

Lessons Learned:

**Views in the Context of Mid-Term Review of Implementation of the EU Framework
for National Roma Integration Strategies 2012 2020**

October 2017

EXECUTIVE SUMMARY

The Regional Office for Europe of the United Nations Human Rights Office (OHCHR) offers below views in the mid-term review of the EU Framework for National Roma Integration Strategies up to 2020. The focus of this document is on lessons learned from our experience and practice in supporting Governments, National Human Rights Institutions, civil society and rights-holders in work to secure the human rights of Roma in Europe and beyond. The analysis provided is an assessment in view of international human rights law -- and in particular the nine core international human rights treaties -- OHCHR's core mandate. Lessons learned and presented below include:

- There is a need for a post-2020 EU policy focusing on Roma inclusion, to follow up and carry forward the work begun under the current EU Framework.
- Next chapters in Roma inclusion efforts can build on creative efforts developed in the recent period to strengthen Roma inclusion on a human rights basis, take a more comprehensive approach, and explicitly recognize the problem of anti-Gypsyism.
- The European Union now has sufficient awareness of the scope and nature of the types of human rights abuses to which Roma are exposed to be able to craft frameworks to end such abuses. These insights should be built into European policies going forward, with a view to ending these practices once and for all, including:
 - The next period should see a major redoubling of efforts to combat segregation in education, housing, health care and employment, including via vigorous application of the Commission Guidance document in this area, strengthening of data gathering and documentation in this area, expansion of the use of infringement proceedings, as well as via the many other tools available to the Union in this area.
 - Genuine inclusion depends on the existence of viable effective remedy for abuses, as well as on the willingness by authorities at all levels to apply them, particularly (although not only) in cases of serious human rights abuse. European Union frameworks on Roma inclusion should include explicit provision for developing and advancing the right to effective remedy for Roma.
- Efforts should continue to highlight and foster positive local practices and partnerships, with a view illustrating positive possibilities to make progress in overcoming Roma exclusion.
- Policy frameworks going forward should explicitly name targets in areas related to gendered aspects of the negative treatment of Roma, including but not necessarily limited to strengthening representation in public and political life, tackling child and early marriage, and strengthening outreach by and access to mainstream services for domestic violence.
- The European Union should continue to play a very strong role in supporting vibrant and independent civil society organisations working on Roma rights and Roma inclusion, and should affirm the importance of freedom of speech, freedom of peaceful public assembly, and rights to truth as intrinsic to human dignity, as well as crucial for democratic societies.
- The Commission should be given a pan-college mandate to act on Roma inclusion both inside and outside the borders of the European Union.

I. INTRODUCTION

The current document responds to the European Commission's request for views on the implementation of the EU Framework for National Roma Integration Strategies up to 2020, adopted in 2011. This document is based on OHCHR Regional Office for Europe's and Europe-based Field Presences' experiences in work to combat human rights abuses of Roma, and to support efforts at Roma inclusion. The analysis provided here is an assessment in view of international human rights law, and in particular the nine core international human rights treaties.¹ It is also done with a view to the Durban Declaration and Plan of Action – the commitments made in the context of the 2001 World Conference Against Racism – at which States made extensive commitments to end racism and racial discrimination against Roma and others regarded as “Gypsies”, as well as to undertake a range of tangible measures to improve the situation of Roma.²

This document cannot be considered comprehensive, as OHCHR's role and efforts in this area are themselves limited. Nevertheless, OHCHR's actions and those of the UN human rights system more broadly are sufficiently substantive and engaged that we are in a position to offer insights as to the efficacy of current design of European policy to support Roma inclusion, as well as suggestions going forward.³ Our central conclusions in this area are as follows:

- (1) The adoption in 2011 of the first large-scale EU policy in the area of Roma inclusion constituted an important move forward in responding to the very troubled human rights situation of Roma throughout the continent. The very existence of the EU Framework has acted as catalyst for a range of positive steps in and by the Member States, many of which could not have taken place without European Union support. This work is however very much only in mid-stream and needs to be carried forward post-2020. There is therefore a strong need for a post-2020 EU policy focusing on Roma inclusion, to follow up and carry forward the work begun under the current EU Framework.
- (2) The current Framework is however limited in scope. It covers primarily the areas of education, employment, health and housing. Our work in the field offers tangible lessons learned for the design and implementation of measures going forward, including both actions under the remaining term of the first EU Framework for National Roma Integration Strategies, as well as for the design of measures post-2020.

It is for these reasons that this document is designed as a (non-comprehensive) “lessons learned” document.

¹ In particular, in the current context, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

² <http://www.un.org/WCAR/durban.pdf>

³ In particular, please see UN Human Rights Office Global Study on the Human Rights Situation of Roma Worldwide, 11 May 2015, A/HRC/29/24:
<http://www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/GlobalStudyonRomaworldwide.aspx>.

II. LESSONS LEARNED

1. Building on Positive Developments

As part of the review, the EU published data comparing the situation of Roma in 2011 with 2016 in nine countries.⁴ As a result of this data, divergences in the success of policies of different countries is for the first time evident. For example, the share of active young people in Portugal increased by 27% during the five-year period from 2011-2016, while during the same period it dropped in the Czech Republic, Spain, Hungary, Romania and Slovakia.

Lesson Learned: Positive efforts yield positive results. Those countries and localities which have devoted serious effort to overcoming legacies of exclusion of Roma have made important steps forward. The fact that these examples remain the exception rather than the rule is powerful justification for the advancement and further development of EU Roma Inclusion policy frameworks in the period 2020 plus.

Some countries have made genuine conceptual human rights advances in the recent period within their action with regard to Roma. Most notably, Sweden built upon “truth commission” thinking to hold a broad public consultation on the negative aspects of Sweden’s historic treatment of Roma, and it published a “white paper”, setting out for the official record the legacy of anti-Gypsyism in driving Roma exclusion in Sweden. This remarkable public accounting evidently reflects a determination both to overcome the legacies of the past and their impact on the present, as well as to make use of the human rights tool chest to advance Roma inclusion. Some voices are calling for a similar EU-level process, as well as a sharing of this experience across the Member States.

Lesson Learned: Next chapters in Roma inclusion efforts can build on creative efforts developed in the recent period to strengthen Roma inclusion on a human rights basis.

2. Comprehensive Approach

Thematically, the narrow focus of the existing Framework on education, employment, health care and housing has assisted in concentrating Roma inclusion efforts in particular areas. The drawback of this has been, on the one hand, that additional areas – such as gender equality and addressing civic documentation – have had to be appended in an ad hoc manner, as well as that certain issues such as access to justice have for the most part fallen out entirely. The international human rights treaty system offers a comprehensive, legally grounded basis on which the next period might expand, without losing the valuable aspect of focus.⁵

⁴ http://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=46282

⁵ See in particular United Nations Committee on the Elimination of Racial Discrimination General Recommendation 27, Discrimination against Roma:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7499&Lang=en.

Lesson Learned: Next steps in European Roma policies might take a more comprehensive approach, grounded in human rights as set out under international law.

3. Recognizing and Addressing Anti-Gypsyism

A broad range of actors including civil society, governments and the European Parliament are increasingly calling for a more explicit recognition of the role played by anti-Gypsyism in driving the exclusion of Roma. OHCHR supports these voices, in line with the increasing attention paid in the international human rights system to the role of stigma in giving rise to patterns and practices of human rights abuse.⁶ At the same time, it is evident that non-recognition of stigma-based forces has hindered real progress in a number of areas. Explicit recognition of anti-Gypsyism, and work to advance its recognition and removal from policy and practice, can play a powerful role in advancing Roma inclusion.

Lesson Learned: Recognition of the problem of anti-Gypsyism should be an explicit part of human rights-based Roma inclusion work going forward.

4. Taking Action against Unchecked Abuses

OHCHR's work on the human rights of Roma in the period 2009-present has focused on a range of matters, including on working with states and civil society to end abuses of housing rights, and in particular forced evictions and racial segregation in the field of housing, as well as on abuses carried out by police and related security personnel. In these areas, despite the existence of the EU framework, there appears to be little forward motion. As concerns forced evictions from housing, these continue to be reported across a wide range of Member States and EU candidate countries. In France alone, it is reported that the years 2015 and 2016 saw over 10,000 evictions from housing each, as well as reportedly 4600 forced evictions alone in the period July-October 2017.⁷ The European Committee of Social Rights continues to view the housing situation of Roma in violation of the European Social Charter in countries including Belgium, Bulgaria, France, Greece and Italy, with housing rights violations also regularly reported in countries such as Albania, Romania and Serbia, a non-exhaustive list. Slovakia has recently responded to allegations of police abuse by criminally prosecuting Roma alleging abuses. As has been repeatedly noted, expulsion from one's home is a profoundly destructive act with far-reaching impact on the ability to exercise a broad range of civil, cultural, economic, political and social rights.⁸ Similarly, responding to reports of abuse

⁶ See in particular 2012 Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque (A/HR/C/21/42) and 2013 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HR/C/22/53).

⁷ : http://www.lemonde.fr/societe/article/2017/10/19/la-france-compte-plus-de-500-bidonvilles_5203014_3224.html#gTQyPkM2QJSW6FaM.99

⁸ United Nations Committee on Economic, Social and Cultural Rights (CESCR) General Comments 4 and 7 on the right to adequate housing.

with punitive retaliation threatens to undermine the very basis of responding to harms in a democratic order based on the rule of law.⁹

Lesson Learned: The European Union now has sufficient awareness of the scope and nature of the types of human rights abuses to which Roma are exposed to be able to craft frameworks to end such abuses. These insights should be built into European policies going forward, with a view to ending these practices once and for all.

5. Tackling Segregation

The European Commission's 2015 Guidance concerning segregation sets out detailed measures for appropriate and inappropriate uses of European Union funding.¹⁰ The ban on racial segregation is very strongly law, in particular as a result of Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Despite this, the EU MIDIS II data indicates that segregation in education – the only area in which segregation is tracked -- clearly worsened in the past 5 years, where children report that they attended classes where all of their classmates are Roma. A number of urban areas in both the Member States and candidate countries have ongoing dynamics in which Roma have been moved by force or under duress into manifestly segregated housing, in some cases with European Union funding support. During the period, the European Commission importantly opened infringement procedures against the Czech Republic, Hungary and Slovakia, as a result of continuing racial segregation in education.

Lesson Learned: The next period should see a major redoubling of efforts to combat segregation in education, housing, health care and employment, including via vigorous application of the Commission Guidance document in this area, strengthening of data gathering and documentation in this area, expansion of the use of infringement proceedings, as well as via the many other tools available to the Union in this area.

6. Advancing on Directive 2000/43 to Secure Genuine Inclusion and Diversity

International law guarantees not solely procedural non-discrimination, but rather measures aimed at achieving genuine equality in practice.¹¹ The legal basis banning discrimination has

⁹ See inter alia United Nations Committee on the Elimination of Racial Discrimination (CERD) General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system. See also CERD General Comment 27 on Discrimination against Roma, providing, inter alia, that States shall "... ensure protection of the security and integrity of Roma, without any discrimination, by adopting measures for preventing racially motivated acts of violence against them; ... ensure prompt action by the police, the prosecutors and the judiciary for investigating and punishing such acts; and ... ensure that perpetrators, be they public officials or other persons, do not enjoy any degree of impunity."

¹⁰ European Commission, European Structural and Investment Funds, "Guidance for Member States on the use of European Structural and Investment Funds in tackling educational and spatial segregation", EGESIF_15-0024-01 11/11/2015.

¹¹ Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or

provided the Union with major opportunities for action during the recent period, as evidenced by infringement proceedings as noted above, as well as resulting in 2015 in the European Court of Justice's first major judgment in a case concerning discrimination against Roma.¹² As yet under-developed is equality law's potential to make genuine advances into overcoming systemic exclusion of the kind built into the powers available to the Northern Ireland equality body under the Fair Employment Treatment Order (1989),¹³ as well as implicitly available in the anti-discrimination laws of a number of the Member States.¹⁴ Without development of equality duties¹⁵ and proactive rules to provide powers to public oversight bodies to ensure diversity, it is unlikely that the major obstacles driving Roma exclusion can be overcome.

Lesson Learned: Securing genuine equality for Roma will require the development of further legal tools, including those which require Member States to develop structures to ensure diversity.

7. Representation in Public and Political Life

Europe-wide, the tendency is severe under-representation of Roma in positions of public authority, elected representation and civil service. Roma are extremely underrepresented also in local bodies and administrations. Romani women are particularly severely excluded from positions of public representation. In some countries, representation takes place via segregated minority bodies with limited access to or input into mainstream policy. In addition, this issue is highly gendered: there are not more than a handful of Romani women in positions of public representation or elected responsibility at any level anywhere in Europe. It is a weakness of the current EU Framework that no attention is paid to overcoming barriers to inclusion and public and political life, including the gender-based aspects of this exclusion.¹⁶

Lesson Learned: Explicit attention should be paid going forward to remedying the exclusion of Roma from the public administration, and from public and political life more broadly. Romani women should be an explicit part of this policy attention.

8. Strengthening Roma Inclusion in Public Procurement

There is increasing attention to possibilities to strengthen human rights in public procurement, as a result of the adoption by the European Union of three new Directives in these areas

exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

¹² Case C-83/14 CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia.

¹³ On the potential relevance of FETO-like structures for Roma inclusion, see: <http://www.errc.org/article/the-fair-employment-and-treatment-order-feto--northern-ireland/2536>

¹⁴ See for example Article 36 of Hungary's 2003 Act on equal treatment and the furtherance of the equality of opportunities.

¹⁵ On equality duties, see: <http://www.equineteurope.org/Advancing-Equality-The-Potential-of-Equality-Duties>

¹⁶ Article 25 of the International Covenant on Civil and Political Rights guarantees rights (1) To take part in the conduct of public affairs, directly or through freely chosen representatives; (2) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and (3) To have access, on general terms of equality, to public service.

(2014/24/EU, 2014/25/EU and 2014/23/EU). Although the Union has noted that measures to advance Roma inclusion “could include targeting Roma under the youth guarantee schemes, introducing social considerations into public procurement ...”,¹⁷ there is limited indication that these insights have been acted upon with any depth or gravity. A 2015 Social Platform publication focusing on possibilities related to “reserved contracts”, “social considerations” and related possibilities under Directive 2014/24/EU notes positive practices for persons with disabilities, but is silent on any aspect of minority inclusion under these new modalities, apparently because, at least as of that date, positive practices were lacking.¹⁸

Lesson Learned: The 2014 public procurement Directives offer important opportunities to advance diversity – including but not limited to Roma inclusion -- in a broad range of employers, services and other sectors. In accordance with the EU Principles, Roma should be explicitly but not exclusively named for inclusion in public procurement matters.

9. Right to Effective Remedy

OHCHR has been engaged during the period in efforts to move forward comprehensive remedy for Romani women coercively sterilized in the former Czechoslovakia and its successor states, an issue affecting tens of thousands of women. Countries including Switzerland and Norway have made recent progress in this area.¹⁹ Lack of remedy for serious harms such as these acts as a serious impediment to the basic trust required for effective inclusion. Unfortunately, the Committee of Ministers of the Council of Europe has recently closed supervision of several judgments related to Slovakia in this area, apparently satisfied that remedy provided to a handful of victims meets human rights law in this area. This decision sends a troubling signal.

As noted above, Sweden has recently undertaken truth commission work related to the historic treatment of Roma, with a view to anchoring the right to truth more firmly in the public record. The European Commission has contributed positively with the first proceedings opened against EU Member States for infringement of EU anti-discrimination law, in matters related to the racial segregation of Romani children in the Czech Republic, Slovakia and Hungary. These practices should continue, and should be extended to troubled areas such as housing, employment, health provision and social services, and should also be applied as concerns the situation of Roma beyond Central and Southeastern Europe.

Lesson learned: Genuine inclusion depends on the existence of viable effective remedy for abuses, as well as on the willingness by authorities at all levels to apply them, particularly (although not only) in cases of serious human rights abuse. European Union frameworks on Roma inclusion should include explicit provision for developing and advancing the right to effective remedy for Roma.

¹⁷ http://europa.eu/rapid/press-release_MEMO-14-249_en.htm

¹⁸ Social Platform, “Public Procurement for Social Progress: A Social Platform Guide to the EU Public Procurement Directive”, Brussels, October 2015.

¹⁹ Organization for Security and Co-operation in Europe (OSCE), “Summary Report of the Conference: Forced and Coercive Sterilization of Roma Women: Justice and Reparations for Victims in the Czech Republic Organized by the OSCE/ODIHR Contact Point for Roma and Sinti Issues, Prague, 1 June 2016”.

10. Supporting Local Action

International media have recently reported remarkable successes at local level.²⁰ Positive local practices are seen in a range of Member States and candidate countries as well as in some places in the Eastern Partnership. Such practices do not appear in national aggregate data, and yet it is precisely in those places where creative efforts have been made that one sees genuine inclusion.

Lesson learned: Efforts should continue to highlight and foster positive local practices and partnerships, with a view illustrating positive possibilities to make progress in overcoming Roma exclusion.

11. Gender Dimensions

An increasing range of actors are working on gendered issues in Roma communities, including the issue of child and early marriage, practices prevalent in some segments of Roma communities with very destructive impacts in particular on the girl child.²¹ There are important recent studies on this issue in Italy, Romania, France, Bosnia-Herzegovina and Serbia, as well as on related matters such as problematic accessibility by Romani women to mainstream services for victims of domestic violence. Despite this heightened attention, policies and services in these areas remain under-developed. Representation of Romani women in public and political life is extremely low. Without explicit focus on gendered aspects of negative treatment of Roma, it is unlikely that there can be positive progress in these areas.

Lesson Learned: Policy frameworks going forward should explicitly name targets in areas related to gendered aspects of the negative treatment of Roma, including but not necessarily limited to strengthening representation in public and political life, tackling child and early marriage, and strengthening outreach by and access to mainstream services for domestic violence.²²

12. Supporting Independent Civil Society Voices

OHCHR is concerned at the dramatic erosion of civil society space taking place in some of the Member States, candidate countries and in the Eastern Partnership. Efforts to chill public debate, thwart discussion, suppress information seen as “damaging” are powerfully destructive of the efforts of democratic voices to come forward for the good of societies and

²⁰ <https://www.nytimes.com/2017/09/09/world/europe/slovakia-roma-spisky-hrhov-integration.html?mcubz=1&r=0>.

²¹ Article 24(3) of the Convention on the Rights of the Child commits States “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”

²² See United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), General Comment 35 on Gender-Based Violence against Women.

people. These phenomena are seen particularly strongly in discussions on the situation of Roma.

Lesson Learned: The European Union should continue to play a very strong role in supporting vibrant and independent civil society organisations working on Roma rights and Roma inclusion, and should affirm the importance of freedom of speech, freedom of peaceful public assembly, and rights to truth as intrinsic to human dignity, as well as crucial for democratic societies.

13. Promoting Roma Inclusion beyond the Borders of the European Union: Extending Efforts to NEAR and Beyond

The recent period has seen European Union engagement on Roma inclusion matters beyond the borders of the European Union, including via Enlargement Chapter 23 action, IPA and EIDHR support, Roma seminars, Human Rights Dialogues, as well as as a result of the engagement of the European Parliament. Nevertheless, the Union's Roma inclusion action remains to some extent fragmented, due to the ad hoc division between action in the Member States (i.e. under DG Justice) and action elsewhere (predominantly to date under DG NEAR). Enlargement and related external processes open unique windows of opportunity for deep advances in the area of Roma inclusion.

Lesson Learned: The Commission should be given a pan-college mandate and the necessary resources to act on Roma inclusion both inside and outside the borders of the European Union.

III. CONCLUSIONS

Gaps in achievement to date can be attributed to the at best partial extent to which the human rights framework has been deployed in the design and implementation of policies on Roma inclusion in Europe. Going forward, European Roma policy should be set on a human rights basis, including on the core pillars of participation, accountability, transparency and non-discrimination. Genuine action to secure Roma inclusion in Europe should be a priority area of efforts to implement the 2030 development agenda, in particular in light of the Sustainable Development Goals commitment to leave no one behind, as well as to act first on those most excluded. Needed too are efforts to go beyond a narrow and cramped version of non-discrimination, to achieve real equality rights in practice.

The Durban Declaration and Programme of Action committed States *inter alia* “to adopt appropriate and concrete policies and measures, to develop implementation mechanisms, where these do not already exist, and to exchange experiences, in cooperation with representatives of the Roma/Gypsies/Sinti/Travellers, in order to eradicate discrimination against them, enable them to achieve equality and ensure their full enjoyment of all their human rights”. It further called upon States and encouraged non-governmental organizations “to raise awareness about the racism, racial discrimination, xenophobia and related

intolerance experienced by the Roma/Gypsies/Sinti/Travellers, and to promote knowledge and respect for their culture and history”.²³

The Regional Office for Europe of the United Nations Human Rights Office (OHCHR) stands ready to continue to engage to support genuine advances in the human rights of Roma in Europe, and to work with human rights-based partners in Government, civil society, grassroots entities, human rights defenders, National Human Rights Institutions, equality bodies, European institutions and others in this important effort.

²³ <http://www.un.org/WCAR/durban.pdf>, paras. 40 and 42.