

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.¹

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.² 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,³ and up to 90 percent of the inhabitants of shanty-towns

¹ 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”).

² EUMC, *Annual Report 1999 – Summary*, p. 6.

³ CESCR, *Summary Record of the Sixth Session: Spain*, E/C.12/1996/SR.5, 9 December 1996, para. 13.

are Roma/gitanos.⁴ Government-sponsored transitional housing programmes have been criticised domestically and internationally as perpetuating ghettoisation rather than alleviating marginalisation.⁵ 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.⁶

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.⁷

Violence

Community violence against immigrants and Roma/gitanos has reached alarming proportions, and has become a source of concern for specialised international bodies.⁸ At the same time, there is no reliable statistical information on the number of racially motivated attacks,⁹ and human rights organisations maintain that the number of cases is underreported by the authorities.¹⁰ Security forces have been criticised for brutality, abusing detainees and ill-treating foreigners and immigrants,¹¹ often with impunity.

⁴ National Ombudsman, *Report to the Parliament 1999*, paras. 14.2.5.

⁵ 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.

⁶ See J. F. Gamella, *The Roma Population in Andalucía*, Junta de Andalucía, Sevilla, 1996, p. 171.

⁷ Barañi Team, *Romani Women and Criminal Justice*, Ediciones Metyel, Madrid 2001.

⁸ CERD, *Summary Record of the 1384th Meeting: Spain, Tonga*. CERD/C/SR.1384, 15 June 2000, para. 64. ECRI Report 1999, paras. 27–29.

⁹ 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.

¹⁰ EUMC, *Diversity and Equality for Europe – Annual Report 2000*, p. 20.

¹¹ 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.¹² 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.¹³ 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.

¹² *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).

¹³ 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,¹⁴ present in Spain for over 600 years,¹⁵ are by and large *olvidados*, the “forgotten” citizens. An estimated 500,000 – 800,000 Roma/gitanos¹⁶ 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.¹⁷ 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

¹⁴ 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.

¹⁵ 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.

¹⁶ 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.

¹⁷ See A. G. Alfaro, *The Great Gypsy Roundup*, Editorial Presencia Gitana, 1995.

exile or even death;¹⁸ 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.¹⁹

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.²⁰ Spaniards also display a relatively high level of acceptance of immigrants compared to other EU countries.²¹

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,²² at a time when levels of support for such initiatives in other parts of Europe are rising.²³ There is a marked resistance to promoting increased political participation for minority groups.²⁴

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

¹⁸ See Alfaro, p. 24. Also, Hancock, *The Pariah Syndrome*, p. 53.

¹⁹ State FCNM Report, p. 3.

²⁰ 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”).

²¹ SORA Analysis, p. 13.

²² 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.

²³ 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.

²⁴ 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.²⁵ 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;²⁶ 70 percent would be upset if one of their children married a gitana/o.²⁷ A similar pattern was revealed among teenagers: 27 percent strongly preferred not to accept Romani children as classmates,²⁸ 49 percent rejected the idea of marrying a gitana/o,²⁹ 13 percent were in favour of expelling them from the country,³⁰ and 43 percent believed that the Roma are responsible for their poverty and marginalisation.³¹ These powerful negative stereotypes have been used to justify the segregation and isolation of Romani communities.³²

In some cases, negative attitudes spill over into violence. In recent years there has been a marked increase of racially motivated violence,³³ anti-Semitic attacks and racist threats and intimidation. The number of racist crimes committed by neo-Nazi organisations and similar groups has also increased,³⁴ as has membership in such organisations³⁵ and the use of Internet to organise attacks.

²⁵ J. F. Gamella, *The Roma Population in Andalusia*, Junta de Andalusia, Sevilla, 1996, p. 324.

²⁶ 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.

²⁷ 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.

²⁸ T. C. Buezas, p. 35.

²⁹ T. C. Buezas, p. 78.

³⁰ T. C. Buezas, p. 107.

³¹ T. C. Buezas, p. 148.

³² 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.

³³ 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.

³⁴ EUMC, *Diversity and Equality for Europe – Annual Report 2000*, Vienna 2001, p. 12.

³⁵ 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.³⁶ 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,”³⁷ 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,³⁸ 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

³⁶ 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.

³⁷ Union Romani, *Journalists against Racism? The Spanish Press about Roma in 1998 and 1999*, pp. 366–367.

³⁸ 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,³⁹ 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.⁴⁰ 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.⁴¹ These agreements, which were applauded upon their adoption by the UN Committee for the Elimination of Racial Discrimination (CERD) as “original and positive,”⁴² have proven to be of symbolic rather than practical value; they appear to have had little perceptible impact.⁴³

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

³⁹ 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.”

⁴⁰ The Defender of the Reader is usually a journalist employed by the newspaper to answer readers’ complaints and letters.

⁴¹ 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.

⁴² CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Spain*, CERD/C/304/Add.8, 28 March 1996.

⁴³ 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.⁴⁴

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."⁴⁵

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.⁴⁶ 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."⁴⁷ 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 2002.⁴⁸ On the other hand, some public figures, such as famous writers Francisco Umbral⁴⁹ and Juan Goytisolo,⁵⁰ 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.

⁴⁴ R. Llopis I Llord, "The Invisibility of the Roma Nation," in *Annual Report 2001 on Racism in Spain*, SOS Racismo, Icaria Editorial, Barcelona, 2001, p. 33.

⁴⁵ "First European Congress of the Gypsy Youth," Romani Institute, Barcelona 1999, pp. 35–36.

⁴⁶ For example, *Albaladejo* case, see Section 3.2.

⁴⁷ 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.

⁴⁸ S. Navarro, "The Judge Annuls the Fines Imposed by the Mayor of Pego on Two Local Policemen," *El País*, 11 May 2001.

⁴⁹ F. Umbral, "Romani Tradition," *El Mundo*, 1 March 2000; "The Romani Marriage," *El Mundo*, 11 June 2002.

⁵⁰ 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,⁵¹ including the Framework Convention for the Protection of National Minorities (FCNM)⁵² and the Charter for Regional or Minority Languages (CRML).⁵³ However, it has not yet ratified the Revised European Social Charter,⁵⁴ nor signed Protocol 12 to the European Convention on Human Rights.

European Community law prevails over domestic law⁵⁵ and legally ratified international human rights treaties are part of the domestic legal order.⁵⁶ 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.⁵⁷ Some courts – and particularly the Constitutional Court – give consideration to international human rights treaties in their rulings⁵⁸ but practicing lawyers point out that international norms are often disregarded in lower courts.⁵⁹

3.1 Protection from Discrimination

Spain is a parliamentary monarchy⁶⁰ with a decentralised system of 17 Autonomous Communities (ACs), each having a statutory right to assume partial or exclusive

⁵¹ 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.

⁵² Ratified on 1 September 1995, in force since 1 February 1998.

⁵³ Ratified on 9 April 2001, in force since 1 August 2001.

⁵⁴ Spain signed the Revised European Social Charter on 23 October 2000.

⁵⁵ 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.

⁵⁶ Constitution of Spain (1978), BOE no. 311, 20 December 1978 (hereafter, "Constitution"), Art. 96(1).

⁵⁷ Constitution, Art. 10(2).

⁵⁸ CCPR, *Concluding Observations of the Human Rights Committee: Spain*, CCPR/C/79/Add.61, 4 March 1996, para. 9.

⁵⁹ D. L. Fernández Jiménez, "Juridical Aspects," in Working Documents 43, "Debate on Romani People," p.177.

⁶⁰ Constitution, Art. 1(3).

competence in certain areas established by the Constitution.⁶¹ 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.⁶²

Article 14 of the Constitution explicitly prohibits racial discrimination,⁶³ but it applies to citizens only, while aliens enjoy “public freedoms ... under the terms which treaties or laws may establish.”⁶⁴ The right of non-citizens to equal treatment has been the subject of extensive debate and has been raised repeatedly before the Constitutional Court;⁶⁵ the failure to secure equality for all individuals under Spanish jurisdiction has drawn criticism from the European Commission against Racism and Intolerance (ECRI).⁶⁶

Article 14 is binding on all public authorities,⁶⁷ 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*.”⁶⁸ 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,⁶⁹ and by 2000 the rate had increased to almost one of every four cases.⁷⁰ However, virtually none of these cases address discrimination on grounds of race or ethnicity.

⁶¹ Constitution, Art. 148 and 149.

⁶² Constitution, Art. 149(1).

⁶³ 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.”

⁶⁴ Constitution, Art. 13.

⁶⁵ See STC 107/84, 115/87, 28/1991, 24/1993, 94/1993, 291/1994.

⁶⁶ See ECRI Report 1999, para. 2.

⁶⁷ Constitution, Art. 53(1).

⁶⁸ Constitution, Art. 53(2).

⁶⁹ Constitutional Court’s Annual Report 1999, Section. V.1.a.

⁷⁰ Constitutional Court’s Annual Report 2000, Section V.1.a.

Affirmative action is permitted, both by the Constitution⁷¹ and the Worker's Statute.⁷² 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).⁷³

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,⁷⁴ 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 discrimination⁷⁵ on all the grounds mentioned in Article 13 of the Amsterdam Treaty.⁷⁶ The burden of proof is reversed in gender discrimination cases only, and provided the complainant establishes a *prima facie* case of discrimination.⁷⁷ In gender cases, the Constitutional Court has confirmed that statistics are not only acceptable, but also necessary to argue indirect discrimination.⁷⁸

⁷¹ 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."

⁷² 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."

⁷³ *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.

⁷⁴ 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.

⁷⁵ Workers' Statute, Art. 4(2)(c).

⁷⁶ Art. 13 lists protected grounds: sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

⁷⁷ 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.

⁷⁸ Constitutional Court Decision, STC 240/1999, 20 December 1999.

The Penal Code stipulates that racial or ethnic motivation constitutes an aggravating circumstance⁷⁹ and criminalises discrimination in employment⁸⁰ and denial of services on racial or ethnic grounds by public officials, *inter alia*.⁸¹

The Law on Foreigners provides a definition of both direct and indirect discrimination and a list of actions considered discriminatory.⁸² 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.⁸³ Moreover, the concept of indirect discrimination is applicable with regard to the employment of foreign workers only.⁸⁴

Transposition of the EU Race Equality Directive⁸⁵ 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.⁸⁶

Labour inspectorates monitor implementation of legislation in their area of competence, but there is no specialised body to deal with human rights issues generally⁸⁷ or racial discrimination in particular.⁸⁸ There is no institution to provide

⁷⁹ Penal Code, Art. 22.4 (Organic Law 10/1995 of 23 November 1995; hereafter, "Penal Code").

⁸⁰ Penal Code, Art. 314.

⁸¹ Penal Code, Art. 511.

⁸² 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).

⁸³ M. M. Sierra, "Anti-discrimination Legislation in EU Member States – Spain," EUMC, Vienna, 2002, p. 16.

⁸⁴ C. Esplugues Mota, M. De Lorenzo Segrelles, *The New Juridical Regime of Immigration in Spain*, Tirant lo Blanc, Valencia 2001, pp. 51–58.

⁸⁵ 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.

⁸⁶ 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.

⁸⁷ 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.

⁸⁸ EUMC, *Annual Report 1999*, p. 59.

assistance to victims of discrimination or to deal with complaints, as recommended by ECRI.⁸⁹ 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.⁹⁰

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)⁹¹ and ECRI⁹² 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.⁹³

The Government maintains that legal norms on gathering ethnically sensitive data make systematic data collection impossible.⁹⁴ 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.⁹⁵ 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.⁹⁶ Further, the Law on Statistics explicitly allows for the collection of data on ethnicity, with the previous and informed consent of the individuals concerned,⁹⁷ while

⁸⁹ ECRI Report 1999, para. 7.

⁹⁰ *Fifteenth Periodic Reports of States Parties Due in 1998: Spain*, CERD/C/338/Add.6, 12 October 1998, para. 51.

⁹¹ 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.

⁹² ECRI Report 1999, para. 19.

⁹³ CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Spain*, CERD/C/304/Add.8, 28 March 1996.

⁹⁴ "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.

⁹⁵ *Ethnic Monitoring and Data Protection – the European Context*, Central European University Press – INDOK, Budapest, 2001, pp. 200–227.

⁹⁶ "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.

⁹⁷ 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.⁹⁸

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.⁹⁹

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,¹⁰⁰ and Spain is a party to the major international human rights instruments relevant for the right to education.¹⁰¹ The Law on Legal Protection of Minors expressly incorporates the Convention on the Rights of the Child into the legal system.¹⁰² 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,¹⁰³ 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

⁹⁸ *Ethnic Monitoring and Data Protection – the European Context*, Central European University Press – INDOK, pp. 212–213.

⁹⁹ Interview with Diego Luis Fernández Jiménez, Cordoba, 6 November 2001.

¹⁰⁰ Constitution, Art. 27(1).

¹⁰¹ 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.

¹⁰² The Legal Protection of Minors Act, No 1/1996 of 15 January 1996, Art. 3.

¹⁰³ 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.¹⁰⁴ Within this framework, all children are guaranteed equal and free access to education (including those with irregular legal status)¹⁰⁵ through the first four years of secondary school,¹⁰⁶ and competent public authorities have a legal obligation to ensure the enrolment and attendance of all children.¹⁰⁷ Curricula are established by decree for each stage of education.¹⁰⁸

The Preamble of the National Education Act (LOGSE) further establishes the State obligation to ensure *de facto* equality of opportunity.¹⁰⁹ The 1995 Royal Decree¹¹⁰ 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.¹¹¹

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.¹¹² 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

¹⁰⁴ Andalusia, Canaries, Catalunya, Valencia, Galicia, Navarra and the Basque Country.

¹⁰⁵ LODE, Art. 10(3).

¹⁰⁶ LODE, Art. 5(1).

¹⁰⁷ The Legal Protection of Minors Act, Art. 13.

¹⁰⁸ 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.

¹⁰⁹ 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).

¹¹⁰ Royal Decree No. 732/1995 of 5 May 1995 establishing the rights and obligations of pupils and the internal rules governing behaviour in schools.

¹¹¹ Royal Decree No. 732/1995, Art. 17.

¹¹² *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).¹¹³ However, enrolment among the non-Roma majority population is at 100 percent.¹¹⁴ Moreover, studies show that differences between Romani pupils' age and grade level tend to increase by the end of primary school.¹¹⁵

Absenteeism is still very high: in the seven-year period between 1994 and 2001 the level of absenteeism was not significantly reduced¹¹⁶ and the majority of Romani pupils attend school irregularly (54 percent);¹¹⁷ of these, 31 percent miss classes for extended periods of time – three or more months per year.¹¹⁸ A recent case study in Andalusia showed that Romani children are almost 12 times more likely to miss classes than non-Roma.¹¹⁹

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” reasons¹²⁰ (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

¹¹³ FSGG, *Evaluation of Educational Normalisation of Romani Children*, Madrid, 2002, p. 190.

¹¹⁴ 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.

¹¹⁵ FSGG, *Evaluation of Educational Normalisation of Romani Children*, p.190.

¹¹⁶ FSGG, *Evaluation of Educational Normalisation of Romani Children*, pp. 79–81.

¹¹⁷ FSGG, *Evaluation of Educational Normalisation of Romani Children*, p. 197.

¹¹⁸ FSGG, *Evaluation of Educational Normalisation of Romani Children*, p. 190.

¹¹⁹ 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.

¹²⁰ 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.¹²¹ 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.¹²²

The Government has reacted indignantly to these critiques. The Government representative for immigration issues¹²³ called the Human Rights Watch reporting "unfocused" and "inaccurate;"¹²⁴ 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.¹²⁵ 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."¹²⁶

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

¹²¹ 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.

¹²² 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.

¹²³ The delegate of the Government for immigration issues is the highest public functionary on immigration issues, subordinated to the Minister of Interior.

¹²⁴ T. Cruz, "Critics of the Ombudsman in Canarias," *El Mundo*, 27 February 2002.

¹²⁵ "The Popular Party Denies that Children's Rights are Violated in Spain," *El País*, 9 June 2002, p. 27.

¹²⁶ "The Popular Party Denies that Children's Rights are Violated in Spain," *El País*, 9 June 2002, p. 27.

children have access to kindergartens,¹²⁷ compared to a national average of 93.9 percent for the academic year 2001–2002.¹²⁸

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.¹²⁹ 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.¹³⁰

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...'

¹²⁷ MEC and CIDE, *The Inequalities in Education in Spain*, Madrid, 1999, p. 33.

¹²⁸ Ministry of Education, *Basic Data on Education in Spain for the Year 2001/2002*, Madrid, 2001.

¹²⁹ *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.

¹³⁰ 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.¹³¹

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,¹³² 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.¹³³

In practice, Romani pupils are overrepresented in public schools,¹³⁴ while their access to private and *colegios concertados* is blocked by discriminatory policies. Within the

¹³¹ 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.

¹³² Royal Decree No. 366/1997. This decree, however, does not apply in the ACs that have assumed competences in the field of education.

¹³³ *Periodic Reports of States Parties Due in 1999: Spain*, CRC/C/70/Add.9, 12 November 2001, para. 1272.

¹³⁴ 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.¹³⁵ 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.¹³⁶ 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.¹³⁷

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.¹³⁸ 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

¹³⁵ J. Salinas, intervention published in Working Documents 43, “Debate on Romani People,” p. 58.

¹³⁶ 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.

¹³⁷ María Neredó’s interview with Paz Serrano, secondary education teacher, member of Baltasar Gracián-Group, Madrid, November 2001. On file with EUMAP.

¹³⁸ 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.¹³⁹

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.¹⁴⁰ 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.¹⁴¹

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,¹⁴² as certain public schools have been transformed into “parking places” for Romani children.¹⁴³ 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.¹⁴⁴

From exclusion to segregation

In the 1970s, almost half of Romani children between four and 14 did not attend school at all;¹⁴⁵ although school registration was obligatory, the rule simply was not implemented for them.¹⁴⁶ In an attempt to improve school attendance, in 1978 the Ministry of Education signed a “bridge school agreement” (*escuelas puente*) with the

¹³⁹ A. L. Escudero, “Schools to Reserve at Least Two Places in Class for Disadvantaged Students,” *El País – Madrid*, 5 February 2001.

¹⁴⁰ A. L. Escudero, “Schools to Reserve at Least Two Places in Class for Disadvantaged Students,” *El País – Madrid*, 5 February 2001.

¹⁴¹ Maria Naredo’s interview with Paz Serrano, secondary education teacher, member of Baltasar Gracián-Group, Madrid, November 2001. On file with EUMAP.

¹⁴² H. García, intervention published in Working Documents 43, “Debate on Romani People,” p. 59.

¹⁴³ J. M. Flores, intervention published in Working Documents 43, “Debate on Romani People,” p. 60.

¹⁴⁴ FSGG, *Evaluation of Educational Normalisation of Romani Children*, pp. 160–161.

¹⁴⁵ ISAM, 1978 as cited in M. F. Enguita, p. 180.

¹⁴⁶ 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,¹⁴⁷ 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 1986¹⁴⁸ 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.¹⁴⁹ 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.¹⁵⁰ Many Romani parents feel that the increasing ghettoisation of schools constitutes a form of discrimination,¹⁵¹ 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

¹⁴⁷ M. F. Enguita, p. 182.

¹⁴⁸ Although exceptionally, some “bridge schools” have been maintained. See Enguita, p. 181.

¹⁴⁹ 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.

¹⁵⁰ J. M. Fresno, intervention published in Working Documents 43, “Debate on Romani People,” p. 65.

¹⁵¹ 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.¹⁵²

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.¹⁵³

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.¹⁵⁴ 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.”¹⁵⁵ Comparative research in the last two decades showed that the level of racism against Roma tripled over the nine-year period from 1986 to 1993.¹⁵⁶

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.¹⁵⁷

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

¹⁵² T. San Román, in Working Documents 43, “Debate on Romani People,” p. 71.

¹⁵³ 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.

¹⁵⁴ J. M. Fresno, intervention published in Working Documents 43, “Debate on Romani People,” p. 68.

¹⁵⁵ T. C. Buezas, *Racism Increases, Solidarity as Well*, Tecnos, Junta de Extremadura, 1995, p. 101.

¹⁵⁶ T. C. Buezas, p. 109.

¹⁵⁷ 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.¹⁵⁸

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 education¹⁵⁹ 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,¹⁶⁰ 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.¹⁶¹ 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

¹⁵⁸ N. Galarraga, “Ricardo Herrero. School Director: ‘They Have Friends, They are Integrated,’” *El País*, 22 October 2001.

¹⁵⁹ Andalucía, Canarias, Catalunya, Valencia, Galicia, Navarra and the Basque Country.

¹⁶⁰ 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.

¹⁶¹ *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.¹⁶²

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,¹⁶³ in practice existing curricula tend to reflect the majority culture almost exclusively¹⁶⁴ (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,¹⁶⁵ 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

¹⁶² The Romani People and Education – A Working Document, November 1999; on file with EUMAP.

¹⁶³ LOGSE, Art. 2.

¹⁶⁴ FSGG, *Evaluation of Educational Normalisation of Romani Children*, p. 35.

¹⁶⁵ 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,¹⁶⁶ “are dirty,”¹⁶⁷ 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.¹⁶⁸ Marginalised Roma/gitanos tend to take up jobs which vary from one region to another¹⁶⁹ but are generally considered undesirable by the rest of the population, such as “street selling,”¹⁷⁰ 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.¹⁷¹ 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.¹⁷² 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

¹⁶⁶ C. Méndez López, “Hidden Journeys. Hidden Opportunity for Romani Families,” Cáceres City Hall, 2001.

¹⁶⁷ 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.

¹⁶⁸ 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.

¹⁶⁹ 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.

¹⁷⁰ 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.

¹⁷¹ L. Fernández, “The Employment Situation of the Roma from the Ghettos,” *Revista Hika* 111, see: <http://www.hika.net/revista/zenb111/Hon_laboral.html>, (accessed 20 August 2002).

¹⁷² See ASGG, *Situation and Normalisation of Street-selling in Spain*, p. 12, respectively Grupo PASS, 1991.

for street-selling activities.¹⁷³ 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.”¹⁷⁴ 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.”¹⁷⁵

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,¹⁷⁶ and a lack of coordination among municipalities regarding market schedules.¹⁷⁷

At the beginning of the 1990s, an estimated 10–15 percent of Roma/gitanos were *chatarreros*,¹⁷⁸ 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.¹⁷⁹ 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.

¹⁷³ 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.

¹⁷⁴ CERD, *Summary Record of the 1384th Meeting: Spain, Tonga*, CERD/C/SR.1384, 15 June 2000 para. 54.

¹⁷⁵ CERD, *Summary Record of the 1384th Meeting: Spain, Tonga*, CERD/C/SR.1384, 15 June 2000 para. 44.

¹⁷⁶ ASGG, *Situation and Normalisation of Street-selling in Spain*, p. 17.

¹⁷⁷ 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.

¹⁷⁸ Grupo PASS 1991.

¹⁷⁹ 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 conditions¹⁸⁰ that most Spanish workers would consider unacceptable.¹⁸¹

Although there has been no systematic research on the subject, Romani leaders and human rights organisations,¹⁸² as well as inter-governmental bodies such as ECRI,¹⁸³ 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.¹⁸⁴

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.”¹⁸⁵ 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.¹⁸⁶ 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.¹⁸⁷ 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,

¹⁸⁰ EUMC, *Annual Report 1999 – Summary*, p. 6.

¹⁸¹ 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.

¹⁸² EUMC, *Diversity and Equality for Europe – Annual Report 2000*, p. 43 and p. 46.

¹⁸³ ECRI Report 1999, para. 18.

¹⁸⁴ Interview with Daniel Wagman, coordinator of Barafí Team, Madrid, 10 December 2001.

¹⁸⁵ Interview with a Romani woman who works in an employment office, anonymity requested, December 2001.

¹⁸⁶ 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.

¹⁸⁷ 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.”¹⁸⁸

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.¹⁸⁹

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.”¹⁹⁰

Romani women who obtain employment complain of discriminatory practices in the workplace. The president of “Romí Sersení”¹⁹¹ 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.”¹⁹²

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

¹⁸⁸ Interview with Amara Montoya, President of Romí Sersení, Madrid, 10 December 2001.

¹⁸⁹ IONE Project, *Study on Women at Risk of Exclusion*, para. 2.2.2.

¹⁹⁰ IONE Project, *Study on Women at Risk of Exclusion*, para. 2.2.2.

¹⁹¹ Romí Sersení is a Madrid-based non-governmental organisation of Romani women.

¹⁹² Interview with Amara Montoya, President of Romí Sersení, Madrid, 10 December 2001.

has been given to the role played by racial discrimination,¹⁹³ and as a result few strategic policy responses to the reality of discrimination have been developed.¹⁹⁴

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.¹⁹⁵ 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.

¹⁹³ 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.

¹⁹⁴ See, e.g. A. Vega Cortés, “Roma in Spain,” text published by the Association of Young People against Intolerance, Barcelona, 13 February 1997.

¹⁹⁵ 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.¹⁹⁶ 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.¹⁹⁷

State law sanctions misleading advertising, but not discriminatory advertisement.¹⁹⁸ ACs may establish regulations in this area, and some have done so,¹⁹⁹ 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.²⁰⁰ 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,²⁰¹ 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):²⁰²

¹⁹⁶ Constitution, Art. 47.

¹⁹⁷ 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.

¹⁹⁸ Law on Advertising (*Ley General de Publicidad*), 34/1988 of 11 November 1988.

¹⁹⁹ 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*).

²⁰⁰ Grupo PASS 1991.

²⁰¹ 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.

²⁰² 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;²⁰³ the situation had not changed as of 1999.²⁰⁴

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.”²⁰⁵

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

²⁰³ 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.

²⁰⁴ 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.

²⁰⁵ 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-Roma²⁰⁶ – 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 Mimbreras I,²⁰⁷ 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.”²⁰⁸ 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.²⁰⁹

²⁰⁶ Integration into non-Roma neighbourhoods is expensive, slow, and often encounters resistance from local inhabitants, requiring the intensive engagement of social workers (see below).

²⁰⁷ IRIS (*Instituto de Realojamiento e Integración Social*), Annual Report 2000, Madrid, p. 26.

²⁰⁸ Ombudsman, *Annual Report 1999*, Section 14.1.1.

²⁰⁹ 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.²¹⁰ 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.²¹¹

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.²¹²

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.²¹³

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,²¹⁴ noting that the "failure of this type

²¹⁰ 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."

²¹¹ 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).

²¹² A. Vega Cortés, "The Roma in Spain," text published by the Association of Young People against Intolerance, Barcelona, 13 February 1997.

²¹³ 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.

²¹⁴ 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.”²¹⁵

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)²¹⁶ and La Celsa (96 housing units built in 1995).²¹⁷ 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.”²¹⁸ 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.²¹⁹

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.²²⁰ 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]

²¹⁵ Ombudsman, *Annual Report 1999*, section 14.2.5 (Re-housing the marginalised population).

²¹⁶ According to IRIS, la Rossilla was eradicated in 2000. IRIS – Institute for Re-housing and Social Integration – *Annual Report 2000*, Madrid, p. 15.

²¹⁷ According to IRIS, la Celsa was eradicated in 2000. IRIS – Institute for Re-housing and Social Integration – *Annual Report 2000*, Madrid, p. 18.

²¹⁸ See C. Prado, *What Do We Mean When We Speak about Racism?* SOS Racismo, Oviedo.

²¹⁹ “Chamizo Asks the Public Administration not to Let Shanty-towns in Andalucia to Become Permanent,” *El Mundo*, 7 December 2000.

²²⁰ 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.”²²¹

Efforts to re-house Romani families in or close to non-Roma neighbourhoods are often impeded or blocked by neighbours.²²² 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.²²³

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.²²⁴ Also in 2000, the inhabitants of Magraners (Lleida) organised a series of similar protests against the arrival of Roma in their neighbourhood.²²⁵ 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.²²⁶

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.²²⁷ In May 2001, local authorities in Lleida renounced a plan to

²²¹ 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.

²²² 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.”

²²³ 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.

²²⁴ “Around 2000 Persons Ask to Limit the Number of Gitanos in Nueva Segovia”, *El Adelantado de Segovia*, 17 April 2000.

²²⁵ 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.

²²⁶ Movement against Intolerance, *RAXEN Report – Racism, Xenophobia and Intolerance in Spain through Facts*, No. 8, January 2001, p. 6.

²²⁷ 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 families²²⁸ after groups of inhabitants organised a protest.²²⁹ 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.²³⁰ 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).²³¹

Access to social housing

There is no housing deficit; in fact, there are over two million empty houses in the country.²³² 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.²³³

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.²³⁴ 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.²³⁵

²²⁸ "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.

²²⁹ Movement against Intolerance, *RAXEN Report – Racism, Xenophobia and Intolerance in Spain through Facts*, No. 9, April 2001, p. 37.

²³⁰ Movement against Intolerance, *Urban Violence and Racist Aggressions in Spain by Autonomous Communities*, May–July 2001, p. 20.

²³¹ Movement against Intolerance, *Urban Violence and Racist Aggressions in Spain by Autonomous Communities*, May–July 2001, p. 4.

²³² *Housing Census: Family Housing According to Occupation 1991*. Census of population and housing, INE, Ministry of Economy and Finance, 1991.

²³³ 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.

²³⁴ 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.

²³⁵ 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.²³⁶ Discrimination is also a powerful obstacle: in a significant number of cases, private owners and agencies refuse to rent flats to Romani families.²³⁷ “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.”²³⁸

In recent years, there have been numerous press reports about Roma being denied access to private housing in Barcelona,²³⁹ Oviedo and Valencia.²⁴⁰ 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.²⁴¹ 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.”²⁴² 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.²⁴³ In October 2001,

²³⁶ 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.

²³⁷ 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.

²³⁸ 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.

²³⁹ ASGG, Press Bulletin, May 2000.

²⁴⁰ ASGG, Press Bulletin, November 2000.

²⁴¹ Movement against Intolerance, *Urban Violence and Racist Aggressions in Spain by Autonomous Communities*, August–October 2000,” p. 35.

²⁴² G. Garcia, “On the Street – Four Roma Families Sleep on the Street in Cornellà,” *El Mundo – Catalunya*, 26 July 2000.

²⁴³ 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.²⁴⁴

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.”²⁴⁵

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.²⁴⁶

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.²⁴⁷ In Summer 2000, about 50 Roma/gitano adults and children were sleeping on the street in Cornellà (Catalunya),²⁴⁸ 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.²⁴⁹ 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

²⁴⁴ “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.

²⁴⁵ L. Nadal, “Inhabitants of Zamorra de Xirivella Say that They Are Denied Flats Rental for Being Roma,” *Las Provincias*, 2 November 2001.

²⁴⁶ 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).

²⁴⁷ 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.

²⁴⁸ “Cornellà Evicts 53 Gitanos Who Were Living in Unhealthy Conditions,” *El Mundo – Catalunya*, 25 July 2000.

²⁴⁹ 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.²⁵⁰

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,²⁵¹ 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,²⁵² and initiating *ex officio* investigations in cases of inappropriate police action in eviction procedures.²⁵³ 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.²⁵⁴

²⁵⁰ 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.

²⁵¹ Cities for a sustainable future, "1998 Spanish Best Practices selected by the International Jury," Superior Technical School of Architecture, Madrid, 2000.

²⁵² *Thirteenth Periodic Reports of State Parties Due in 1994: Spain*, CERD/C/263/Add.5, 3 March 1995 para. 250.

²⁵³ Ombudsman, *Report to the Parliament 1995* (case F9500012: *Police intervention in eviction procedures in Humanes, Madrid*).

²⁵⁴ 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.²⁵⁵ 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.²⁵⁶ The offence is aggravated if committed by a civil servant;²⁵⁷ private discriminators do not risk prison or fine, but only loss of their license.²⁵⁸

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 length²⁵⁹ 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, invitations²⁶⁰ or identity cards.²⁶¹

²⁵⁵ General Police Rules for Public Shows and Entertainment (Royal Decree 2816/82 of 27 August 1982), Art. 59(1).

²⁵⁶ The Penal Code, Art. 511, paras. 1 and 2.

²⁵⁷ The Penal Code, Art. 511, para. 3.

²⁵⁸ The Penal Code, Art. 512.

²⁵⁹ 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.

²⁶⁰ 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.

²⁶¹ 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.²⁶² 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.²⁶³ 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.”²⁶⁴ 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.”²⁶⁵ 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.²⁶⁶ 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.”²⁶⁷

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.²⁶⁸

Roma/gitano children and women are also regularly denied entry to public places.²⁶⁹ 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

²⁶² “The Director of the Basque Immigration Office Discriminated against for Being Black,” *El Mundo*, 22 October 2001.

²⁶³ SOS Racismo, *Annual Report 2001 on Racism in Spain*, p.35.

²⁶⁴ SOS Racismo, *Annual Report 2001 on Racism in Spain*, p. 91.

²⁶⁵ Movement against Intolerance, *Urban Violence and Racist Aggressions in Spain by Autonomous Communities*, May-July 2000, p. 37.

²⁶⁶ SOS Racismo, *Annual Report 2001 on Racism in Spain*, p. 91.

²⁶⁷ SOS Racismo, *Annual Report 2001 on Racism in Spain*, p.192.

²⁶⁸ E. Figueredo, “The Autopsy Shows that the Ecuadorian was Still Alive when They Threw Him into the Sea,” *El Mundo*, 30 January 2002.

²⁶⁹ 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.²⁷⁰ 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.²⁷¹ In Falces (Navarra), Romani women allegedly are not allowed into discos.²⁷²

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.²⁷³

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."²⁷⁴ 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."²⁷⁵

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.²⁷⁶

²⁷⁰ 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.

²⁷¹ Interview with Alicia Terruel, the lawyer in both cases, 26 April 2002.

²⁷² SOS Racismo, *Annual Report 2001 on Racism in Spain*, 2001, p. 26.

²⁷³ SOS Racismo alone filed 46 discrimination complaints in the last three years. *Diari de Terrasa*, 2 February 2002.

²⁷⁴ Supreme Court, Decision No. 1089/1998 of 29 September 1998.

²⁷⁵ SOS Racismo, *Annual Report 2000 on Racism in Spain*, p. 193.

²⁷⁶ 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.²⁷⁷ The Movement against Intolerance recently announced the launch of a campaign to educate bar owners and staff on “the right to admission without discrimination.”²⁷⁸

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.²⁷⁹

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.²⁸⁰ 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.²⁸¹ Roma children receive less post-natal care²⁸² and are at higher risk of getting ill,²⁸³ suffering an accident (such as burns, falls, broken bones, car accidents, and animal bites²⁸⁴), lead poisoning,²⁸⁵ and dermatological problems.²⁸⁶ They

²⁷⁷ “The Bars Ask for ‘Neighbourhood Police’ to Put an End to Violence,” Belt Ibérica [professional association], S.A., *Professional News*, 6 February 2002.

²⁷⁸ “The Bars Ask for ‘Neighbourhood Police’ to Put an End to Violence,” Belt Ibérica [professional association], S.A., *Professional News*, 6 February 2002.

²⁷⁹ See, e.g., J. F. Gamella, *The Roma Population in Andalucía*, Junta de Andalucía, Sevilla, 1996, p. 171.

²⁸⁰ 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.

²⁸¹ 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.

²⁸² Government of Andalucía, Department of Social Affairs, *Integral Plan for the Romani Community*, p. 27.

²⁸³ 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.

²⁸⁴ J. F. Gamella, *The Roma Population in Andalucía*, p. 186.

²⁸⁵ 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.

²⁸⁶ 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.²⁸⁷ 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.²⁸⁸

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.²⁸⁹ Moreover, many Roma/gitanos do not have effective access to information about the availability of various healthcare services.²⁹⁰

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.²⁹¹ In some areas (e.g. Castellón), doctors have recorded a higher incidence of hepatitis B and hepatitis C among Roma than among non-Roma.²⁹² Roma are more often victims of accidents than the population at large.²⁹³

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."²⁹⁴

Government response

The Roma Development Programme has financed various workshops, seminars and small health education projects carried out by Romani NGOs. However, no general

²⁸⁷ 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.

²⁸⁸ 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.

²⁸⁹ P. Bezunarte, Health Department of the FSGG: "Romani Community and Health," <<http://www.fsgg.org/salud02.htm>>, (accessed 15 August 2002).

²⁹⁰ 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.

²⁹¹ Government of Andalucía, Department of Social Affairs, *Integral Plan for the Romani Community*, p. 28.

²⁹² 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.

²⁹³ 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.

²⁹⁴ 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.²⁹⁵

3.1.5 Criminal justice

The Constitution provides for the right to a fair public trial,²⁹⁶ and prohibits racial discrimination in all areas, including criminal justice.²⁹⁷ 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.²⁹⁸ Racial profiling is a common experience for Roma who live in poor neighbourhoods.²⁹⁹ 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.³⁰⁰ Practicing lawyers and human rights organisations

²⁹⁵ Interview with Carmen Santiago Reyes, Castellon, July 2002.

²⁹⁶ Constitution, Art. 24 (Legal Remedies).

²⁹⁷ Constitution, Art. 14 (Equality).

²⁹⁸ T. San Román Espinosa, intervention published in Working Documents 43, “Debate on Romani People,” p. 71.

²⁹⁹ 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.

³⁰⁰ 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,³⁰¹ and allege that less value is attached to the testimony of Romani victims and witnesses than to the testimonies of non-Roma.³⁰²

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.³⁰³

One practising lawyer has stated that the tone of criminal law decisions of the Supreme Court involving Roma “oscillates between charity and racism.”³⁰⁴ 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;”³⁰⁵ “they wanted to buy heroin from a gitano;”³⁰⁶ and “the [witness] had relations with gitanos, including with the defendant.”³⁰⁷ 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...”³⁰⁸

Widespread lack of understanding of Romani culture and traditions within the judiciary³⁰⁹ 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.³¹⁰ Courts

³⁰¹ Interview with Carmen Santiago Reyes, Cordoba, November 2001. Allegedly, the police often enter and search Romani houses without warrant, expecting to find stolen goods.

³⁰² Movement against Intolerance, *RAXEN Report – Racism, Xenophobia and Intolerance in Spain through Facts*, Especial 2001, p. 33.

³⁰³ 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.”

³⁰⁴ D. L. Fernández Jiménez, “Juridical Aspects” in Working Documents 43, “Debate on Romani People,” p. 176.

³⁰⁵ Supreme Court Decision 1834/1992 of 14 September 1992.

³⁰⁶ RJ 1990/8201, decision of 22 October 1990.

³⁰⁷ RJ 1989/2615, decision of 13 March 1989.

³⁰⁸ Supreme Court Decision 686/1994 of 1 April 1994.

³⁰⁹ See, e.g., F. Hernández, intervention published in Working Documents 43, “Debate on Romani People,” p. 183.

³¹⁰ 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,³¹¹ 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.³¹²

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.³¹³

Government response

There has been no official response to the Barañi report³¹⁴ 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.³¹⁵ Offences committed with a racial motivation are aggravated offences.³¹⁶ Though it has been in force for more than five years, this provision has been applied

³¹¹ State FCNM Report, p. 21.

³¹² Barañi Team, *Romani Women and the Criminal Justice*, Ediciones Metyel, Madrid 2001.

³¹³ Barañi Team, *Romani Women and the Criminal Justice*, Ediciones Metyel, Madrid 2001.

³¹⁴ Interview with Daniel Wagman, coordinator of Barañi Team, Madrid, 10 December 2001.

³¹⁵ The Penal Code, Art. 510(1).

³¹⁶ The Penal Code, Art. 22(4).

extremely rarely,³¹⁷ despite a generally acknowledged increase in the number of racially motivated attacks, juvenile violence, and attacks by extremist and neo-Nazi groups and gangs.³¹⁸

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.³¹⁹

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.³²⁰ 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.³²¹

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.³²² Human rights organisations maintain that the number of cases is severely under-reported by the authorities.³²³

Community violence against immigrants and Roma/gitanos has reached alarming proportions, and has become a subject of concern of specialised international bodies.³²⁴ A number of incidents have followed a similar pattern: the majority population of a

³¹⁷ 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.

³¹⁸ ECRI Report 1999, Introduction; EUMC, *Diversity and Equality for Europe – Annual Report 2000*, p. 27.

³¹⁹ CERD, *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Spain*, CERD/C/304/Add.95, 19 April 2000, para. 6.

³²⁰ Amnesty International Report on Spain – 2000.

³²¹ CAT, *Concluding Observations: Spain*, CAT/C/ SPA, 21 November 1997, para. 8.

³²² CERD/C/304/Add.95.

³²³ 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.

³²⁴ *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.³²⁵ 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,³²⁶ 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.”³²⁷ The mayor promised the crowd to instruct the judge to “free the accused.” The demonstrations continued for weeks,³²⁸ with demonstrators arriving in buses provided by the city hall, and harassing other Romani families in the village.³²⁹ 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!”³³⁰ The case is currently pending.³³¹

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

³²⁵ 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.

³²⁶ 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.

³²⁷ “More than Thousand Neighbours Ask for the Release of Two Young People,” *Lanza*, 6 May 1999.

³²⁸ “Two Weeks after the Incidents, Albaladejo Continue to Maintain its Firm Support to Raul and Jose,” *Crónicas de la Mancha*, No. 223, 1999.

³²⁹ 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.

³³⁰ “Finally, They are Free!” *Lanza*, 28 June 1999.

³³¹ 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.³³² Two Romani houses were set on fire and another eight were damaged,³³³ cars and motorcycles parked on the street were destroyed. The first group was encouraged and supported by another 1,000 demonstrators.³³⁴ 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.³³⁵

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.³³⁶

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.³³⁷ The mayor declared that the violence was simply an isolated incident and had nothing to do with racism.³³⁸ As for the Roma, they "were afraid, felt that the authorities had let them down and left the village, abandoning their houses."³³⁹ 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

³³² 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.

³³³ "Four Assailants on Gitano Settlement are Freed," *El Mundo*, 28 July 2000.

³³⁴ F. Pascual, "Racism: Six Detained after Incidents in Almoradí," *El Mundo*, 26 June 2000.

³³⁵ 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.

³³⁶ "Four Assailants on Gitano Settlement are Freed," *El Mundo*, 28 July 2000.

³³⁷ 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.

³³⁸ 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.

³³⁹ 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.³⁴⁰ 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.³⁴¹

3.2.2 Violence by public officials

Security forces³⁴² have been criticised for brutality, abuse of detainees and ill-treatment of foreigners and immigrants.³⁴³ ECRI has mentioned reports of racist attitudes and misconduct among the police forces towards vulnerable groups in particular.³⁴⁴

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 1995–2002.³⁴⁵ 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.³⁴⁶

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

³⁴⁰ ASGG, *Press Bulletin*, March 2000.

³⁴¹ *El País*, 18 October 2001.

³⁴² 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.

³⁴³ 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.

³⁴⁴ ECRI Report 1999, para. 15.

³⁴⁵ Amnesty International, "Spain: Crisis of Identity – Race-related Torture and Ill-treatment by State Agents," April 2002, AI-Index EUR 41/001/2002.

³⁴⁶ 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.³⁴⁷

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.”³⁴⁸

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 conflicts³⁴⁹ 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.³⁵⁰ However, no information was made available about the content of the offence or the punishment.³⁵¹

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.³⁵² As a result, racially motivated violence is severely under-

³⁴⁷ “Two Policemen are Fined for Aggression,” *El Mundo*, 10 July 2002.

³⁴⁸ J. A. Hernández, “The Prosecutor Demands Ten Years of Prison for a Policeman Who Raped an Immigrant,” *El País*, 17 April 2001.

³⁴⁹ *Fifteenth Periodic Reports of States Parties Due in 1998: Spain*, CERD/C/338/Add.6, 12 October 1998, para. 9.

³⁵⁰ *Fifteenth Periodic Reports of States Parties Due in 1998: Spain*, CERD/C/338/Add.6, 12 October 1998, para. 40.

³⁵¹ *Summary Record of the 1384th Meeting: Spain, Tonga*, CERD/C/SR.1384, 15 June 2000, para. 45.

³⁵² *Fifteenth Periodic Reports of States Parties Due in 1998: Spain*, CERD/C/338/Add.6, 12 October 1998, para. 43.

reported. Several NGOs³⁵³ 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,³⁵⁴ initiatives to raise awareness about racism attitudes,³⁵⁵ and research on offences related to racism.³⁵⁶ 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 torture³⁵⁷ and included in the so-called "millennium pardon" another 14 members of security forces who had been convicted for torture.³⁵⁸

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,³⁵⁹ 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.³⁶⁰ The community of Madrid has established such

³⁵³ 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.

³⁵⁴ 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.

³⁵⁵ 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.

³⁵⁶ *Fifteenth Periodic Reports of States Parties Due in 1998: Spain*, CERD/C/338/Add.6, 12 October 1998, paras. 53–54.

³⁵⁷ 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.

³⁵⁸ 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.

³⁵⁹ ECRI Report 1999, *Introduction*.

³⁶⁰ 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.³⁶¹

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”³⁶² – 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.³⁶³

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*

³⁶¹ Interview with the President of the Movement against Intolerance, Madrid, December 2001.

³⁶² Constitution, *Preamble*.

³⁶³ 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.³⁶⁴

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,³⁶⁵ but there was little or no reaction to it.³⁶⁶

Similar demands have been formulated by other Romani organisations: the Romani Union recommended the adoption of a Roma Statute,³⁶⁷ 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.³⁶⁸

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.”³⁶⁹

³⁶⁴ “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).

³⁶⁵ ASGG News, “Manifesto for the Rights, Dignity and Future of the Roma Nation,” NT 00.07.01.

³⁶⁶ “Romipen and the Cultural Autonomy Status,” *Revista Hika* 111, <<http://www.hika.net/revista/zenb111/HenEstatuto.html>>, (accessed 20 August 2002).

³⁶⁷ P. Aguilera Cortés, “Political Participation in Romani Communities,” *Gitanos – Pensamiento y Cultura*, No. 4, April 2000.

³⁶⁸ Movement against Intolerance, *Urban Violence and Racist Aggressions in Spain by Autonomous Communities*, August–October 2001, p. 20.

³⁶⁹ “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.³⁷⁰

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,³⁷¹ other languages also may be designated “official” under regional statutes,³⁷² and the official policy is that “different language variations of Spanish are a cultural heritage which shall be... respected and protected.”³⁷³ A language or dialect other than Castilian Spanish is used in six of 17 ACs.³⁷⁴ 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.³⁷⁵

³⁷⁰ State FCNM Report, p. 14.

³⁷¹ Constitution, Art. 3 (1).

³⁷² Constitution, Art. 3 (2).

³⁷³ Constitution, Art. 3 (3).

³⁷⁴ 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.

³⁷⁵ 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.³⁷⁶ 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.³⁷⁷ 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,³⁷⁸ 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-Caló³⁷⁹ 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.³⁸⁰

³⁷⁶ “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.

³⁷⁷ 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>, (accessed 20 August 2002).

³⁷⁸ “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).

³⁷⁹ MLSA, *Roma Development Programme*, March 1999, p. 4.

³⁸⁰ 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.).³⁸¹

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 16th and the 18th centuries.³⁸² 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.³⁸³

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.”³⁸⁴

The national ombudsman³⁸⁵ and CERD³⁸⁶ 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.”³⁸⁷ However, the definition continues to appear in dictionaries sold in 2002. The FSGG asked³⁸⁸ the editors to recall from the market all copies of the 1998 edition

³⁸¹ 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.

³⁸² T. C. Buezas, “Racism Increases, Solidarity as Well,” *Tecnos*, Junta de Extremadura, 1995, p. 225.

³⁸³ 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.

³⁸⁴ 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.

³⁸⁵ *Thirteenth periodic reports of States parties due in 1994: Spain*, CERD/C/263/Add.5, 3 May 1995, paras. 73–76.

³⁸⁶ 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.

³⁸⁷ Royal Academy of Spain, *Dictionary of Spanish Language*, 21st edition, Vol. 1, Madrid 1995, p. 1040.

³⁸⁸ 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.³⁸⁹ 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.³⁹⁰

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.³⁹¹

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.³⁹²

³⁸⁹ J. Salinas, intervention published in Working Documents 43, “Debate on Romani People,” p. 58.

³⁹⁰ J. D. Santiago, intervention published in Working Documents 43, “Debate on Romani People,” p. 69.

³⁹¹ FSGG, *Evaluation of Educational Normalisation of Romani Children*, pp. 170–171.

³⁹² 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.³⁹³ 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.³⁹⁴

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,³⁹⁵ 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.³⁹⁶

3.3.4 Media

Romani experts assert that there is a lack of a coherent minority media policy.³⁹⁷ 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

³⁹³ ECRI Report 1999, para. 13.

³⁹⁴ State FCNM Report, pp. 11–12.

³⁹⁵ CERD, *Summary Record of the 1146th Meeting: Spain*, CERD/C/SR.1146, 22 April 1996, para. 9.

³⁹⁶ State FCNM report, p. 13.

³⁹⁷ Interview with Sebastian Porras, Romani journalist, Barcelona, November 2001.

identity of its minorities³⁹⁸ 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*,³⁹⁹ 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.⁴⁰⁰ 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.⁴⁰¹ 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,⁴⁰² “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.”⁴⁰³ 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.⁴⁰⁴

³⁹⁸ “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).

³⁹⁹ *I Tchatchipen* means “the Truth” in Caló.

⁴⁰⁰ These summaries are accessible at: <<http://www.fsgg.org>>, (accessed 2 September 2002).

⁴⁰¹ Interview with Amara Montoya, President of the Romí Serseni, Madrid, November 2001.

⁴⁰² 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.

⁴⁰³ Interview with Sebastian Porras, Romani journalist, Barcelona, November 2001.

⁴⁰⁴ 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.”⁴⁰⁵

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.⁴⁰⁶

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,⁴⁰⁷ and the right to accede, under conditions of equality, to public functions and positions, in accordance with the requirements established by law.⁴⁰⁸ Political parties are the fundamental instruments for political participation.⁴⁰⁹

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.⁴¹⁰

Spanish Roma have been represented in international bodies such as the European Parliament and the Council of Europe.⁴¹¹ At the national level, Roma representatives

⁴⁰⁵ CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Spain*, CERD/C/304/Add.8, 28 March 1996, “Positive Aspects.”

⁴⁰⁶ “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.

⁴⁰⁷ Constitution, Art. 23(1).

⁴⁰⁸ Constitution, Art. 23(2).

⁴⁰⁹ Constitution, Art. 6.

⁴¹⁰ “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.

⁴¹¹ 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.⁴¹² Roma organisations are represented in the National Council of NGOs for Social Action, a consultative body for the development of social protection policies.⁴¹³

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.”⁴¹⁴ 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.⁴¹⁵

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,⁴¹⁶ and two Roma representatives are *de jure* members of the regional Social Welfare Council, together with representatives of other disadvantaged groups.⁴¹⁷ However, these representatives are not elected, but nominated by the social protection authorities.⁴¹⁸ Roma are involved in work on social programmes in a number of other

⁴¹² 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.

⁴¹³ 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.”

⁴¹⁴ Union Romani, “Barcelona Starts the New Gypsy People City Council,” 29 December 1998.

⁴¹⁵ P. Aguilera Cortés, “Political Participation in Romani Communities,” *Gitanos – Pensamiento y Cultura*, No. 4, April 2000.

⁴¹⁶ Law 5/1997 of 25 June 1997, regulating the Social Services System in Valencia [97/1935], Art. 4.

⁴¹⁷ Law 5/1997, Art. 4.

⁴¹⁸ 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.⁴¹⁹

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.⁴²⁰

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.⁴²¹ However, there is no policy to encourage either parliamentary participation or the employment of Roma in public positions.

⁴¹⁹ 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).

⁴²⁰ P. Aguilera Cortés, "Political Participation in Romani Communities," *Gitanos – Pensamiento y Cultura*, No. 4, April 2000.

⁴²¹ 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.⁴²²

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.⁴²³

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.⁴²⁴

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

⁴²² Council Directive 2000/43/EC, Art. 13.

⁴²³ Interview with Diego Luis Fernández Jiménez, Cordoba, 6 November 2001.

⁴²⁴ 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 obligation⁴²⁵ to respond to information requests, although in practice not all of them have done so.⁴²⁶

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.⁴²⁷ 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.⁴²⁸

The ombudsman in Andalucía (*Defensor del Pueblo Andaluz*) has been particularly active in addressing social exclusion, marginalisation, ghettoisation, the situation in

⁴²⁵ 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).

⁴²⁶ Ombudsman Office, "Presentation of the 2000 Report before the Mixed Parliamentary Commission," 18 October 2001.

⁴²⁷ 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.

⁴²⁸ *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.⁴²⁹ 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.⁴³⁰ 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.⁴³¹

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.⁴³² 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.

⁴²⁹ "The Ombudsman of Castilla y León Ask Help for the Romani People Who Need it," *El Norte de Castilla*, 19 January 1999.

⁴³⁰ "Manuel García Álvarez Congratulates Himself on the Immediate Re-housing of the Romani Families from Cacabelos," *Bierzo Noticias*, 2 February 2001.

⁴³¹ "El Ararteko Criticises the Absence of Unified Criteria to Judge Minors," *El País – País Vasco*, 12 August 2001.

⁴³² 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 1999.⁴³³ 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.⁴³⁴ 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,⁴³⁵ 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).⁴³⁶

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

⁴³³ "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.

⁴³⁴ "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.

⁴³⁵ The Chamber of Deputies' Proposal for the Creation of the Roma Development Programme, 3 October 1985, PNL 191-II.

⁴³⁶ 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.”⁴³⁷

The Government allocates approximately €3.3 million annually⁴³⁸ for implementation of the RDP, and the MLSA decides how to distribute this amount among the ACs, on the basis of established criteria.⁴³⁹ The Ministry then concludes agreements with the ACs⁴⁴⁰ 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,⁴⁴¹ 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.⁴⁴²

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

⁴³⁷ “The Roma Development Programme,” General Direction for Social Action, Minors and Family, Department of Social Affairs, MLSA, March 1999, p. 8.

⁴³⁸ 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.

⁴³⁹ Projects must be comprehensive, covering social welfare, education and training, employment, health, housing and living conditions. See State FCNM Report, p. 10.

⁴⁴⁰ All but five ACs (Canarias, País Vasco, Navarra, Ceuta and Melilla) participate in these agreements. See “The Roma Development Programme,” MLSA, p. 9.

⁴⁴¹ Federación Española de Municipios y Provincias (FEMP).

⁴⁴² The Roma Development Programme,” MLSA, p. 12.

Education and Culture to develop policy measures, with the help of various educational and social sector institutions.⁴⁴³

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.”⁴⁴⁴ 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.”⁴⁴⁵

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.⁴⁴⁶ 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.”⁴⁴⁷

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

⁴⁴³ See State FCNM Report, p. 19.

⁴⁴⁴ Interview with Carmen Santiago Reyes, Cordoba, 6 November 2001.

⁴⁴⁵ Interview with Diego Luis Fernández Jiménez, the Socialist Party’s Coordinator for Minorities’ Issues, Cordoba, 6 November 2001.

⁴⁴⁶ *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.

⁴⁴⁷ 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.⁴⁴⁸ 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.⁴⁴⁹

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.”⁴⁵⁰

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.”⁴⁵¹

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

⁴⁴⁸ 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.

⁴⁴⁹ *Report on the Situation of Roma and Sinti in the OSCE Area*, p. 145.

⁴⁵⁰ F. Villarreal, “Spanish Policy and Roma,” *Roma Rights – Quarterly Journal of the European Roma Rights Centre*, No. 2-3, 2001, Budapest, pp. 55–60.

⁴⁵¹ Interview with Diego Luis Fernández Jiménez, Cordoba, 6 November 2001.

the names of the responsible organisations.⁴⁵² 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.⁴⁵³ 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.⁴⁵⁴ Commentators have noted a need for these leaders to forge strategic approaches, unified methodologies, clear criteria and common objectives at the national level.⁴⁵⁵ At

⁴⁵² The Service of the Roma Development Programme, “Report on the Roma Development Programme,” MLSA, Madrid, 1998.

⁴⁵³ Union Romani, “A Civic Platform is Born in Barcelona to Struggle against Nazism,” 2 December 1998.

⁴⁵⁴ 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.

⁴⁵⁵ 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.⁴⁵⁶ Furthermore, there is a distance between Roma and non-Roma civil society, and a scarcity of intercultural associations.⁴⁵⁷ 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.⁴⁵⁸

According to some critics, little effort has been made to draw a connection between State funding allocation and Romani NGOs' management capacities⁴⁵⁹ 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,⁴⁶⁰ has resulted in the development of an "NGO clientele"⁴⁶¹ 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.⁴⁶²

Furthermore, the fact that the Government has provided substantial funding to select NGOs has contributed to what some characterise as "a widespread sense of

⁴⁵⁶ A. Vega Cortés, intervention published in Working Documents 43, "Debate on Romani People," p.183.

⁴⁵⁷ J. D. S. Torres, "Social Participation," in Working Documents 43, "Debate on Romani People," p. 173.

⁴⁵⁸ 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.

⁴⁵⁹ H. Garcia, intervention published in Working Documents 43, "Debate on Romani People," p. 182.

⁴⁶⁰ J. Salinas, intervention published in Working Documents 43, "Debate on Romani People," p. 174.

⁴⁶¹ 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.

⁴⁶² J. D. Santiago Torres, "Social Participation," in Working Documents 43, "Debate on Romani People," p. 173.

complacency,”⁴⁶³ 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...⁴⁶⁴

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.

⁴⁶³ *Report on the Situation of Roma and Sinti in the OSCE Area*, p. 145.

⁴⁶⁴ 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.