larger than the Asian community, including those from Kurdish, Bosnian, Somalian, Arab and Malaysian communities.<sup>322</sup>

Further difficulties for the Muslim voluntary sector in accessing funding arise from uncertainty about the extent to which funding bodies can fund Muslim organisations. Funding bodies fail to see the distinction between organisations that provide services to a Muslim community and those that are involved in propagating their faith. Muslim voluntary sector bodies would like to see clearer recognition that Muslim organisations have a right to public funding.<sup>323</sup>

The prohibition on gambling within Islam means that Muslim community organisations are also excluded from one of the largest providers of funding for the voluntary sector, the National Lottery Board's Community Fund (NLBCF). In the words of one organisation: "Through choices that you make as a Muslim body you cut yourself off from that funding stream and that is one of the largest funding streams that you have."<sup>324</sup> The Government acknowledges that certain faith groups are unable to apply for funding from the NLBCF and argue that funding applications by such organisations to other public bodies should be "treated more sympathetically."<sup>325</sup>

The requirements of inclusiveness can also be used to deny Muslim community groups funding, as such groups are often perceived as exclusive and as obstacles to integration. There is some evidence suggesting that many Muslims do not access the services of mainstream voluntary sector providers.<sup>326</sup> There are many reasons for the reluctance to access these services, including feelings that such services will not be sensitive or appropriate to their needs. In such situations the Muslim voluntary sector – while not replacing the mainstream voluntary sector body – may be the most effective means of reaching those that would otherwise remain excluded and isolated. For example, a Muslim women's group found that its users would not have accessed their services if it had identified itself as a general women's group or an Asian women's group. By identifying itself as a Muslim group, the organisation was able to reach and provide services to women who would otherwise have remained excluded. For some women, the group provided skills, knowledge, and experience that allowed further participation

<sup>322</sup> Interview with organisation A, London, 16 April 2002.

<sup>323</sup> Interview with organisation B, Glasgow, 13 May 2002.

<sup>324</sup> Interview with organisation B, Glasgow, 13 May 2002.

<sup>325</sup> Local Government Association, *Faith and Community*, London: LGA Publications, 2002, p. 18.

<sup>326</sup> Interview with organisation A, London, 16 March 2002.

and involvement in other non-Muslim bodies.<sup>327</sup> The Cattle Report recommended against separate funding for distinct communities, except “for those circumstances where the need for funding is genuinely only evident in one section of the community and can only be provided separately.”<sup>328</sup> There must be care to ensure that this does not prevent targeted intervention based on real need. Community organisations would like to see an acknowledgement that Muslim organisations could serve the needs of the community as a whole, but also an acceptance of Muslim organisations that would serve principally the needs of Muslims.<sup>329</sup>

Even when funding is available, Muslim community organisations may not be in a position to tap into funding streams. There are organisational, resources and capacity issues that operate as barriers to accessing funding. When bidding for a funding package, an organisation must show that it has the organisational infrastructure to manage that funding. Micro- and small sized organisations – which account for the majority of the Muslim voluntary sector – generally lack the range of skills and resource capacity to meet the expectations and requirements of funders. These include the lack of book-keeping and financial management skills and the ability to draft business and strategic plans. Without the capacity to tap into long-term funding streams the Muslim voluntary sector focuses on funding for short-term, often single-year, project funding. This reduces efficiency within the organisation as resources are diverted in the course of the year to securing future funding rather than delivering services. Thus bodies can be stuck in a vicious circle in which they do not have “the capacity in skills and resources to access the skills and resources necessary to develop the required skills and resources.”<sup>330</sup>

The first task is therefore one of capacity building within these civil society organisations. This should focus on strengthening the ability of community organisations and groups to build their structures, systems, people and skills so that they are better able to define and achieve their objectives, manage projects and engage in consultation and planning. Much work is already being done on capacity building within the voluntary sector generally. It has been recognised that black and minority ethnic voluntary sector organisations were not accessing the opportunities available to the mainstream voluntary sector. Research is needed to see whether Muslim voluntary sector bodies are accessing the resources provided for voluntary sector bodies and for the black and minority ethnic voluntary sector in particular.

<sup>327</sup> Interview with organisation K, Edinburgh, 14 May 2002.

<sup>328</sup> Cattle Report, p. 50.

<sup>329</sup> Interview with organisation B, Glasgow, 13 May 2002.

<sup>330</sup> W. Sullivan, “Communities Within Community – Ethnic Minority Networks and Civil Society in Scotland,” *Renewal* vol. 10, No. 2, 2002, p. 30.

The ability of Muslim voluntary sector bodies to contribute to social inclusion and building of cohesive communities is hindered by their isolation from the black and minority ethnic voluntary sector and wider civil society structures. Connections to such networks are vital for the development of the voluntary sector bodies, as they provide information, resources, solidarity, influence and knowledge. The mainstream and the BME voluntary sector bodies need to accept the identity and validity of Muslim voluntary sector bodies and include them within their networks.

*Government's view of the role of faith-based civil society bodies*

A recent official report on the relationship between faith-based organisations and Government recognised that minority faith communities “have particular difficulty engaging with existing consultation processes and accessing funds, yet they are likely to be in particular need of help: they are often concentrated in areas of severe deprivation, they coincide with minority ethnic communities and they may lack the skills required to engage with wider structures.”<sup>331</sup> The report sets out reasons for Government engagement with faith communities, and it recognises the importance of faith-based groups in the delivery of public services: “faith groups may be the best means of reaching those in need within their faith community and sometimes those in the wider community also.”<sup>332</sup>

The Government views engagement with faith communities and civil society within the context of its reform of local government and the need for local authorities to “reconnect” with local communities. The Government also sees a role for faith communities in regeneration and renewal programmes. For example, guidance for the Single Regeneration Budget (SRB) programme made it clear that faith communities were valid partners and eligible for SRB funding.<sup>333</sup> Similarly, the guidance for developing local partnerships to deliver under the *New Deal for Communities* (NDC) programme makes it clear that funding is open to faith communities.<sup>334</sup> The policies are in place for Muslim civil society organisations to participate in regeneration and renewal projects, but as the Government acknowledges, “there is a low level of involvement of faiths other than the main Christian Churches ... the principle that faith communities are valuable partners in regeneration is widely promoted, but the practice in translating this into substantial outcomes is ‘work in progress.’”<sup>335</sup>

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<sup>331</sup> Local Government Association, *Faith and Community*, 2002, p. 4.

<sup>332</sup> Local Government Association, *Faith and Community*, 2002, p. 7.

<sup>333</sup> Local Government Association, *Faith and Community*, 2002, p. 13.

<sup>334</sup> Local Government Association, *Faith and Community*, 2002, p. 13.

<sup>335</sup> Local Government Association, *Faith and Community*, 2002, p. 13.

In the Government's view, there is no clear consensus on the need for public funding of capacity building within faith communities. They recognise that "support for the strengthening of structures within a faith community could have major benefits in terms of community participation, the coordination of community services, civic renewal, and the improvement of public services," but at the same time they see dangers in "involving central and/or local government in sectional politics within faith communities or an unacceptable alignment of with a particular faith group over others."<sup>336</sup> Muslims argue that such dangers are inherent in official funding for any community group, including ethnic community groups, and do not provide a sufficient reason to oppose funding of faith groups in particular.

A strong Muslim voluntary sector will be a crucial partner for Government in effectively tackling social exclusion faced by many in Britain's Muslim communities. Lack of infrastructure support and obstacles to accessing funding mean that most operate in a reactive atmosphere, working to tight budgets and heavily reliant on short-term funding. Most lack the capacity to work more strategically, coordinate their approaches and tackle policy issues. The Government's concerns over support for capacity building in the faith based voluntary sector should not prevent involvement in capacity building. The potential benefits to all aspects of policy development are tremendous.

The Government and other funding bodies should undertake an audit of the extent and impact of funding of Muslim voluntary sector and publish the results.

The Government and other funding bodies should provide funding and support for capacity and infrastructure building for Muslim voluntary sector organisations. The aim of such funding should be:

- to help Muslim voluntary sector organisations develop their capacity to gain further funding;
- to help Muslim organisations engage in effective advocacy on mainstream social policy decisions which affect them, particularly those involving substantial allocation of resources, for example on combating social exclusion;
- to arrange professional support for senior staff in Muslim organisations, including mentoring, financial management and organisational development.

### *Muslim civil society experience of engagement with Government*

The ability of Muslim civil society organisations to participate in the policy-making process is hindered by a lack of knowledge or experience, within these organisations, of

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<sup>336</sup> Local Government Association, *Faith and Community*, 2002, p. 18.

the policy process and how it can be used effectively to create change. “[E]ven if the Government was tomorrow to consult, at a high level, on a number of policy issues, there is a real lack of expertise and institutional framework within the Muslim community.”<sup>337</sup> Personal contacts and networks are an important element for effective participation in policy processes. As a relatively new sector, Muslim civil society bodies do not have contacts and experience that other bodies have. They are on a steep learning curve in understanding how to influence the policy-making process.

Muslim community groups acknowledge that there has been an increase in consultation with Muslim civil society at all levels. However, the experience of this consultation is mixed. In the experience of one group, there were “limited positive experiences with certain officials.”<sup>338</sup> At the same time they feared that the Government was seeking to impose a leadership on the Muslim community by consulting only with those organisations that were acceptable to them: “The key difficulty in terms of engagement with civil society is that they only listen to certain voices ... there is no feeling that you have to include people ... there is very much a need to go and seek out groups who are specialising in certain areas and consult them. And if they ... tell you things you don’t like you should still listen and take it on board.”<sup>339</sup>

There was also a feeling that consultation has been superficial: “We are only consulted once everything has been done. And on that level there is no point. They need our cooperation to implement this, not to actually develop it.”<sup>340</sup> “So far, most of the consultation ... appears to be at a minimum level. A lot of it is to do with public relations, with symbolism, rather than real effects on the ground.” Consultation has been criticised for being *ad hoc* and reactive, rather than long-term and strategic:

When there is a crisis there is a meeting, it is not organised in a fashion which is regular, and it very much depends on the person who is occupying that seat. The people chosen can be quite arbitrary, [and] the discussions tend to be quite emotional rather than strategic. There is no strategic vision, you don’t really have people who are sitting down and writing proper reports for ministers and policy makers to take too seriously. It means there is nothing in these meetings that the Government doesn’t already know – but they just do it anyway – so that everyone can say ‘oh, the Muslims have been consulted.’<sup>341</sup>

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<sup>337</sup> Interview organisation F, London, 19 April 2002.

<sup>338</sup> Interview organisation E, London, 19 April 2002.

<sup>339</sup> Interview organisation E, London, 19 April 2002.

<sup>340</sup> Interview organisation E, London, 19 April 2002.

<sup>341</sup> Interview organisation F, London, 19 April 2002.



Some Muslim organisations have acknowledged that there are ways in which Muslim communities could themselves act to improve the consultation process, such as through providing more coordinated input and response.

The Government should encourage, promote and support the active involvement of Muslim communities in institutionalised procedures of policy-making and also include them in more informal channels of dialogue.

### *Engagement of civil society at the European level*

The European Union and the Council of Europe have done much valuable work on tackling racism, xenophobia and anti-Semitism. The EU definition of racism and xenophobia includes identification of people for adverse treatment on grounds that include “religion or belief.”<sup>342</sup> Both the EUMC and ECRI have published reports on Islamophobia and Europe’s Muslim communities.<sup>343</sup> All aspects of the European Union and the Council of Europe’s work on racism and xenophobia should include within its scope Islamophobia and anti-Muslim prejudice.

The expansion of EU policy-making into areas of discrimination, asylum, immigration and policing will have significant impact on British Muslim communities. Therefore, it is vital that they participate in the policy development process in these areas. The obstacle is again a lack of capacity, experience and knowledge. Muslim communities are only beginning to engage in policy-making at the national level; they have not even looked at the European level. There are no links with or knowledge of policy processes in the EU.

The European Union and the Council of Europe should launch a campaign explaining their policy-making processes to Muslim and other minority communities.

The European Union should fund and facilitate networking by Muslim community organisations across Europe that will help them build strategic alliances and identify common issues of concern.

<sup>342</sup> Proposal for a Council Framework Decision on Combating Racism and Xenophobia, COM/2001/0664.

<sup>343</sup> See EUMC, *Situation of Five Islamic Communities, 2001*; EUMC, *Summary Report on Islamophobia in the EU after 11 September*, Vienna, 2002; ECRI *General Policy Recommendation No 5: Combating Intolerance and Discrimination Against Muslims*, Strasbourg, 2000.

## 5. RECOMMENDATIONS

### **Discrimination: changes in the legal framework**

- The Government should make a commitment to creating, when legislative time allows, a positive duty for public authorities to eliminate unlawful religious discrimination in relation to their function and to promote equality of opportunity and good relations between persons of different religious belief.
- The United Kingdom should sign Protocol 12 to the ECHR; this will ensure comprehensive protection from religious discrimination in all areas that are not currently covered by the HRA.
- The Government should state its commitment in principle to legislation prohibiting religious discrimination in all areas covered by the existing anti-discrimination laws. This could be introduced once it has implemented the EU Employment Directive. In the meantime, the Government should publish non-statutory codes of practice that provide practical advice and assistance to prevent direct and indirect religious discrimination in education, housing and the provision of goods, services, and facilities.

### **Discrimination: changes in policies**

- Before policy options targeted to assist Muslim communities can be developed, there is a need to build up solid baseline information about Muslim communities. It is therefore essential that where statistics and data are collected on the basis of race and ethnic origin, information should also be collected on the basis of religious affiliation.
- Research is urgently needed to investigate the levels of social exclusion of Muslims so that effective policy responses can be developed to tackle this problem.
- Government and refugee support organisations should ensure their policies and practices are appropriate for Muslim asylum applicants.
- Employers must monitor their employment decisions on the basis of religious affiliation to ensure that a policy, practice, provision or criteria does not have the unintended effect of disadvantaging Muslims or employees of any other faith.
- The government should fund research into developing practical and effective guidance to assist monitoring faith identities.

- Support for the legislation on religious discrimination should include providing a code of practice for employers and an education campaign to inform communities, employers and employees of their rights and responsibilities under the new legislation.
- There should be diversity monitoring by public service providers that includes monitoring on the basis of religion.
- Delivering services to diverse religious communities should be identified as a theme for the fifth round of the Beacon Council Scheme.
- The Government and Audit Commission should develop guidance, performance standards and performance indicators that assist local authorities and other public bodies in delivering service to Muslim and other faith communities.
- The Association of Muslim Police Officers and representatives of the Muslim community should work together to produce guidelines to support sensitive policing of Muslim communities.
- The British Crime Survey should monitor the Muslim communities' experience of crime and policing.
- Effective implementation of the Employment Directive will require publicly funded support for advice, assistance and representation in religious discrimination cases.

## **Minority Rights**

- Reports under the FCNM should cover the situation of British Muslim communities along with those of other minority faith communities.

## **Education**

- Where there is demand, schools should consider offering Arabic as a modern language option alongside modern European languages.
- A positive endorsement by Ministers of the importance of schools including information and discussion about equality, anti-discrimination legislation and minority protection laws within the citizenship curriculum would constitute a welcome encouragement to teachers.
- Education departments should conduct a review to ensure integration into all aspects of the curriculum of the contribution made by Muslims.

- All guidance on accommodating the religious needs of pupils should be brought together, strengthened and reissued under one cover. School inspection bodies should include in their reports the extent to which a school accommodates the religious needs of pupils from different faith communities. School inspection bodies should use the reissued guidance as a benchmark for evaluation in their reports.
- Education departments should consider ways in which education about Islam can be integrated into the general schooling process. This must be done in partnership and consultation with the Muslim communities.
- Schools should avail themselves of appropriate religious awareness training, this should be provided for all teaching and non-teaching staff and for governing bodies. Government should make funding available for such training.
- Teacher training programmes should aim at the recruitment and training of teachers that are able to teach Arabic as a modern foreign language.

## Media

- As an important step in enabling Muslims to engage with media coverage, media regulatory bodies such as the Press Complaints Commission, the Independent Television Commission and the BBC should consider launching a campaign to raise awareness of their complaints mechanisms among Muslim communities.
- The Department for Culture, Media and Sport should consider funding research that would bring together and highlight models of good practice for long-term sustained engagement between media organisations and minority communities.
- Recruitment, retention and training policies for employment of ethnic minorities in the media should be monitored to ensure that representative numbers of Muslims are accessing them.
- The BBC, ITV, Channel 4 and Channel 5 should undertake and publish an audit of their programming to see the extent to which Muslims participate in programmes. The results of the audit should be published
- The NUJ should consider developing guidelines for reporting about Muslim communities.

## Participation in Public Life

- Statistics should be collected on the basis of religious affiliation to see if Muslims are represented in public appointments and public service employment.

## Institutions

- The Equal Opportunities Commission should extend its role of challenging stereotypes and prejudice about women to problems faced by Muslim women in particular; it should consider creating a forum for networking and dialogue with Muslim women's organisations and consider launching a campaign, in partnership with Muslim women's groups, to challenge the stereotypes and prejudice faced by Muslim women.
- Mainstream and Black and minority ethnic voluntary sector bodies should accept the identity and validity of Muslim voluntary sector bodies and include them within their networks.
- The Government and other funding bodies should undertake an audit of the extent and impact of funding of the Muslim voluntary sector and publish the results.
- The Government and other funding bodies should provide funding and support for capacity and infrastructure building for Muslim voluntary sector organisations. The aim of such funding should be:
  - to help Muslim voluntary sector organisations develop their capacity to gain further funding;
  - to help Muslim organisations engage in effective advocacy on mainstream social policy decisions which affect them, particularly those involving substantial allocation of resources, for example on combating social exclusion;
  - to arrange professional support for senior staff in Muslim organisations, including mentoring, financial management and organisational development.
- The Government should encourage, promote and support the active involvement of Muslim communities in institutionalised procedures of policymaking and also include them in more informal channels of dialogue.

- All aspects of the European Union and the Council of Europe's work on racism and xenophobia should include within its scope Islamophobia and anti-Muslim prejudice.
- The European Union should fund and facilitate networking by Muslim community organisations across Europe that will help them build strategic alliances and to identify common issues of concern.
- The European Union must ensure that it consults Muslim communities across Europe, in developing policies that have a particular impact on Muslim communities, including policies on discrimination, asylum, immigration and policy.
- The European Union and the Council of Europe should launch a campaign to explain their policy-making processes to Muslim and other minority communities.

# Map – Distribution of Muslim Communities in the UK

**1 Wales Cardiff**

6Areas: Mainly Cardiff, with largest community in Tiger Bay  
 Schools: 1  
 Mosques: 11  
 Political representation: 1 councillor (Rhondda)

**2 Birmingham**

Background: Pakistan and Kashmir. The world's biggest expatriate Kashmiri population is in Birmingham.  
 Areas: Mainly Pakistani: Sparkbrook, Highgate.  
 Mixed: Small Heath, Aston, Bordesley Green  
 Schools: 11. St Saviours School in Saltley boasts the highest percentage of Muslim pupils of any Church School in the country  
 Mosques: 108  
 Political representation: The People's Justice Party (justice for Kashmir) has 4 councillors: Ali Khan, Khalid Mahmood, Mohammed Nazam. There are 9 other Muslim councillors  
 MP: Khalid Mahmood, Labour, Birmingham Perry Barr (England's first Muslim MP)

**3 Northern Ireland**

Background: Pakistan, Bangladesh, Arab  
 Areas: Belfast (Pakistani, Bangladeshi, Arab); Craigavon, (Pakistani, Arab); North Down (Bangladeshi); the Ards peninsula (Bangladeshi)  
 Schools: none  
 Mosques: 20  
 Main mosque: Belfast Wellington Park  
 Political representation: none

**4 Scotland Glasgow Edinburgh**

Background: Arab, Pakistan, Turkey, Africa, Malaysia and India  
 Areas: 33,000 Muslims in the Glasgow area, half of Scotland's Islamic population.  
 Edinburgh has 15,000 Muslims living in the city of which 10,000 are Pakistani.  
 Schools: 1  
 Mosques: 20  
 Main mosque: Central Mosque of Glasgow  
 Political representation: 4 Muslim councillors in Glasgow. Bashir Mann, Hanzala Malik, Mohammed Shoib, Shaugar Butt MBE  
 MP: Mohammed Sarwar, Labour, Glasgow Govan, was the UK's first Muslim MP

**5 Oldham**

Background: Predominantly Pakistan and Bangladeshi  
 Areas: Glodwick, Werneth and Westwood  
 Schools: Five Bangla schools. 20% of schoolchildren in Oldham are from an ethnic minority background. Predicted to rise to 30% by 2011.  
 Mosques: 16  
 Politicians: Mayor Riaz Ahmed is a Muslim;  
 7 councillors

**6 Bradford**

Background: Predominately from Pakistan Kashmir and Bangladesh  
 Where: Manningham, Bradford Moor, Little Horton  
 Schools: 2 listed in Muslim directory  
 Mosques: 54 in Bradford area (includes Skipton, Keighley, North Yorkshire). Approximately 100,000 Muslims attend weekly prayers in Bradford  
 Political representation: 12 councillors

**7 Leeds**

Background: Mainly from Pakistan, India, and Bangladesh. The Arab community is about 1,000 plus many small communities from Bosnia, Kosova and other countries of origin.  
 Areas: Chapel Allerton, City & Holbeck, Harehills, Headingley  
 Schools: 1 listed in Muslim directory  
 Mosques: 21  
 Political representation: 1 councillor

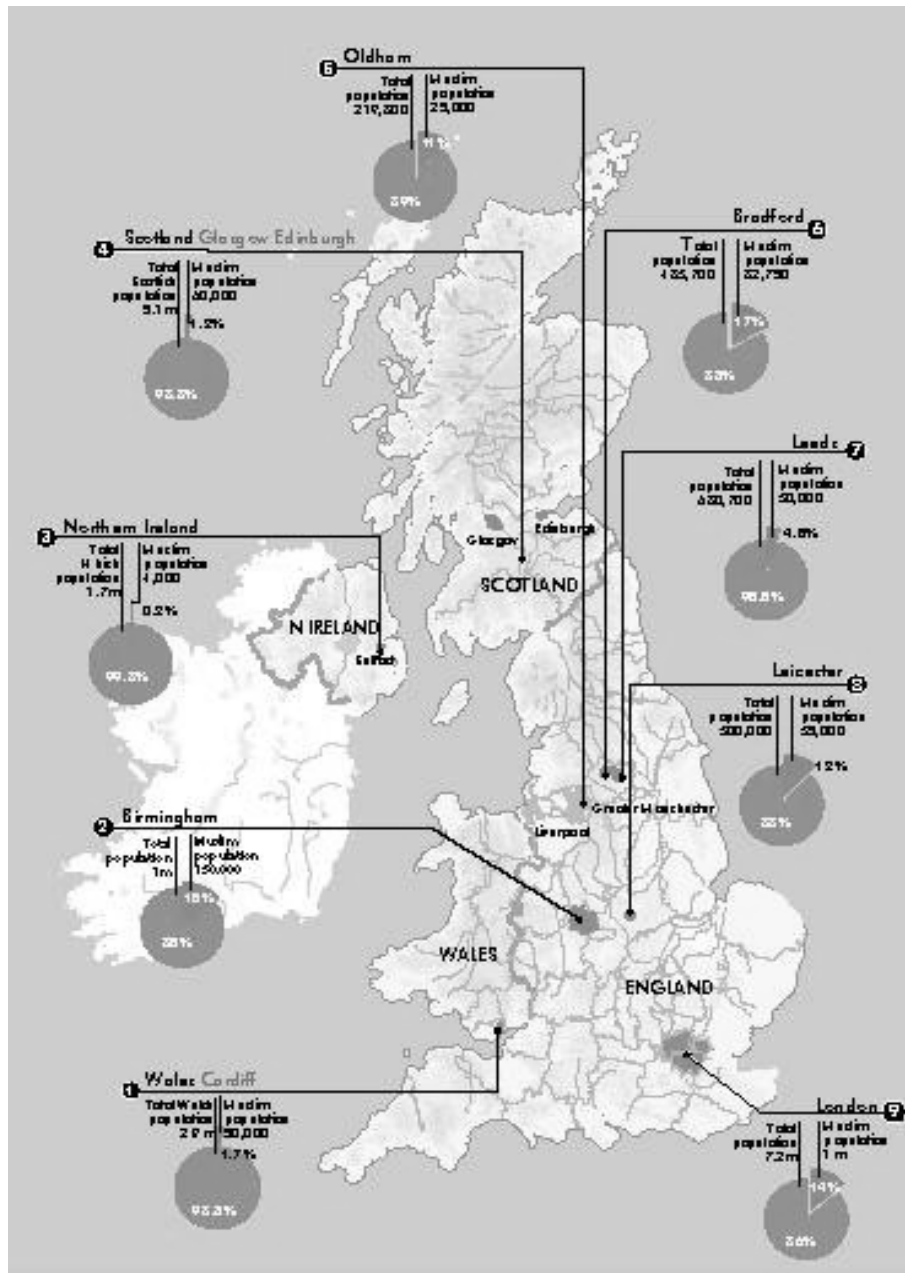
**8 Leicester**

Background: Pakistan, Bengal, Somalia  
 Areas: Highfields, Spinney Hill  
 Schools: 8  
 Mosques: 19  
 Political representation: 4 councillors  
 London

**9 London**

Background: The most diverse Muslim community in Britain. Almost 250,000 Muslim Londoners are of Pakistani or Bangladeshi origin, and a further 150,000 of Turkish. Other communities hail from Saudi Arabia and the Gulf states, north Africa, Cyprus, Somalia and Nigeria.  
 Areas: Pockets all over the capital. High concentration in east London. 123,000 people of Bangladeshi descent in Tower Hamlets, accounting for 60% of the population in Spitalfields ward and over 30% of four other wards. Projections suggest the 2001 census show non-white majorities in Newham and Brent  
 Schools: 20  
 Mosques: 165 (estimated)





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