



Not Even in the Margins: Where are Roma with Disabilities?

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Abbreviations

Treaties and treaty bodies

Acronym	Treaty	Acronym Treaty body
CEDAW	Convention on the Elimination of all forms of Discrimination against Women	CEDAW Committee
CRC	Convention on the Rights of the Child	CRC Committee
CRPD	Convention on the Rights of Persons with Disabilities	CRPD Committee
ICERD	Convention on the Elimination of all forms of Racial Discrimination	CERD Committee
ICESCR	International Covenant on Economic, Social, and Cultural Rights	CESCR Committee
ICCPR	International Covenant on Civil and Political Rights	CCPR Committee

Other abbreviations

DRI	Disability Rights International
ERRC	European Roma Rights Center
ECtHR	European Court of Human Rights
HRW	Human Rights Watch
ILO	International Labour Organization
MDAC	Mental Disability Advocacy Center
UNDP	United Nations Development Program
WHO	World Health Organization



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A major campaign to raise awareness of conditions for Roma living in Central and South-East Europe, the Decade of Roma Inclusion 2005-2015, ended last fall. Governments made commitments, reported on progress, and civil society organizations monitored their work. The concluding report, A Lost Decade?, signals that results were mixed at best; yet for 15% of the population (i.e., persons with disabilities), there were no commitments, no reports, and no monitoring. For Roma with disabilities the decade didn't start and lose momentum, it simply never happened.

This study looks at the progress made through the Decade of Roma Inclusion (hereinafter Roma Decade) and European Union's Framework for National Roma Integration Strategies (hereinafter EU Framework), provides information about Roma with disabilities, describes efforts to raise awareness of Roma with disabilities and protect their rights, and finally outlines the rights of ethnic minorities through an intersectional lens.

**Michael Szporluk, February 2016
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I. Introduction

It has been recognized that poverty and disability are correlated, and that ethnic minorities are more likely to live in poverty than ethnic majorities.¹ With respect to Roma in particular, it has been recognized that they are more likely to live in poverty, have worse educational and health outcomes, and fewer job prospects. This recognition motivated numerous governments, at the urging of civil society, to develop and implement the Decade of Roma Inclusion (hereinafter Roma Decade) from 2005-2015 and the European Union's Framework for National Roma Integration Strategies (hereinafter EU Framework), to 'close the gap' between Roma and non-Roma in the EU and EU enlargement countries.

Despite these recognized facts, the Roma Decade and the EU Framework have ignored Roma with disabilities. In part this can be explained as a result of the fragmented approach to looking at rights of different groups in international law. While the International Covenant on the Elimination of all forms of Racial Discrimination (ICERD) should apply for all persons with disabilities who are racial or ethnic minorities, in practice this has not been the case. The failure to include persons with disabilities was one of the reasons why disability rights activists advocated for the Convention on the Rights of Persons with Disabilities (CRPD).

Traditionally, disability has been seen as a medical and individual problem, and often as a source of shame for disabled persons and their families. A shift towards viewing disability as a social issue is still relatively new, and has not gained wide acceptance in many communities.

¹ Szporluk, Michael, Anirban Pal, and Meritt Buyer, "The Right to Adequate Housing for Persons with Disabilities Living in Cities: Towards Inclusive Cities, United Nations Settlements Program" (UN-Habitat, 2015), 10 (see footnote 21), and pages 13-15 (see sections on indigenous persons, migrants, and ethnic minorities and persons in extreme poverty).



In 2001 World Health Organization (WHO) noted the following:

Disability is not an attribute of an individual, but rather a complex collection of conditions, many of which are created by the social environment. Hence the management of the problem requires social action, and it is the collective responsibility of society at large to make the changes necessary for full participation of people with disabilities in all areas of social life.²

The CRPD puts forth a human rights model for looking at disability, and recognizes that States Parties have obligations to ensure persons with disabilities can enjoy their rights on an equal basis with others. This requires undertaking measures to reduce barriers in economic, social, cultural, and political life. It requires a change in how disability is conceived of in the family and in the community, and requires governments to proactively support persons with disabilities to close the disparities in living conditions and ensure non-discrimination.

This study reviews the results of the Roma Decade and the EU Framework, highlights some of the gaps in knowledge regarding Roma with disabilities, and describes the efforts of some stakeholders to raise awareness about conditions for Roma with disabilities and the discrimination they experience. It ends with an intersectional analysis of the rights of ethnic minorities in international law.

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Note on language: Except when using direct quotes or citing official strategies such as “the National Roma Integration Strategies”, this report uses the following terms: Romani (adjective), Rom (singular noun), and Roma (plural noun).

II. The Roma Decade and the EU Framework

A. The Roma Decade / background / objectives

The Roma Decade traces its origins to a conference on “Roma in an Expanding Europe” held in Bulgaria in 2003.³ At that conference governments made pledges to eliminate discrimination against Roma and to ‘close the gaps’ between Roma and the rest of the population. The Roma Decade, which lasted from 2005-2015, was initiated in nine countries (Bulgaria, Croatia, Czech Republic, Hungary, Macedonia, Montenegro, Romania, Serbia, and Slovakia).⁴ Each country was obliged to develop and provide adequate funding for national action plans with a focus on four themes (housing, education, employment and health care), ensure participation of civil society organizations (and in particular Romani organizations), collect data, ensure transparency, establish monitoring mechanisms, strengthen the capacity of Romani organizations to ensure their effective participation, and contribute financially to the Decade.⁵

² World Health Organization, “International classification of functioning, disability and health: Short version”, Geneva, Switzerland, 2001, 28.

³ At <<http://www.romadecade.org/about-the-decade-decade-in-brief>> (Accessed: 15 January, 2016)

⁴ Albania, Bosnia and Herzegovina, and Spain joined the Decade in 2009.

⁵ “Decade of Roma Inclusion 2005-2015, Terms of Reference”, Approved by the International Steering Committee on 18 November, 2005, Bucharest, Romania, amended by the 19th International Steering Committee on October 1 2010, 5-6, at <<http://www.romadecade.org/decade-documents-decade-governing-documents>> (Accessed: 15 January, 2016)



B. Findings/results of the Roma Decade

The Decade Secretariat commissioned three experts on Romani rights with drafting of an evaluation (titled “A Lost Decade?”). This evaluation revealed rather mixed results in each of the four main thematic areas. The authors presented their findings at the Decade’s International Steering Committee in September 2015.⁶

Education

The evaluation found that the most progress was made in the educational sector, even though inequalities exist in all Decade countries, and segregation persists in many of the countries.⁷ For example, Roma between ages of 15-24 have seen gains in literacy in almost all Decade countries and rates of completion of secondary education have increased in most countries.⁸ Nonetheless, gaps in completion rates for Roma in primary and secondary education are still profound in all countries. With regard to primary education there were gaps of “more than 25 percentage points” in Albania, Macedonia and Montenegro, while the “gap in completion of secondary education [is] 40 percentage points or more in all Decade countries.”⁹ The evaluation noted that “arguably the most pressing” issue is school segregation, attributed in part to non-disabled Roma being inappropriately placed in segregated schools for children with disabilities (see section II F. for more on this practice).¹⁰

Employment

With regard to improving access to employment, the evaluation referenced data that showed that “targeted programs for Roma administered by national employment agencies” made little progress.¹¹ Some reports had criticized the EU-funded programs for trainings that were not relevant or not sufficiently linked to any opportunity for regular employment¹², and for an emphasis on awareness raising when what was needed, rather, was concrete measures to support the development of the social economy in Romani communities.¹³ Others point out that even if those programs had been more effective in supporting entrepreneurship, the impact on the whole population would still be quite limited given the small scale of those programs.¹⁴

Health

The first of two references to disability in the health chapter mentions the “worsening mental health of Roma” – in particular for women, who are reported to have “depression and rising levels of anxiety.”¹⁵ However, there is almost no information on the availability or use of mental health services for Roma women and girls,¹⁶ let alone for Roma women and girls with disabilities.

The second reference to disability noted great concern with regard to “the reported direct effects on health

⁶ Friedman, Eben, email communication with the author, 15 January 2016. No other internal evaluation is foreseen.

⁷ Rorke, Bernard, Margareta Matache, and Eben Friedman, “A Lost Decade?: Reflections on Roma Inclusion 2005-2015” (2015), at 9.

⁸ *Ibid.*, 18.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*, 19.

¹² Hurrell, Jakob, *et al.*, “Uncertain Impact: Have the Roma in Slovakia Benefitted from the European Social Fund?”, United Nations Development Programme Bratislava, 2012, 75.

¹³ Iulian Stoian, David Mark, and Marius Wamsiedel, “Decade Watch Romania Report: Mid-Term Evaluation of the Decade of Roma Inclusion”, Roma Civic Alliance of Romania, Bucharest, 2010, 25.

¹⁴ O’Higgins, Niall, “Roma and Non-Roma in the Labour Market in Central and South Eastern Europe”, United Nations Development Programme, Bratislava, 2012, 36.

¹⁵ Rorke, Matache, and Friedman *ibid.*, 54.

¹⁶ European Union, “Report on the health status of the Roma population in the EU and monitoring data collection in the area of Roma health in the Member States”, 2014, 73.



within the most vulnerable families, especially for children's diet and chronic disease monitoring and management within elderly disabled groups."¹⁷

Housing

Overall, housing conditions deteriorated in one or more aspects in all countries aside from Bosnia and Herzegovina despite the Decade's clear focus on housing.¹⁸ Elements assessed included access to improved water sources, sanitation, proportion living in insecure housing, and average space per household member. Residential segregation, the use of substandard housing for Romani populations and forced evictions were identified as problems in more than half of the Decade countries.¹⁹

Roma Decade report on indicators

In 2014 the Roma Decade produced a report that assessed the 314 projects that had been carried out in the 12 countries, looking specifically at six indicators to determine what factors led some of the projects to be more successful. While the projects, in sum, were relatively good at ensuring the "participation of Roma", they fared much less well with respect to "level of government involvement" and "level of institutional incorporation of the practice."²⁰ Projects that had a direct aim to bring together Roma and non-Roma tended to achieve more positive results.²¹ The report noted the benefit of addressing 'taboo topics' such as early marriages, using a mediation model to discuss such issues.²²

According to their analysis, four factors need to be part of every successful project: 1) the inclusion of Roma from the beginning and in all aspects of the cycle; 2) "the promotion and protection of Roma identity"; 3) "fighting discrimination and promotion of tolerance"; and 4) empowerment of members of the community.²³ The report also stressed the need to have baseline data, clarity about monitoring roles, and funding to carry out monitoring. Finally, three external factors influenced the success of projects: "the existence of official policies for Roma inclusion (national or local), the existence of legislation appropriately regulating the subject area and effective implementation of the legislation."²⁴

C. Lack of progress in cross-cutting issues

The Roma Decade identified three cross-cutting issues: poverty reduction, gender, and anti-discrimination. There were disappointing results, however, in each.

George Soros, one of the biggest backers of the Decade, noted the failure "to lift visible numbers of Roma out of poverty."²⁵ The evaluation stated that there was "relatively few data available on the extent to which poverty among Roma has been reduced in the course of the Decade."²⁶

With respect to gender, the end of project evaluation found that, "with the partial exception of Spain," there was "a lack of sustained attention to issues of gender" in the twelve countries that were part of the Roma Decade.²⁷ It noted that women were not considered as a distinct target group, even when it came to

¹⁷ Rorke, Matache, and Friedman *ibid*, 54.

¹⁸ *Ibid*, 21.

¹⁹ *Ibid*, 22.

²⁰ Decade of Roma Inclusion Secretariat Foundation, "Decade Intelligence Report: factors for success or failure of Roma Inclusion Projects", 2014, 7.

²¹ *Ibid*, 9.

²² *Ibid*, 12.

²³ *Ibid*, 11 and 15.

²⁴ *Ibid*, 19.

²⁵ European Roma Rights Centre Blog, "George Soros looks back on the Decade of Roma Inclusion", 2015, at <<http://www.errc.org/blog/2015-george-soros-looks-back-on-the-decade-of-roma-inclusion/91>> (Accessed: 5 January, 2016)

²⁶ Rorke, Matache, and Friedman, *ibid*, 25.

²⁷ *Ibid*, 25.



issues that particularly affect Romani women. It was further noted that strategic documents gave inconsistent consideration to Romani women.²⁸

Finally, with respect to anti-discrimination, anecdotal evidence from stakeholders interviewed for the evaluation showed the general view that “the situation [with respect to discrimination] is worse at the end of the Decade than it was at the beginning.”²⁹

D. EU Framework for National Roma Integration Strategies up to 2020

The EU Framework document was developed at the time when the Roma Decade was just past its midterm point. The EU Framework retained the same focus on education, employment, healthcare and housing as the Roma Decade. The EU Framework noted the over-representation of Roma in special education and in segregated schools,³⁰ but failed to address the inferior education that “special schools” provide. The EU Framework acknowledged reports of deep discrimination in employment,³¹ significant gaps in healthcare outcomes linked to poor housing, limited access to healthcare, lack of information, and exposure to higher health risks.³² The EU Framework also acknowledged discrimination with regard to access to housing.³³

Despite recognition of the importance of addressing multiple discrimination, the unimpressive results of the Roma Decade, and the stated EU Framework’s focus on addressing gender disparities, the EU Framework does not adequately address gender. It refers to “women” just three times in the body of the text, “gender” just once, and makes no references to disabled persons.

The European Commission acknowledged, in their 2014 update on the implementation of the EU Framework, that discrimination against Roma is widespread, and that the situation is “often worse” for Romani women “as they tend to face multiple discrimination.”³⁴ They noted further that there are “additional concerns” regarding the situation for Romani children, and posited that the nature of the problem is “not due to gaps in legislation, but rather to its implementation.”³⁵ They recommended that Member States should mainstream anti-discrimination into all policies (as opposed to a stand-alone policy).³⁶

E. Absence of Roma with disabilities from Roma Decade and EU Framework

Roma with disabilities have been excluded from the Roma Decade and the EU Framework. Neither initiative identifies Roma with disabilities as a target group, and there are no recommended actions to identify who they are, to understand the effects of intersectional discrimination as experienced by men and women with disabilities, to understand what barriers they face (both in their communities and within society at large), or to work toward addressing those barriers and ensuring they can exercise their rights on an equal basis with others.

²⁸ *Ibid.*

²⁹ *Ibid.*, 24.

³⁰ European Union, “Framework for National Roma Integration Strategies up to 2020”, 2011, 5.

³¹ *Ibid.*, 6.

³² *Ibid.*, 7.

³³ *Ibid.*

³⁴ European Commission, “Report on the Implementation of the EU Framework for National Roma Integration Strategies COM”, 2014, section 3.5, 13.

³⁵ *Ibid.*, 13.

³⁶ *Ibid.*, 14.



Updates to the EU Framework from 2014 and 2015 mentioned persons with disabilities just once each, namely in regard to the practice of segregated education, and in particular the inappropriate placement of Romani children in segregated schools for children with disabilities.³⁷ Though the 2015 update recognized that such schools provide “unequal chances,” the appropriateness of such schools was not questioned for children with disabilities. Ironically, the 2015 update noted the need to mobilize the “education sector to prevent and tackle marginalisation, intolerance, racism and radicalisation and to preserve a framework of equal opportunities for all, including by ensuring inclusive education for all children.”³⁸ Despite being required by the CRPD, their conception of inclusive education continues to exclude all children with disabilities.³⁹

F. Inappropriate labeling of ethnic minorities as disabled persons

The only regular mention of disability in documents from the Roma Decade is the practice of inappropriately and incorrectly identifying Romani children as disabled in several central and eastern European countries. Lawson, quoting Reid and Knight, notes this practice is not unusual:

In essence, marking students of color as disabled allows their continued segregation under a seemingly natural and justifiable label. Because it makes segregation seem appropriate and even preferable, the enduring belief that impairment and disability are empirical facts is at the center of the disproportionately problem.⁴⁰

In her study on segregation of Romani children, Julia M. White notes:

Romani children are usually streamed into special education in the earliest years, through a regime of school readiness testing and/or psychological and/or educational testing in which children are diagnosed and labeled as disabled and placed in special education settings, which are usually also segregated.⁴¹

In their concluding observations the Committee on Elimination of Racial Discrimination (CERD Committee) expressed concern about the practice of segregation:

While welcoming the various measures adopted by the State party to ensure equal access to quality education for Roma children, the Committee reiterates its previous concern about the de facto segregation of Roma children in education. It expresses its concern at their large overrepresentation in special schools and classes for children with mental disabilities. The Committee is particularly concerned about decision-making processes for placing children in such special schools, which may not take into account the cultural identity of, and specific difficulties faced by Roma.⁴²

³⁷ *Ibid*, 5; and European Commission, “Report on the implementation of the EU Framework for National Roma Integration Strategies COM (2015) 299”, 2015, 10.

³⁸ European Commission (2015), *ibid*, 10.

³⁹ CRPD, Article 24.

⁴⁰ Lawson, Anna, “Disadvantage at the Intersection of Race and Disability: Key Challenges for EU Non-Discrimination Law”, in Dagmar Schiek and Anna Lawson (eds.), *European Union non-discrimination law and intersectionality: investigating the triangle of racial, gender and disability discrimination* (Ashgate, 2011), at 50. Quoting D. Kim Reid, and Michelle G. Knight, “Disability justifies exclusion of minority students: A critical history grounded in disability studies”, 35(6) *Educational Researcher* (2006), 18-23, at 19.

⁴¹ White, Julia M., “Pitfalls and Bias: Entry Testing and the Overrepresentation of Romani Children in Special Education” (April 2012), 16, at <http://www.romaeducationfund.hu/sites/default/files/publications/pitfalls-and-bias-screen_singlepages.pdf> (Accessed: 26 January, 2016)

⁴² CERD/C/SVK/CO/6-8/2010, para. 16. Note: interesting that while the committee recognizes that Roma have the right to attend quality education, and that segregated schools do not offer quality education, no concern is expressed that children with disabilities are not provided quality education.



The Committee on the Rights of the Child (CRC Committee) has expressed similar concerns: “there continue to be serious and widespread issues of discrimination, particularly against the minority Roma children in the State party, including the systemic and unlawful segregation of children of Roma origin from mainstream education.”⁴³

The CERD Committee has called on States Parties “to bring to an end and to prevent segregation of Roma children in the field of education.”⁴⁴ Likewise, the CRC Committee has urged States Parties to eliminate “all forms of segregation of children of Roma origin, especially the discriminatory practices against them in the education system.”⁴⁵

G. Summary statement

Roma with disabilities get almost no attention in either of the main European campaigns to lift Roma out of poverty and to protect Roma from discrimination. The only issue that got any regular attention is that of inappropriately placing Roma children (regardless of actual disability status) in segregated schools for children with disabilities. The campaigns did not sufficiently address cross-cutting issues of gender, poverty reduction, and anti-discrimination. Despite the campaigns there is still very little information about Roma with disabilities, the conditions they live in, and the discrimination they face.

III. Where are Roma with disabilities?

A. Population estimates

Population estimates suggest there are at least 11,250,000 Roma in the EU and enlargement countries (using data updated in 2009-2010).⁴⁶ In a global study from 2011, WHO estimated that 15% of any population are persons with disabilities.⁴⁷ Many studies have shown a correlation between poverty and disability.⁴⁸ Lawson noted:

[I]t can be inferred that physical and mental impairment are likely to appear more often in the lives of impoverished minority ethnic communities than in those of the majority ethnic group.⁴⁹

Lawson emphasized disability as a cause and consequence of poverty, citing studies from 2000 and 2006 on conditions in the UK that showed a quarter of children living in poverty had a disabled parent, and more than half of families with a child with a disability live in poverty.⁵⁰

The European Union’s Roma Health Report notes the 2011 Census in Ireland found that Roma had higher rates of disability than the general population.⁵¹ The same report refers to other studies showing that a

⁴³ CRC/C/CZE/CO/3-47/2011, para. 30.

⁴⁴ CERD/C/SVK/CO/6-8/2010, para. 16.

⁴⁵ CRC/C/CZE/CO/3-4/2011, para. 31.

⁴⁶ European Union (2011), *supra* note 178, Annex — Table elaborated on the basis of Council of Europe’s data, at <<http://www.coe.int/t/dg3/romatravellers/defaulten.asp>>. Roughly five million live in the enlargement countries, while over six million are in EU countries currently.

⁴⁷ World Health Organization and World Bank, *World Report on Disability*, 2011, 29.

⁴⁸ Szporluk, Pal, and Buyer, 14. Describes the connection between poverty and disability, and references several studies that show this correlation.

⁴⁹ Lawson, *ibid.*, 49.

⁵⁰ *Ibid.*

⁵¹ European Union “Report on the health status of the Roma population in the EU and monitoring data collection in the area of Roma health in the Member States”, 2014, 68.



significantly higher percentage of Roma live in households with “severe material poverty” and that 81% of the Roma population “is at risk of poverty.”⁵² Given the correlation between poverty and disability, and the impoverished conditions for most Romani households, it is safe to consider, as a conservative estimate, that 15% of the Romani populations are persons with some kind of impairment. This means at a minimum there are 1.6 million Roma with disabilities in the EU and the EU enlargement countries.

The lack of data (for all Roma, not just Roma with disabilities) has been recognized as a significant challenge and barrier inhibiting the formulation and implementation of policies to protect and promote the rights of Roma. In fact, Open Society Foundations noted:

[T]he lack of data about Roma communities remains the biggest obstacle to conducting any thorough assessment of how governments are meeting their Decade commitments, despite widespread agreement among participating governments about the crucial need to generate data disaggregated for ethnicity in order to assess and guide policies.⁵³

B. Lack of intersectional lens for Romani rights organizations and DPOs

While recognizing the limitations of desk research, no documents could be located describing strategies or programs of disabled persons organizations or Roma rights organizations to identify and support Roma with disabilities. There appear to be no efforts at the European, national, or community levels to support Roma with disabilities specifically. This does not mean that work has not been done, it means merely that it is not widely known (if it is being done).

C. Lack of knowledge about the conception of disability within the community

There is a lack of information about how Romani communities conceptualize disability. Even in an article with an explicit focus on intersectional discrimination experienced within the Romani community (*included in a book concerning the intersection of racial, gender and disability discrimination*) there is no mention of Roma with disabilities or the CRPD.⁵⁴ The failure to consider Roma with disabilities, despite using an intersectional framework, illustrates how far from the margins Roma with disabilities are.

If Roma with disabilities are similar to non-Roma with disabilities, then it can be assumed that they experience even greater isolation, less access to education, less access to services, greater unemployment, and more severe poverty than their non-disabled peers. It can be assumed that there are more Romani women and girls with disabilities than men and boys with disabilities.⁵⁵ But there are many unknowns.

Within their communities, are Roma with disabilities considered a bad omen or curse as is the case in many communities across the globe? Or are they considered “just” an individual misfortune? Is disability primarily viewed as a deficiency and as a problem to be corrected? Is the birth of a child with a disability a source of shame? Who do Roma with disabilities turn to for support? What additional disadvantages do women and girls with disabilities face within the Romani community? To what extent do Roma with disabilities experience physical, sexual or emotional violence? What happens to individuals with disabilities who are estranged from or do not have any family members?

⁵² *Ibid.*, 93.

⁵³ McDonald, Christina and Katy Negrin, “No Data—No Progress: Data Collection in Countries Participating in the Decade of Roma Inclusion 2005–2015”, Open Society Foundations – Roma Initiatives, June 2010, 9.

⁵⁴ Koldinska, Kristina, “EU Non-Discrimination Law and Policies in reaction to Intersectional Discrimination against Roma Women in Central and Eastern Europe”, in Dagmar Schiek and Anna Lawson (eds.), *European Union non-discrimination law and intersectionality: investigating the triangle of racial, gender and disability discrimination* (Ashgate, 2011), 241-258.

⁵⁵ World Health Organization and World Bank (2011), 27, notes: “Across all countries, vulnerable groups such as women, those in the poorest wealth quintile, and older people had higher prevalences of disability”.



It would be important to explore these questions and others through field research, in an attempt to shine a light on the human rights violations and disparities that exist, and to begin to raise awareness and advocate for action to address those violations and disparities.

IV. Efforts to raise awareness and address discrimination

This section looks at the work of actors to address discrimination against Roma with disabilities.

A. Roma in institutions

The practice of denying legal capacity has led to the global institutionalization of a large number of individuals who are often without legal recourse to challenge their institutionalization. Several organizations, including Human Rights Watch (HRW), Disability Rights International (DRI) and Mental Disability Advocacy Center (MDAC) have examined inhumane conditions in institutions located in Eastern and Central Europe.⁵⁶

Roma confined in institutions endure significant human rights violations. Many Romani children and youth are presumed to be confined in such institutions, but precise data is lacking. As Lawson points out, “statistics do not reveal what proportion of institutionalized disabled children are from minority ethnic groups, but it is generally presumed to be substantial.”⁵⁷ During a visit to Bulgaria, for example, Thomas Hammarberg, the Commissioner for Human Rights at the Council of Europe, called for:

urgent measures to be taken regarding the placement of Roma children in institutions. Appropriate and targeted awareness-raising campaigns should be immediately initiated to inform parents of alternative solutions as well as the possible short-term and long-term consequences of such an institutionalisation. The Commissioner urges the authorities to adopt a concrete and comprehensive action plan to deinstitutionalise these children.⁵⁸

The CRPD emphasizes that all persons are equal before the law, and all persons retain their legal capacity.⁵⁹ It has also recognized that persons with disabilities have the right to live independently and in the community.⁶⁰ While the CRPD doesn’t call for de-institutionalization specifically, the CRPD Committee has called for deinstitutionalization in a general comment and several concluding observations.⁶¹ In addition, the CRPD Committee has recognized that ethnic minorities are disproportionately denied legal capacity.⁶²

⁵⁶ See, for some examples, reports from Human Rights Watch: “Abandoned by the State: Violence, Neglect and Isolation for Children with Disabilities in Russian Orphanages”, 2014. Also reports from Disability Rights International: “Left Behind: The Exclusion of Children and Adults with Disabilities from Reform and Rights Protection in the Republic of Georgia”, 2013, and reports from Mental Disability Advocacy Center: “My Home, My Choice in Hungary The right to community living for people with mental disabilities in 2014”, 2014.

⁵⁷ Lawson, *ibid*, 51.

⁵⁸ Hammarberg, Thomas, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following his Visit to Bulgaria from 3 to 5 November 2009 (2010), para. 144, at <<https://wcd.coe.int/ViewDoc.jsp?id=1581941>> (Accessed: 11 December, 2015)

⁵⁹ Article 12 CRPD.

⁶⁰ Article 19 CRPD.

⁶¹ CRPD Committee (2014), General Comment 1, para. 46; and, *inter alia*, concluding observations on Czech Republic, Hungary, Ukraine and Belgium.

⁶² *Ibid*, para. 8.



B. Reconsideration of the four themes through a disability lens

Education

As the EU was developing its Framework, Open Society Roma Initiatives provided their recommendations on the Romani integration strategies. Three recommendations pertained to education: (1) that classes be organized to prepare students to be integrated into mainstream schools (since “there is no legitimate reason for them to continue to attend schools for the mentally disabled”);⁶³ (2) that legislation be introduced to forbid the placement of students without disabilities in special schools “or educated according to the curriculum designed for mentally handicapped students;”⁶⁴ and (3) amending legislation that categorized students according to their disabilities. Instead, schools should track and explain the level and type of support those students require.⁶⁵

Roma with disabilities have the right to inclusive and quality education per the CRPD. At least five challenges remain when it comes to education. The first is that many Romani children (regardless of disability status) receive no education whatsoever. Anna Lawson’s report on race and disability noted, “In Bulgaria only 35 per cent of Roma were reported to attend primary school and 10 per cent secondary school.”⁶⁶ Lawson also reported that in Serbia and Montenegro:

factors underlying poor school attendance included the costs associated with the purchase of uniforms or other appropriate clothing, books, travel (particularly as there was often considerable distance between home and school), and with lost working time. Parental lack of interest also appeared to be an important factor.⁶⁷

A second challenge is that some children with disabilities are still in segregated schools or segregated classrooms in mainstream schools. White notes this legislation that facilitates inclusion for children with “mild intellectual disabilities” is relatively new, and thus anticipates that inclusion rates will increase. She notes, further, that rates of segregation have decreased slightly in the Czech Republic and Hungary, while increasing slightly in Slovakia.⁶⁸ No children with intellectual disabilities are included in mainstream education in Hungary and the Czech Republic.⁶⁹

A third challenge is school segregation, one aspect of which is the placement of non-disabled Romani children in schools that are set up for children with disabilities.⁷⁰ The tests that are used to determine placements in schools are biased against Romani children, White argues, and are often illegally obtained and used in ways that do not follow the designers’ protocols. The bias leads them to lower scores (and more frequent placement in segregated schools for children with disabilities).⁷¹ White, citing studies from Artiles (1998), Grossman (1995) and Gay (2002), notes that teachers have different assumptions about minority students. These assumptions lead to lower expectations and biased treatment, which in turn negatively affect performance, end up marginalizing them, and ensure they do not have equal educational opportunities.⁷²

⁶³ Open Society Foundations - Roma Initiatives, “Beyond Rhetoric: Roma Integration Roadmap for 2020: Priorities for an EU Framework for National Roma Integration Strategies”, June 2011, 85.

⁶⁴ *Ibid*, 87.

⁶⁵ *Ibid*, 88.

⁶⁶ Lawson, *ibid*, page 52. She cites Ringold *et al* (2005, page 42) for that data.

⁶⁷ *Ibid*.

⁶⁸ White, *ibid*, 18.

⁶⁹ *Ibid*, 19.

⁷⁰ Rorke, Matache, and Friedman, *ibid*, 18.

⁷¹ White, *ibid*, 21.

⁷² *Ibid*, 16. Artiles, Alfredo, “The dilemma of difference: Enriching the disproportionality discourse with theory and context”, 32(1) *Journal of Special Education* (1998), 32–36, at 32. Gay, Geneva, “Culturally responsive teaching in special education for ethnically diverse students: Setting the stage”, 15(6)



A fourth challenge is that many Roma live in segregated neighborhoods⁷³ and thus (if there are schools), schools are de facto for Roma only. Given segregation, Romani children may have to travel further to get to school, accessible transportation is presumably extremely limited, and there may be environmental barriers preventing access to school). Schools in Romani neighborhoods may have less resources and poorer infrastructure than other schools.⁷⁴

A fifth challenge is that when Romani children attend mainstream schools, the education they receive is not culturally sensitive to Romani culture and language. Thus Romani children with disabilities may not get the support they need once in school. Lawson notes:

[A]lthough there is little data comparing the prospects of disabled children from minority ethnic groups with those of other disabled children, it is likely that the former group will be additionally hampered by race-related factors including the attitudes and expectations of teachers.⁷⁵

A sixth challenge is that concepts such as inclusive education and reasonable accommodation need to be learned, embraced and implemented by school administrations and local communities alike.

European Roma Rights Center (ERRC) and MDAC have litigated to challenge discrimination in the field of education. ERRC filed the case *Horváth and Kiss v. Hungary* at the European Court of Human Rights (ECtHR) on behalf of two young Romani men who had been diagnosed with mental disabilities. Referencing the lawsuit *DH vs. Czech Republic*, Lawson noted that the ECtHR found that “segregated schools for children with ‘mental handicaps’ provided an inferior level of education to that provided by mainstream schools.”⁷⁶

Roma with disabilities are entitled to attend regular (not “special education”) non-segregated schools that are accessible, and to request reasonable accommodation if needed. Administrations and teachers are obliged to ensure Roma with disabilities can realize their right to inclusive education in their minority language. The CRPD permits special measures to accelerate equality for Roma with disabilities, and the CRC Committee, in General Comment 9, noted that special attention to ensure girls with disabilities are protected and have access to services (in this case to education).

Employment

No studies or programs focusing on employment for Roma with disabilities could be located. A UNDP report on Roma in the labor market in central and south east Europe contains just one reference to disability, and that referred to using attendance in a “special school” as a proxy for quality of education.⁷⁷ An ILO study on the impact of the economic crisis on wages in South-East Europe contains just two references to Roma (which are acknowledgements of discrimination against Roma in Bosnia and

Qualitative Studies in Education (2002), 613–629, at 615. Grossman, Howard, *Special education in a diverse society*, (Allyn & Bacon, Boston, 1995), 66.

⁷³ Rorke, Matache, and Friedman, *ibid*, 52. According to UNDP surveys Roma reported “a deepening of spatial segregation and a deterioration of living conditions.”

⁷⁴ Rorke, Matache, and Friedman, *ibid*, 18.

⁷⁵ Lawson, *ibid*, 53.

⁷⁶ *Ibid*. The European Roma Rights Centre provides the following summary of the case: “The case was brought by 18 Roma students from the Ostrava region in the Czech Republic. During 1996 and 1999 all applicants had been assigned to special schools for children with learning difficulties where they received inferior education based on a diluted curriculum. In 2000 the applicants complained to the European Court of Human Rights arguing that their treatment amounted discrimination in violation of Article 14 in conjunction with Article 2 of Protocol 1 of the European Convention on Human Rights as their right to education had been denied. Applicant submissions to the European Court of Human Rights included extensive research indicating that Roma children were systematically assigned to segregated schools based on their racial or ethnic identity rather than intellectual capacities.”

⁷⁷ O’Higgins, Niall, “Roma and Non-Roma in the Labour Market in Central and South Eastern Europe”, Roma Inclusion Working Papers, UNDP Bratislava, 2012, 48. Note, this is yet another acknowledgement that “special schools” provide inferior education.



Romania), and no references to Roma with disabilities.⁷⁸ Another ILO study, on the gender dimension of employment policies, noted the importance of more nuanced indicators to track employment amongst particular target groups, such as Roma or those with refugee status.⁷⁹

Data (not disaggregated by disability status) shows significant gaps in employment rates and wages for Roma.⁸⁰ There is no data on employment of Roma with disabilities. Given the low completion rates of primary and secondary school, and the high unemployment rates for all Roma (regardless of disability status), it can be assumed that very few Roma with disabilities are employed. Presumably Roma with disabilities have less economic opportunities and even lower wages than their non-disabled peers.

Roma with disabilities have the right to work, and the right to request reasonable accommodation to realize that right. States Parties to CRPD and ICERD are permitted to take measures to promote equality for Roma with respect to the right to work, and the Committee on the Elimination of Discrimination against Women (CEDAW Committee) allows for temporary measures specifically for Romani women.

Health care

No studies or programs focusing on health care for Roma with disabilities could be located. One study of Romani settlements in Serbia found a link between lower maternal education and higher rates of stunting amongst children. While stunting doesn't equate with disability, the study implies a link between lower education and worse health outcomes.⁸¹

One report prepared for ILO's social security policy noted that women in general, ethnic minorities, and migrants "face difficulties in accessing the labour market" and therefore are disadvantaged when it comes to social health protections.⁸² The report noted further:

[T]he gender pay gap has strong implications for inequalities in financial access to health care, especially if gaps in social health protection translate into high out-of-pocket payments. While women in general are affected by such income disparities, female migrants and Roma women in particular, whose income is typically even lower than that of the majority population, are exceptionally vulnerable when in need for care.⁸³

Given the employment and wage gaps, and limited control of financial resources, studies have shown that one impact of user fees is the further decline in the use of health care amongst women than by men.⁸⁴ Presumably women and girls with disabilities in the Romani community experience even greater disparities in this regard.

⁷⁸ Schmidt, Verena and Daniel Vaughan-Whitehead (eds.), "The Impact of the crisis on wages in South-East Europe", International Labour Office, ILO Decent Work Technical Support Team and Country Office for Central and Eastern Europe, ILO, Budapest, 2011. References appear on page 71 (Bosnia) and page 232 (Romania).

⁷⁹ Goulding, Kristine, "Gender dimensions of national employment policies: a 24-country study", International Labour Office, Employment Policy Department, ILO, Geneva, 2013, 49.

⁸⁰ European Union Agency for Fundamental Rights, "Roma Survey – data in focus, poverty and employment: the situation of Roma in 11 EU Member States (2014), 3. The survey notes, for example, 58% of young Roma are neither employed nor in training, in comparison to 13% on average in the EU.

⁸¹ UNICEF, "State of the Child", 2013, 37 – source is Janevic, Teresa, *et al.*, "Risk Factors for Childhood Malnutrition in Roma Settlements in Serbia", 10 *BMC Public Health* (2010).

⁸² Scheil-Adlung, Xenia, and Catharina Kuhl, "Social security for all: Addressing inequities in access to health care for vulnerable groups in countries of Europe and Central Asia", International Labour Office, Social Security Department, ILO, Geneva, 2011, 8.

⁸³ *Ibid*, 28. Quoted text cites, Berliner Institut für Vergleichende Sozialforschung, "Economic aspects of the condition of Roma women, study commissioned by the European Parliament's committee on Women's Rights and Gender Equality", European Parliament, Brussels, 2006.

⁸⁴ Scheil-Adlung and Kuhl, *ibid*, 14.



Romani men, women, and children with disabilities have a right to health care. The denial of health care on the basis of ethnicity or disability is a violation of their rights per CRPD and ICERD. Roma with disabilities have the right to access information in accessible formats and to request reasonable accommodation to realize this right. They have the right to use their language when accessing health services. They have the right to the same quality and range of services as non-Roma with disabilities, and the same quality and range of services as non-disabled persons.

Housing

No programs or reports supporting housing for Roma with disabilities could be located. While the Special Rapporteur on Adequate Housing engaged ERRC in consultations on housing conditions for Roma through Central and South-East Europe, and while intersectional aspects of the right to housing were considered (for Roma, for women, for lesbians, gays, bisexuals, etc.), there was no content or discussion on Roma with disabilities.⁸⁵

In a recent publication UN-Habitat noted the dearth of information on adequate housing for Roma with disabilities.⁸⁶ All persons, including persons with disabilities, have a well-established right to adequate housing per General Comment 4 of the Committee on Economic, Social and Cultural Rights (CESCR Committee). For persons with disabilities there are additional considerations and aspects to this right that need to be considered and addressed. Roma with disabilities have the right to social protection, non-discrimination, equal recognition before the law, access to information, equality of opportunity, to live independently and in the community, the right to accessible housing and the right to take part in decisions affecting their housing conditions.⁸⁷ As part of the right to adequate housing they have a right to access accessible services, including health services, on an equal basis with others.

C. Other references to Roma with disabilities

Three organizations (ERRC, MDAC and Platform for Social Housing) submitted to the CERD Committee a report that concerns conditions in the Czech Republic, emphasizes the need for an intersectional approach, and is inclusive of Roma with disabilities.⁸⁸ This report highlighted some significant problems:

- The lack of legislation and the lack of case law to address cases of intersectional discrimination;⁸⁹
- Obstacles for persons with disabilities when trying to access justice;⁹⁰
- Over-representation of Roma in institutions (but precise data is lacking);⁹¹
- Persons leaving institutions, who are disproportionately Roma, are vulnerable to homelessness;⁹²
- The lack of provision of reasonable accommodation, accessible transportation, and access to services for Roma with disabilities;⁹³

⁸⁵ “The interlinkages between multiple discrimination and Women’s Right to Adequate Housing”, Report on the Central-Asia / Eastern Europe Regional Consultation on Women’s Right to Adequate Housing, The United Nations Special Rapporteur on Adequate Housing, supported by the Office of the High Commissioner for Human Rights, in cooperation with European Roma Rights Centre, November 2005.

⁸⁶ Szporluk, Pal, and Buyer, *ibid*, 4.

⁸⁷ *Ibid*, 36-45.

⁸⁸ “Written comments concerning the Czech Republic”, For consideration by the United Nations Committee on the Elimination of Racial Discrimination, at its 87th session, 3–28 August 2015, European Roma Rights Center, Mental Disability Advocacy Center and Platform for Social Housing, at <<http://www.errc.org/article/errc-submission-to-un-committee-on-the-elimination-of-racial-discrimination-july-2015/4384> on 5 January 2016>

⁸⁹ *Ibid*, 4.

⁹⁰ *Ibid*.

⁹¹ *Ibid*, 6.

⁹² *Ibid*, 5.

⁹³ *Ibid*, 7.



- The over-representation of Roma diagnosed as “children with mild mental disabilities” and placed in segregated schools;⁹⁴
- Women with disabilities, and Roma with and without disabilities, are disproportionately sterilized;⁹⁵
- Romani women with disabilities have a harder time accessing justice due to denial of legal standing, being placed under guardianship, a lack of information about their rights, and a lack of adequate support.⁹⁶

The Special Rapporteur on the Rights of Persons with Disabilities, on a recent visit to Moldova, noted that Roma with disabilities are among those who are “at biggest risk of being left behind.”⁹⁷ The Special Rapporteur further noted that Romani children with disabilities face “particular barriers” and their access to inclusive education needs to be ensured.⁹⁸

V. An intersectional review of the rights of ethnic minorities in international law

This last section looks at how discrimination is defined, the extent to which intersectionality or multiple discrimination is recognized, and how the treaties consider issues of race and ethnic origin, gender, and disability. Six treaties, and the sets of general comments/recommendations and concluding observations of committee bodies, are to be considered in this analysis.⁹⁹ This section aims to show that Roma with disabilities face discrimination along multiple identity markers (ethnic origin, disability, gender, and age). The relevant treaty committee bodies have all recognized different aspects of the disadvantages and discrimination that all Roma experience, and this is more pronounced for men, women, and children who are also disabled.

While international treaties exist to protect the rights of persons who come under their purview (i.e., women and girls are covered by provisions in CEDAW, children are covered by CRC, etc.), the international community has recognized that members of religious, ethnic, and linguistic minorities face additional challenges, barriers, and restrictions with regard to exercising their rights on an equal basis with others.¹⁰⁰

Aside from the CRPD, the treaty body committees have not consistently applied an intersectional lens, which considers how treaties consider minority members.¹⁰¹ Because the treaty body committees have done this inconsistently, there is fragmentation in coverage, and this fragmentation has led to various

⁹⁴ *Ibid*, 10.

⁹⁵ *Ibid*, 16-18.

⁹⁶ *Ibid*, 19.

⁹⁷ Devandas Aguilar, Catalina, “Special Rapporteur on the Rights of Persons with Disabilities”, Statement of the United Nations Special Rapporteur Devandas Aguilar on the rights of persons with disabilities on the conclusion of her official visit to the Republic of Moldova, 10 to 17 September 2015.

⁹⁸ *Ibid*.

⁹⁹ International Covenant on the Elimination of all forms of Racial Discrimination (ICERD), International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of all forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), International Covenant on Economic, Social and Cultural Rights (ICESCR), and Convention on the Rights of Persons with Disabilities (CRPD).

¹⁰⁰ ICERD refers to “ethnic origin.” This report uses “ethnic” and “ethnic origin” interchangeably.

¹⁰¹ An intersectional analysis asks about minority members (who may otherwise be overlooked). For example, how does the CRPD address ethnic minorities with disabilities? To what extent does the CRC consider girls? How does the ICERD look at persons with disabilities of different ethnicities?



legal problems, including a variation in material coverage,¹⁰² and a failure to adequately address discrimination experienced by persons on multiple grounds. Despite the singular focus of the treaties, the different treaty body committees have begun to consider intersectionality through general comments and general recommendations (as discussed below). This is a positive development, but more work needs to be undertaken to make intersectional analysis the rule rather than an exception.

In the below section a distinction is made between the treaties which are binding, and the writings of the committee bodies of the different treaties which are authoritative but not binding.

A. Anti-discrimination

Treaties

The treaties all contain anti-discrimination clauses, and each clause includes a list of prohibited grounds. The International Covenant on Economic, Social and Cultural Rights (ICESCR) list comprises “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁰³ The International Covenant on Civil and Political Rights (ICCPR) uses the same list and adds a statement that “all persons are equal before the law.”¹⁰⁴

The CRC refers to both children and their parents or legal guardians, and adds disability as a prohibited ground.¹⁰⁵ ICERD and CEDAW offer similar definitions of discrimination. ICERD lists “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin,”¹⁰⁶ while CEDAW lists “any distinction, exclusion or restriction made on the basis of sex.”¹⁰⁷

Both ICERD and CEDAW introduced a new element in the definition of discrimination. States Parties to both treaties are to prohibit distinctions that have the “purpose or effect” of “impairing or nullifying the recognition, enjoyment or exercise” of “human rights and fundamental freedoms” in “the political, economic, social, cultural, or any other field of public life.”¹⁰⁸ Thus, discrimination can occur whether intended or not. CEDAW Article 15 guarantees equality before the law for all women and a “legal capacity identical to that of men and the same opportunities to exercise that capacity.”¹⁰⁹

The CRPD includes more expansive definitions of “discrimination on the basis of disability” and reaffirms that the denial of reasonable accommodation constitutes disability-based discrimination.¹¹⁰ The CRPD emphasizes that the enjoyment of rights are “on an equal basis with others”, and contains a list of fields similar to CEDAW (political, economic, etc.).¹¹¹ The CRPD defines reasonable accommodation as follows:

necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or

¹⁰² Degener, Theresia, “Intersections between Disability, Race and Gender in Discrimination Law”, in Schiek, Dagmar, and Anna Lawson (eds.), *European Union non-discrimination law and intersectionality: investigating the triangle of racial, gender and disability discrimination* (Ashgate, 2011), at 31.

¹⁰³ Article 2.2, ICESCR.

¹⁰⁴ Article 26, ICCPR.

¹⁰⁵ Article 2.1, CRC. The CRC was the first treaty to include disability in a non-discrimination clause.

¹⁰⁶ Article 1.1 ICERD.

¹⁰⁷ Article 1 CEDAW.

¹⁰⁸ Article 1.1 ICERD. and Article 1 CEDAW. CEDAW adds “civil” rights and freedoms to the list, and does not include the qualifying adjective “public”

¹⁰⁹ Article 15 (1) and (2) CEDAW.

¹¹⁰ The Committee on Economic, Social, and Cultural Rights (CESCR Committee) had included disability-based discrimination in their General Comment 5 (1994), para 15. The CRPD expanded these concepts.

¹¹¹ Article 2 CRPD.



exercise on an equal basis with others of all human rights and fundamental freedoms.¹¹²

Given the introduction of the concept of reasonable accommodation into the CRPD (as opposed to being contained in a general comment of the CESCR Committee only), every State Party to the CRPD is obliged to ensure the provision of reasonable accommodation, including the themes covered by the Roma Decade and EU Framework. Since the EU ratified the CRPD on 23 December 2010, all EU countries and EU enlargement countries are obliged to comply with the CRPD.¹¹³

B. Intersectionality

Treaties

The CRPD is the only treaty that refers specifically to “multiple discrimination.” In its preamble (which is non-binding) the CRPD expressed concern about the multiple discrimination that persons with disabilities face on the basis of different identity markers, including gender as well as national, ethnic, indigenous, or social origin.¹¹⁴ The CRPD recognized that women face multiple discrimination (Article 6) and thus obliges States Parties to take measures “to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.”¹¹⁵ Article 6 (women with disabilities) and Article 7 (children with disabilities) are considered cross cutting, and thus are to be read in conjunction with all other articles. Thus, for example, the article on adequate standard of living and social protection (Article 28) and the article on freedom from exploitation, violence, and abuse (Article 16) acknowledge that women may be at more risk to such phenomena, and that States Parties have an obligation to ensure the realization of these rights in particular for women and children.¹¹⁶

The CRPD does not contain a similar provision obliging measures specifically for ethnic minorities who are disabled persons (of any gender).

Committee bodies

Other treaties have identified specific groups who have been excluded or marginalized in their general recommendations or general comments. For example, the CERD Committee includes in the preamble of one recommendation “Roma/gypsies” as one of a number of groups (others include asylum seekers, refugees, stateless persons, etc.) who are “particularly exposed to exclusion, marginalization and non-integration in society, paying particular attention to the situation of women and children belonging to the aforementioned groups, who are susceptible to multiple discrimination because of their race and because of their sex or their age.”¹¹⁷

In a general comment the CESCR Committee elaborates the definition of non-discrimination and explicitly refers to multiple discrimination, including discrimination on the ground of gender and ethnicity.¹¹⁸ It also clarifies and defines the difference between direct and indirect discrimination. Direct discrimination occurs when someone is “treated less favorably than another person ... for a reason related to a prohibited ground”, while indirect discrimination “refers to laws, policies or practices which appear neutral ... but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination.”¹¹⁹ The Committee notes that “requiring a birth registration

¹¹² *Ibid.*

¹¹³ A list of states that have signed and ratified the convention and the optional protocol is on the UN website, at

<<http://www.un.org/disabilities/countries.asp?id=166>> (Accessed: 5 January, 2016)

¹¹⁴ Preamble (p) CRPD.

¹¹⁵ Article 6 (1) CRPD.

¹¹⁶ Article 16 (2) and (5), and Article 28 (2) (b) CRPD.

¹¹⁷ CERD Committee, General Recommendation 31, preamble (not numbered), 2.

¹¹⁸ CESCR Committee, General Comment 20, paras. 17-21.

¹¹⁹ CESCR Committee, General Comment 20, para. 10.



certificate for school enrolment may discriminate against ethnic minorities” as an example of indirect discrimination. For example, in a blog post, the Executive Director of Praxis notes that approximately 30,000 Roma in Serbia are de facto stateless since they have not been registered.¹²⁰ The blog post refers to a report that calls the government’s practices indirect discrimination against Roma.¹²¹

The CEDAW Committee’s General Recommendation 25 notes that some groups of women, including women with disabilities and women who have different ethnic or religious identities, face multiple forms of discrimination.¹²² The CEDAW Committee’s General Recommendation 28 further reinforces the concept of intersectionality by noting “other factors that affect women.”¹²³ They emphasize that adolescent girls are “more vulnerable to discrimination in such areas as access to basic education, trafficking, maltreatment, exploitation and violence.”¹²⁴ The CEDAW Committee notes further that women, and especially “groups of women who are most marginalized and who may suffer from various forms of intersectional discrimination” must be identified as rights-bearers.¹²⁵

The CEDAW Committee recognizes the intersectional nature of discrimination and the obligation to address the negative impact of such through policies and programs.¹²⁶ The Committee has referenced intersectional or multiple discrimination in numerous recent concluding observations. For example, the Committee noted efforts to reconcile laws to address multiple discrimination and recommended monitoring the impact of such legislation, while also identifying and addressing any gaps or inconsistencies that would affect women from disadvantaged groups, including ethnic minorities and women with disabilities.¹²⁷ The Committee also expressed concerns about women who “are at risk of intersectional forms of discrimination in terms of education, health care, employment, and public and political participation”, and recommended the state take effective measures to eliminate discrimination against Romani women and women with disabilities, amongst others.¹²⁸ The CEDAW Committee has made similar observations and recommendations in other EU and EU enlargement countries.¹²⁹

In one set of concluding observations, the CEDAW Committee references the importance of being aware of and addressing intersectional discrimination, specifically, discrimination against women with disabilities and Romani women in many sectors. But with just one exception (mentioned below) these references are consecutive. In other words, there is not recognition that Romani women and girls with disabilities encounter even greater discrimination and additional barriers. For example, the Committee recommends the State Party “[f]acilitate access to education and employment for women in rural areas, Roma women and women with disabilities.”¹³⁰ The CEDAW Committee makes similar observations and recommendations in other concluding observations.¹³¹

The CEDAW Committee observes just once that Romani children may also be disabled. In concluding observations they call on the State Party to “[i]nvestigate and urgently address the recommendations of

¹²⁰ Kostic, Ivanka, “No birth registration, no nationality, no documents, no rates”, 4 June, 2012, at <<http://www.statelessness.eu/blog/no-birth-registration-no-nationality-no-documents-no-rights>> (Accessed: 25 January, 2016)

¹²¹ Praxis, “‘Legally invisible’ persons in Serbia: Still without a Solution”, June 2011, 9.. On their website, at <<http://www.praxis.org.rs>> they post an article from the weekly magazine *Vreme* (31 July 2014), “the forgotten people”, that refers to the failure to register Roma from Kosovo and numerous ensuing problems due to that failure. (Accessed: 25 January, 2016)

¹²² “General Recommendation 25”, CEDAW Committee, para. 12.

¹²³ General Recommendation No. 28/2010, *ibid*, para. 18.

¹²⁴ *Ibid*, para. 21.

¹²⁵ *Ibid*, para. 26.

¹²⁶ *Ibid*, para. 18.

¹²⁷ CEDAW/C/ALB/CO/3/2010, paras. 18-19.

¹²⁸ CEDAW/C/BiH/CO/4-5/2013, paras. 37-38.

¹²⁹ See CEDAW/C/BLR/CO/7, CEDAW/C/CZE/CO/5, CEDAW/C/ESP/CO/6, CEDAW/C/FIN/CO/6, CEDAW/C/ITA/CO/6, CEDAW/C/NOR/CO/8, CEDAW/C/SRB/CO/2-3, and CEDAW/C/UKR/CO/7.

¹³⁰ CEDAW/C/HUN/CO/7-8/2013, para. 17 (b).

¹³¹ CEDAW/C/LTU/CO/4/2008.



the Office of the Ombudsman which call for the regulation and review of findings made by institutions authorized to determine the level of children's disabilities and special needs, including those of Roma girls."¹³²

The CESC Committee mentions multiple discrimination in relation to persons with disabilities in their concluding observations just once, where they express concern that women, and in particular "women from ethnic minorities, older women and women with disabilities, continue to face multiple forms of discrimination in the enjoyment of their economic, social and cultural rights."¹³³ The CRC Committee also mentions multiple discrimination in relation to persons with disabilities in concluding observations just once, when they express concern "at continuous discrimination suffered by children with disabilities and children of foreign origin" and recommend the collection of disaggregated data to enable monitoring of discrimination.¹³⁴

The CRC Committee recognizes the need for ensuring that children with disabilities enjoy their rights, and that they and their parents or guardians "receive the special care and assistance they are entitled to."¹³⁵ The CRC Committee further recognizes that girls with disabilities "are often even more vulnerable to discrimination due to gender discrimination."¹³⁶

The CRC Committee has expressed concern "that Roma children with disabilities experience double discrimination."¹³⁷ While the CRC Committee recommended measures to "encourage their inclusion in society and prevent discrimination and institutionalization", and the training of professional staff who work with children, it did not say anything specifically about the need for inclusive education for Roma with disabilities.¹³⁸

As mentioned above, in its first general comment the CRPD Committee noted that historically ethnic minorities and women have been denied legal capacity.¹³⁹

In sum, the CRPD and five of the six committee bodies have highlighted intersectional discrimination as a phenomenon that places certain groups at a more significant disadvantage. Four committee bodies have identified multiple or intersectional discrimination experienced by persons with disabilities.¹⁴⁰ The committees have also understood that discrimination can be direct or indirect (i.e. it is not required to prove intent, rather only to note differences in outcomes or consequences).

C. Race and ethnicity

Treaties

Aside from the ICERD, the other treaties make several references to the rights of ethnic or racial minorities. The ICCPR affirmed the right of minorities to "to enjoy their own culture, to profess and practise their own religion, or to use their own language."¹⁴¹

¹³² CEDAW/C/MKD/CO/4-5/2013, para. 30 (c).

¹³³ CESC/C/FIN/CO/6/2014, para. 15.

¹³⁴ CRC/C/BEL/CO/3-4/2010, para. 31 -32.

¹³⁵ CRC Committee, General Comment 9, para. 13.

¹³⁶ CRC Committee, General Comment 9, para. 10.

¹³⁷ CRC/C/SVK/CO/2/2007, para. 47.

¹³⁸ CRC/C/SVK/CO/2/2007, para. 48 (c).

¹³⁹ CRPD Committee, General Comment 1, para. 8.

¹⁴⁰ In addition to the three committees (CEDAW, CRC and CESC) mentioned in this section, CRPD Committee has also covered intersectional or multiple discrimination.

¹⁴¹ Article 27 ICCPR.



The CEDAW includes ethnicity in the non-discrimination clause, as mentioned above. The ICESCR mentions race in the non-discrimination clause. It mentions “ethnicity” just once in regard to the article covering education, which notes that education should promote “understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.”¹⁴²

The CRC includes ethnicity in its non-discrimination clause as mentioned above. It also states that when alternative care for a child is needed, due attention “shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural, and linguistic background.”¹⁴³ The CRC also includes a reference to children who are “ethnic, religious or linguistic minorities or persons of indigenous origin” that echoes ICCPR Article 27, namely that a child belonging to “such a minority ... shall not be denied ... to enjoy his or her own culture, to profess and practice his or her own religion or to use his or her own language.”¹⁴⁴

The CRPD only mentions race and ethnicity in its preamble, noting “the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination.”¹⁴⁵

Committee bodies

The Human Rights Committee issued its General Comment 23 on the rights of minorities, focusing specifically on Article 27. It clarified a distinction between the right articulated in Article 27 and the right to self-determination, and further explained that the protections under Article 27 do not require the individuals to be citizens of the State Party.¹⁴⁶

In its general comments the CEDAW Committee refers to ethnicity as a factor that has affected marginalization, as described above.

While the CRPD neglected to mention ethnicity or ethnic origin in its articles, the other treaties have covered the rights of ethnic minorities and have recognized that members of ethnic minorities can face multiple discrimination. Roma, in particular, are identified by the CERD Committee as a population that has experienced discrimination in education, health, living conditions, public life, and as victims of violence.¹⁴⁷ However, there is no mention of Roma with disabilities in particular.

D. Disability

Treaties

The CRPD and the CRC are the only treaties that refer explicitly to persons with disabilities. As mentioned above, disability is included in the CRC non-discrimination clause. In addition, Article 23 provides a focus on children with “mental or physical disabilities.” Thus, children with disabilities “should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.”¹⁴⁸

States Parties to the CRC are obliged to recognize “the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those

¹⁴² Article 13 ICESCR.

¹⁴³ Article 20 (2) CRC.

¹⁴⁴ Article 30 CRC (compare with Article 27 ICCPR).

¹⁴⁵ Preamble (p) CRPD.

¹⁴⁶ Human Rights Committee, General Comment 23, para. 5.1

¹⁴⁷ CERD Committee, General Recommendation 27.

¹⁴⁸ Article 23.1 CRC.



responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.”¹⁴⁹

In addition, States Parties are to provide assistance to ensure “the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.”¹⁵⁰

Committee bodies

The general comments of the CESC Committee, the CERD Committee, and the CRC Committee refer to persons with disabilities. General Comment 5 of the CESC Committee concerns persons with disabilities, but does not mention persons of different ethnicities. It mentions double discrimination experienced by women with disabilities.¹⁵¹ It highlights in particular discrimination experienced by women with disabilities in relation to “motherhood and pregnancy”, including concerns regarding both “the sterilization of, and the performance of an abortion on, a woman with disabilities without her prior informed consent.”¹⁵² Finally, General Comment 5 notes that children with disabilities are vulnerable to exploitation, abuse and neglect.¹⁵³

The CRC Committee’s General Comment 9 focuses on children with disabilities, and explains the importance of Article 2 and Article 23 of the CRC. The Committee explains the importance of the inclusion of disability as a prohibited ground for discrimination in Article 2 as follows:

Children with disabilities belong to one of the most vulnerable groups of children. In many cases forms of multiple discrimination - based on a combination of factors, i.e. indigenous girls with disabilities, children with disabilities living in rural areas and so on - increase the vulnerability of certain groups. It has been therefore felt necessary to mention disability explicitly in the non-discrimination article.¹⁵⁴

The CRC Committee emphasizes the need for inclusion:

The core message of this paragraph [Article 23] is that children with disabilities should be included in the society. Measures taken for the implementation of the rights contained in the Convention regarding children with disabilities, for example in the areas of education and health, should explicitly aim at the maximum inclusion of those children in society.¹⁵⁵

Finally, the CRC Committee notes the particular vulnerability and needs of ethnic minorities with disabilities:

All appropriate and necessary measures undertaken to protect and promote the rights of children with disabilities must include and pay special attention to the particular vulnerability and needs of children belonging to minorities and indigenous children who are more likely to be already marginalized within their communities. Programmes and policies must always be culturally and ethnically sensitive.¹⁵⁶

¹⁴⁹ Article 23.2 CRC.

¹⁵⁰ Article 23.3 CRC.

¹⁵¹ CESC Committee, General Comment 5, para. 19.

¹⁵² *Ibid*, para. 31.

¹⁵³ *Ibid*, para. 32.

¹⁵⁴ CRC Committee, General Comment 9, para. 8.

¹⁵⁵ *Ibid*, para. 11.

¹⁵⁶ *Ibid*, para. 80.



The CRPD Committee has expressed that persons who are perceived to have disabilities may be denied legal capacity (and thus discriminated against): “Under article 12 of the convention, perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity.”¹⁵⁷ The Committee notes, in concluding observations, discrimination against persons who associate with persons with disabilities,¹⁵⁸ and persons who are perceived to have disabilities.¹⁵⁹ This is of particular importance for Romani children, many of whom have been discriminated against and sent to segregated schools due to the perception of disability, as discussed in a subsequent section.

E. Gender

Treaties

Aside from the CEDAW, the other treaties make several references to the rights of women and girls. The ICCPR makes three references to women. First, Article 3 establishes the “equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”¹⁶⁰ Second, pregnant women are identified as exempt from death sentences.¹⁶¹ Finally, the right of “men and women of marriageable age to marry” is recognized.¹⁶²

The ICESCR makes three direct references to women and one indirect reference to women. As with the ICCPR, there is a statement ensuring the equal right of men and women to enjoy the rights established in the Covenant.¹⁶³ The Covenant guarantees equal work and equal pay:

Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.¹⁶⁴

The Covenant accords “special protection” to “mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”¹⁶⁵

The indirect reference concerns “protection and assistance” that is to be accorded to the family (which was understood to be a hetero-normative concept at that time). The Covenant emphasized that the family is “the natural and fundamental group unit of society” and as such is “responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.”¹⁶⁶

As mentioned above in the section on intersectionality, the CRPD includes an article on women with disabilities that is to be read in conjunction with all other articles of the Convention.

Committee bodies

While the ICERD makes no reference to women or gender in the treaty, the Committee covers the intersection of gender and race in General Recommendation 25, and notes, “There are circumstances in

¹⁵⁷ *Ibid*, para. 13.

¹⁵⁸ See CRPD Concluding Observations on Tunisia, Belgium, Mauritius, Peru and Spain.

¹⁵⁹ See CRPD Concluding Observations on Sweden, Kenya, New Zealand, Denmark, Austria, Peru, Spain and China.

¹⁶⁰ Article 3 ICCPR.

¹⁶¹ Article 6.5 *ibid*.

¹⁶² Article 23 *ibid*.

¹⁶³ Article 3 ICESCR.

¹⁶⁴ Article 7 (a) (i): *ibid*.

¹⁶⁵ Article 10.2 *ibid*.

¹⁶⁶ Article 10.1 *ibid*.



which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men. Such racial discrimination will often escape detection if there is no explicit recognition or acknowledgement of the different life experiences of women and men, in areas of both public and private life.”¹⁶⁷

The Committee notes’ issues of particular concern included: sexual violence, the coerced sterilization of indigenous women, and the abuse of women workers in the informal sector. The Committee also mentions the consequences of racial discrimination, including pregnancy resulting from rape, and ostracism following the occurrence of rape, lack of access to remedies and complaint mechanisms “because of gender-related impediments such as gender bias in the legal system and discrimination against women in private spheres of life.”¹⁶⁸

The CRC does not reference girls or women (aside from a passing reference in the preamble to the Declaration on the Protection of Women and Children in Emergency and Armed Conflict). The CRC Committee’s general comment on harmful practices, co-authored with the CEDAW Committee, draws attention to the intersection of sex- and gender-based discrimination with other factors “that affect women and girls, in particular those who belong to, or are perceived as belonging to disadvantaged groups, and who are therefore at a higher risk of becoming victims of harmful practices.”¹⁶⁹ The Committees describe sets of practices that constitute violence against women or are associated with violence against women. The Committees note:

The nature and prevalence of these practices vary across regions and cultures; however, the most prevalent and well documented are female genital mutilation, child and/or forced marriage, polygamy, crimes committed in the name of so-called honour and dowry-related violence. As these practices are frequently raised before both Committees, and in some cases have been demonstrably reduced through legislative and programmatic approaches, this joint GR/GC will use them as key illustrative examples.¹⁷⁰

The Committees attribute other harmful practices to “socially constructed gender roles”:

These practices include, but are not limited to: neglect of girls (linked to the preferential care and treatment of boys), extreme dietary restrictions (forced feeding, food taboos, including during pregnancy), virginity testing and related practices, binding, scarring, branding/tribal marks, corporal punishment, stoning, violent initiation rites, widowhood practices, witchcraft, infanticide and incest.¹⁷¹

The CRPD Committee also notes some discriminatory practices that disproportionately affect women with disabilities:

For example, women with disabilities are subjected to high rates of forced sterilization, and are often denied control of their reproductive health and decision-making, the assumption being that they are not capable of consenting to sex. Certain jurisdictions also have higher rates of imposing substitute decision-makers on women than on men. Therefore, it is particularly important to reaffirm that the legal capacity of women with disabilities should be recognized on an equal basis with others.¹⁷²

¹⁶⁷ CERD Committee, General Recommendation 25, para. 1.

¹⁶⁸ *Ibid*, para. 2.

¹⁶⁹ CEDAW Committee and CRC Committee, Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices (2014), para. 5.

¹⁷⁰ *Ibid*, para. 6.

¹⁷¹ *Ibid*, para. 8. Citing CEDAW GR. No. 19/1992, para. 11 and CRC GC No. 13/2011, para. 29.

¹⁷² CRPD Committee, General Comment 1, para. 35.



The CRPD Committee is currently drafting a general comment on women and girls with disabilities.

Each of the treaties, then, have recognized that women and girls have been disadvantaged with respect to the enjoyment of their political, economic, social, and cultural rights, and have recognized that women and girls who belong to ethnic minorities, and women and girls with disabilities are faced with double discrimination. However, the treaties do not mention women and girls with disabilities who are also ethnic minorities, given the references to discrimination and restrictions; one can conclude that such individuals face discrimination on at least three grounds.

F. States Parties obligations to address discrimination

The treaties have to be considered cumulative rather than distinct precisely because everyone has multiple identity markers, and can therefore experience discrimination and disadvantage due to those different markers. The different treaties and treaty bodies oblige States Parties to take action to ensure persons do not experience discrimination due to prohibited grounds. This section first pays particular attention to the right to housing, education, health care, and work as these rights comprise the themes of the Roma Decade and the EU Framework (which are discussed in the next section). It then looks at access to information, which is linked to the right to participate. Access to information and the right to participate, in turn, are linked to the States Parties' obligation to raise awareness about the rights of persons covered in international law. Certain harmful practices, affecting women and girls, have been identified by committee bodies, and there is recognition that States Parties must take steps to address and prevent those practices.

To fulfill obligations (and to be held to account), States Parties are to report on progress to the different committees and to use resources to support the realization of rights. The CRPD obliges States Parties further, by providing guidance on national implementation and monitoring. Finally, States Parties are able to implement temporary or special measures to ensure that certain subsets of their population are able to enjoy rights on an equal basis with others. Given the extreme disparities that exist, measures can and should be taken for all Roma, and especially for Roma with disabilities.

1. Obligations to ensure non-discrimination with regard to education, employment, health care, and housing

States Parties to the ICESCR have an obligation to ensure that particular populations have access to education, health care, an adequate standard of living, and the right to work. The ICERD guarantees economic, social and cultural rights to “everyone,” without distinction, including the rights to work, the right to housing, the right to public health, the right to education, the right to equal participation in cultural activities, and the right of access to any place or service intended for the general public.¹⁷³

Right to adequate housing

The ICESCR identifies the right to adequate housing as a component of the right to adequate standard of living.¹⁷⁴ The CRPD merged, for the first time, the right to an adequate standard of living (including the right to adequate housing) with the right to social protection.¹⁷⁵ The right to adequate housing is a complex right, and has been viewed as a pre-condition for exercising other rights. States Parties are obliged to ensure the availability of housing that is adequate and accessible, reasonable accommodation is

¹⁷³ Article 5 (e), and Article 5 (f) ICERD.

¹⁷⁴ Article 11 ICESCR.

¹⁷⁵ Article 28 CRPD.



provided, social protection measures are in place to prevent violence or abuse, and that services (including healthcare) are available and accessible in the community.¹⁷⁶

The CEDAW notes that women in rural areas encounter “particular problems” and thus States Parties are obliged to “take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development.”¹⁷⁷ This includes the right to enjoy “adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”¹⁷⁸

Right to education

The ICESCR “ensures the right of everyone to education.”¹⁷⁹ Thus, primary education “shall be compulsory and available free to all”,¹⁸⁰ secondary education “shall be generally available and accessible to all by every appropriate means”,¹⁸¹ and higher education “shall be made equally accessible to all.”¹⁸²

The CRC obliges States Parties to make primary education compulsory and available for all, make secondary education available and accessible for all, and take measures “to encourage regular attendance at schools and the reduction of drop-out rates.”¹⁸³ The CRC explicitly obliges States Parties to ensure inclusion within the educational system for children with disabilities.¹⁸⁴

The CRPD also provides guidance on States Parties obligations with respect to education. There is an awareness raising component that States Parties are obliged to fulfill, namely to foster an attitude of respect within the educational system for the rights of persons with disabilities.¹⁸⁵ CRPD requires States Parties to not exclude persons with disabilities from the educational system on the basis of disability,¹⁸⁶ and to ensure that persons with disabilities can access that education in the communities in which they live on an equal basis with others.¹⁸⁷ Support, if required, is to be provided,¹⁸⁸ requests for reasonable accommodation are to be considered (and provided where they do not impose an undue burden),¹⁸⁹ and measures consistent with the goal of full inclusion are to be introduced.¹⁹⁰ Measures are to be taken to employ teachers with disabilities, including those qualified in sign language and/or Braille, and trainings are to be organized for staff working throughout the educational system.¹⁹¹

The CESCR Committee has called for inclusive education for Roma in concluding observations on Finland, Ukraine and Czech Republic,¹⁹² and has called for inclusive education for children with disabilities in concluding observations on Moldova, Serbia, Denmark, Czech Republic, Tajikistan, and Slovakia.¹⁹³ It has not (yet) recommended inclusive education for Romani children with disabilities.

¹⁷⁶ Szporluk, Pal, and Buyer, *ibid.*, 36-45.

¹⁷⁷ Article 14 (2) CEDAW.

¹⁷⁸ Article 14 (2) (h) *ibid.*

¹⁷⁹ Article 13 (1) ICESCR.

¹⁸⁰ Article 13 (2) (a) *ibid.*

¹⁸¹ Article 13 (2) (b) *ibid.*

¹⁸² Article 13 (2) (c) *ibid.*

¹⁸³ Article 28 (1) (a), (b) and (e) CRC.

¹⁸⁴ Article 23 *ibid.*

¹⁸⁵ Article 8 (2) (b) CRPD.

¹⁸⁶ Article 24 (2) (a) *ibid.*

¹⁸⁷ Article 24 (2) (b) *ibid.*

¹⁸⁸ Article 24 (2) (d) *ibid.*

¹⁸⁹ Article 24 (2) (c) and Article 24 (5) *ibid.*

¹⁹⁰ Article 24 (2) (e) *ibid.*

¹⁹¹ Article 24 (4) *ibid.*

¹⁹² CESCR/C/FIN/CO/6/2014, CESCR/C/FIN/CO/5/2008, CESCR/C/UKR/CO/6/2014, and CESCR/C/CZE/CO/2/2014.

¹⁹³ CESCR/C/MDA/CO/2/2014, CESCR/C/SRB/CO/2/2014, CESCR/C/DNK/CO/5/2013, CESCR/C/CZE/CO/2/2014, CESCR/C/TJK/CO/2-3/2015, and CESCR/C/SVK/CO/2/2012.



The CRPD and CEDAW Committees are each currently drafting comments/recommendations on education.

Right to health care

The ICESCR also covers the right to “the enjoyment of the highest attainable standard of physical and mental health.”¹⁹⁴ States Parties are obliged to take steps to reduce rates of still-births and infant mortality, and to provide for the healthy development of children.¹⁹⁵

With regard to health care, the CEDAW obliges States Parties to take “all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on the basis of equality of men and women, access to health care services, including those related to family planning.”¹⁹⁶ Further “appropriate services” are to be ensured “in connection with pregnancy, confinement and the post-natal period, granting free services where necessary as well as adequate nutrition during pregnancy and lactation.”¹⁹⁷

The CRC obliges services to be designed “to ensure that the disabled child has effective access to- and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.”¹⁹⁸ Furthermore, all children should be able to enjoy “the highest standard of health and facilities for the treatment of illness and rehabilitation of health.”¹⁹⁹ In addition, parents and children should have access to education and be supported “in the use of basic knowledge of child health and nutrition.”²⁰⁰

The CRPD obliges States Parties to provide the “same range, quality and standard” of health care to persons with disabilities as they do to non-disabled persons.²⁰¹ In addition, health services are to be provided specifically in regards to existing disabilities.²⁰² Furthermore, accessible health services are to be provided as close as possible to one’s own community,²⁰³ and health professionals should not make a distinction in terms of quality of care between persons with disabilities and those without.²⁰⁴ The CRPD prohibits discrimination “in the provision of health insurance” and prevents the “discriminatory denial of health care or health services ... on the basis of disability.”²⁰⁵

Right to work

The ICESCR also covers the “right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”²⁰⁶ Steps to be taken include: “technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”²⁰⁷ Furthermore, States Parties are to ensure fair wages and equal remuneration in particular for women, safe and healthy working

¹⁹⁴ Article 12 (1) ICESCR.

¹⁹⁵ Article 12 (2) (a) *ibid.*

¹⁹⁶ Article 12 (1) CEDAW.

¹⁹⁷ Article 12 (2) *ibid.*

¹⁹⁸ Article 23 (3) CRC.

¹⁹⁹ Article 24 (1) *ibid.*

²⁰⁰ Article 24 (2) (e) *ibid.*

²⁰¹ Article 25 (a) CRPD. The article notes that service coverage is to include “the area of sexual and reproductive health and population-based public health programmes.”

²⁰² Article 25 (b) *ibid.*

²⁰³ Article 25 (c). Also, Article 19 (c) *ibid.*

²⁰⁴ Article 25 (d) *ibid.*

²⁰⁵ Article 25 (e) and (f) *ibid.*

²⁰⁶ Article 6 (1) ICESCR.

²⁰⁷ Article 6 (2) *ibid.*



conditions, and equal opportunities.²⁰⁸ ICERD Article 5 contained similar components in its articulation of the right to work, and added protection against unemployment.²⁰⁹

The CRPD prohibits States Parties from discrimination in “all matters concerning all forms of employment.” It further obliges States Parties to “enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training.”²¹⁰

In addition, States Parties should promote employment opportunities and provide assistance in “finding, obtaining, maintaining and returning to employment.”²¹¹ Furthermore, States Parties should take measures to employ persons with disabilities in the public sector and promote employment of persons with disabilities in the private sector.²¹² Finally, States Parties should ensure that reasonable accommodation is provided in the workplace.²¹³

The CEDAW Committee in a number of concluding observations has expressed concern about discrimination against women with disabilities in respect to access to employment,²¹⁴ and has recommended measures to create access to employment for women with disabilities (including the provision of reasonable accommodation),²¹⁵ and for Roma,²¹⁶ but has not specifically mentioned concern about discrimination against Roma with disabilities or the creation of employment opportunities for them.

2. Access to information and the right to participate

Aside from the four economic, social, and cultural rights, it is also important to ensure that persons with disabilities have access to information and that they can exercise their right to participate in decisions that affect them.

Access to information

The CRPD specifies that persons with disabilities have the “freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.”²¹⁷ Thus, States Parties are obliged to provide information in “accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost.”²¹⁸ States Parties are also obliged to accept and facilitate “the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions.”²¹⁹

Right to participate

The right to participate is mentioned in several treaties. The CRC notes that children have the right to express their views, and those views should be “given due weight in accordance with the age and maturity of the child.”²²⁰ This includes “the opportunity to be heard in any judicial and administrative proceedings

²⁰⁸ Article 7 (a)(i) and Article 7 (b) and Article 7 (c) *ibid.*

²⁰⁹ Article 5 (e)(i) *ibid.*

²¹⁰ Article 27(I) (a) and Article 27 (I) (d) CRPD.

²¹¹ Article 27(I) (e) and Article 27 (I) (f) *ibid.*

²¹² Article 27(I) (g) and Article 27 (I) (h) *ibid.*

²¹³ Article 27(I) (i) *ibid.*

²¹⁴ See, for example, CEDAW/C/FIN/CO/6/2008, para. 35.

²¹⁵ See, for example, CEDAW/C/GBR/CO/7/2013, para. 47(c); and CEDAW/C/HUN/CO/7-8/2013, para. 17 (b) and 29 (c).

²¹⁶ See, for example, CEDAW/C/MKD/CO/4-5/2013, para. 37 and CEDAW/C/HUN/CO/7-8/2013, para. 36.

²¹⁷ Article 21 CRPD.

²¹⁸ Article 21 (a) *ibid.*

²¹⁹ Article 21 (b) *ibid.*

²²⁰ Article 12 (1) CRC.



affecting the child, either directly or through a representative or an appropriate body.”²²¹ The CRC Committee clarified later, “Engaging children in such a process not only ensures that the policies are targeted to their needs and desires, but also functions as a valuable tool for inclusion since it ensures that the decision-making process is a participatory one.”²²² The Committee also highlighted the importance of access to information as a precondition for enabling children with disabilities to live independently and to “participate fully in all aspects of life.”²²³ Finally, the Committee noted that States Parties should “support and cooperate with NGOs” that are involved in the provision of services for children with disabilities, and “to ensure that they operate in full compliance with the provisions and principles of the Convention.”²²⁴

The CEDAW mentions the obligation of States Parties to ensure participation in several articles, including the right to vote, to participate in the formulation of government policy (and implementation thereof), to hold office, and to participate in non-governmental organizations and associations.²²⁵ States Parties are also obliged to ensure rural women “participate in and benefit from” rural development.²²⁶ The CEDAW Committee has advised that States Parties should “ensure that women are able to participate actively in the development, implementation and monitoring of the policy”²²⁷ of eliminating discrimination against women.

The ICERD guarantees equality before the law to all “without distinction” in the enjoyment of political rights, civil rights, and economic, social and cultural rights. This includes the right to participate in elections, to take part in government, the conduct of public affairs and equal access to public service.²²⁸

The CRPD expands the right to participate through its treatment of several articles. Participation is identified as a principle,²²⁹ and States Parties are obliged to “closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations” in the “development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes.”²³⁰ Articles covering the Convention’s purpose (Article 1), accessibility (Article 9), living independently and in the community (Article 19), education (Article 24), habilitation and rehabilitation (Article 26), political and public life (Article 29), cultural life, recreation and leisure and sport (Article 30), and national implementation and monitoring (Article 33), all emphasize the need to ensure participation and inclusion in all aspects of life.

3. The need to address harmful practices affecting women and girls

As mentioned above, the CRC Committee and the CEDAW Committee issued a joint recommendation/comment that focused on addressing “harmful practices,” including child and/or forced marriage, polygamy, and crimes committed in name of honor.²³¹ The Committees noted the need to empower “girls and women, as well as boys and men” to transform the “traditional cultural attitudes that condone harmful practices, act as agents of such change and strengthen the capacity of communities to support these processes.”²³²

²²¹ Article 12 (2) *ibid.*

²²² CRC Committee, General Comment 9, para. 32.

²²³ *Ibid.*, para. 37.

²²⁴ *Ibid.*, para. 25.

²²⁵ Article 7 (a) (b) and (c) CEDAW.

²²⁶ Article 14 (2) *ibid.*

²²⁷ CEDAW Committee, General Recommendation No. 28/2010, para. 27.

²²⁸ Article 5 (c) ICERD.

²²⁹ Article 3 CRPD.

²³⁰ Article 4 (3) *ibid.*

²³¹ CEDAW Committee and CRC Committee (2014), Child and/or forced marriage: paras. 19-23; Polygamy: paras. 24-27; Crimes committed in name of honor: paras. 28-29.

²³² *Ibid.*, para 16.



The Committees noted that addressing the harmful practices requires “supportive legal and policy measures, including social measures that are combined with a commensurate political commitment and accountability at all levels.”²³³ They proposed a set of recommendations including better data collection and monitoring, legislation and enforcement, prevention of harmful practices, establishing rights based norms, empowerment of women and girls, capacity development, awareness raising, and protective measures and responsive services.

CEDAW and CRC Committees have noted harmful practices, including those in relation to sexual and reproductive health services.²³⁴ The CERD Committee has noted sterilization as a violation experienced by ethnic minorities, and the CRPD Committee has noted sterilization as a particular violation experienced by women with disabilities.²³⁵

To ensure protection from harmful practices, Roma women and girls with disabilities should have access to information in accessible formats, be provided with reasonable accommodation, and have access to health and other services on an equal basis with others.

4. Raising awareness, benchmarks and indicators, and use of data

States Parties have recognized the need to raise awareness about conditions affecting different populations and the discrimination they experience. Professor Theresia Degener, for example, notes a lack of awareness amongst the general population about multiple discrimination and how widespread it is.²³⁶ In order to work on addressing discrimination and closing gaps, States Parties are thus obliged to raise awareness about discrimination.

Awareness raising

The CRC obliges States Parties to ensure that mass media regard the “linguistic needs of the child who belongs to a minority group or who is indigenous.”²³⁷ As mentioned above, minorities have the right to enjoy their own culture, practice their own religion, and to use their own language.²³⁸

The CRPD obliges States Parties to engage in awareness raising activities to combat stereotypes, prejudices and harmful practices.²³⁹ It also encourages “media to portray persons with disabilities in a manner consistent with the purpose of the present Convention”, and encourages media to “make their services accessible to persons with disabilities.”²⁴⁰

The CEDAW Committee noted the obligation of States Parties, toward adolescent girls, to provide “education on sexual and reproductive health and by carrying out programmes that are aimed at the prevention of HIV/AIDS, sexual exploitation and teenage pregnancy.”²⁴¹

The CEDAW Committee noted that States Parties have an obligation to ensure that communities and individuals have access to information as a precondition to enable them to claim rights.²⁴²

²³³ *Ibid*, para 32.

²³⁴ *Ibid*, para 67.

²³⁵ CERD Committee, General Recommendation 25, para 2, and CRPD Committee General Comment 1, para 35.

²³⁶ Degener, *ibid*, 30.

²³⁷ CRC, Article 17.

²³⁸ ICCPR, Article 27, and CRC Article 30.

²³⁹ CRPD, Article 8 (1) (b).

²⁴⁰ *Ibid*, Article 8 (2) (c) and Article 21 (d).

²⁴¹ CEDAW Committee, General recommendation No. 28 (2010), para 21.

²⁴² CEDAW Committee, General recommendation No. 28 (2010), para 27.



Outreach programs, in particular, should not only provide information to women, but also should be “appropriate for all ethnic and minority groups in the population and designed in close cooperation with women from those groups and, especially, from women’s and other relevant organizations.”²⁴³

National implementation

The ICESCR and the CRPD oblige States Parties to “take measures to the maximum of its available resources” to achieve, progressively, economic, social and cultural rights.²⁴⁴ The treaties do not refer to the establishment of general indicators, benchmarks and timelines. The ICESCR alone has a two year time frame for States Parties to “adopt a detailed plan of action” to ensure “compulsory primary education, free of charge.”²⁴⁵

The CRPD is unique in requiring States Parties to set up mechanisms for national implementation and monitoring. Thus, States Parties are obliged to establish focal points and coordination mechanisms,²⁴⁶ monitoring frameworks,²⁴⁷ and to ensure that civil society can be “involved and participate fully in the monitoring process.”²⁴⁸

The CEDAW Committee clarified in a general recommendation that anti-discrimination policies need to establish “indicators, benchmarks and timelines, ensure adequate resourcing for all relevant actors and otherwise enable those actors to play their part in achieving the agreed benchmarks and goals. To this end, the policy must be linked to mainstream governmental budgetary processes in order to ensure that all aspects of the policy are adequately funded.”²⁴⁹

Data collection and use

The CRPD is the only treaty that explicitly mentions the need for statistics and data collection. The CRPD notes that States Parties are obliged to collect information that enables them “to formulate and implement policies to give effect” to the convention.²⁵⁰ Such information should be disaggregated and should be disseminated to “ensure their accessibility to persons with disabilities and others.”²⁵¹ Furthermore, the CRPD obliges States Parties to use data to identify and address barriers.²⁵²

The CEDAW Committee in a general recommendation emphasized the need for collecting sex-disaggregated data, effective monitoring, and ensuring that governmental bodies can initiate action, and “coordinate and oversee the preparation and implementation of legislation, policies and programmes necessary to fulfil the obligations of the State party under the Convention. The policy must engage the private sector, including business enterprises, the media, organizations, community groups and individuals, and enlist their involvement in adopting measures that will fulfil the goals of the Convention in the private economic sphere.”²⁵³

Data on persons with disabilities should include information about their support needs (not just the type of impairment). As has been covered above, data on Roma is inconsistent (government and civil society estimates vary considerably).

²⁴³ CEDAW Committee, General Recommendation 33 (2015), para 17 (c).

²⁴⁴ ICESCR, Article 2 (1); and CRPD, Article 4 (2).

²⁴⁵ Article 14, ICESCR.

²⁴⁶ Article 33 (1) CRPD.

²⁴⁷ Article 33 (2) *ibid.*

²⁴⁸ Article 33 (3) *ibid.*

²⁴⁹ CEDAW Committee (2010), General recommendation No. 28, para. 28.

²⁵⁰ Article 31 (1) CRPD.

²⁵¹ Article 31 (2) and Article 31 (3) *ibid.*

²⁵² Article 31 (2) *ibid.*

²⁵³ CEDAW Committee (2010), General recommendation No. 28, para. 28.



5. Obligation to take positive measures

Several treaties permit positive measures to support subsets of the population who have experienced greater disadvantages and discrimination, with the understanding that such positive measures should not be considered discrimination.

The ICERD permits “special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection” and declares that such measures “shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.”²⁵⁴ The CRPD also permits “[s]pecific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.”²⁵⁵

In other cases, treaty bodies clarified that States Parties should take measures to address multiple discrimination. The CEDAW Committee looked at the issue of health in their General Recommendation 24. While it does not refer explicitly to Roma or even to ethnic minorities, the Committee recognized that some groups are more vulnerable than others and thus:

Special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.²⁵⁶

The CEDAW Committee goes on to note that, “States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact upon them.”²⁵⁷ Likewise, the CRC Committee highlighted the need to pay particular attention to girls with disabilities, and advised taking additional measures to ensure they were “well protected, have access to all services and are fully included in society.”²⁵⁸

G. Concerns and recommendations of the CRPD Committee

Given the recent consideration of State Party reports by the CRPD Committee, their reviews are presented here as a standalone section. The CRPD Committee has already received State Reports from several countries where there are significant populations of Roma, including five countries that were part of the Roma Decade, namely Hungary, the Czech Republic, Serbia, Slovakia, and Spain. Although not part of the Roma Decade, Ukraine also has a Romani population²⁵⁹ and has submitted a State Report to the CRPD Committee.

The State Reports submitted by the Czech Republic, Serbia, Spain, and Ukraine gave no mention of Roma with disabilities. Roma with disabilities are not mentioned in the CRPD Committee’s concluding observations for Spain, the Czech Republic or Ukraine. Table 1 summarizes the references to Roma with disabilities.

²⁵⁴ Article 1.4 ICERD.

²⁵⁵ Article 5 (4) CRPD.

²⁵⁶ CEDAW Committee (1999), General Recommendation 24, para. 6.

²⁵⁷ *Ibid*, General Recommendation 25, para. 12.

²⁵⁸ CRC Committee (2006), General Comment 9, para. 10.

²⁵⁹ The average estimate is just over 250,000 per EU Framework.

Table 1: Inclusion of Roma with disabilities in CRPD reporting

	State Report	List of Issues	Reply to List of Issues	Concluding Observations
The Czech Republic	No mention of Roma	Question on strategy to promote rights of Roma with disabilities	Reference is made to the Roma Integration Strategy	No mention of Roma
Hungary	Only reference regards two awareness raising events	Request for information on programs to promote the rights of persons with disabilities amongst Roma.	Refers to local programs that focus on five target groups, but those groups aren't required to include Roma with disabilities.	Committee made observations and recommendations on education and statistics
Serbia	Only two references, both of which refer to Roma and persons with disabilities distinctly as vulnerable groups with respect to violence and social protection.	No mention of Roma.	Not yet received.	Will be reviewed during 15 th session of CRPD Committee, 29 March – 21 April 2016
Slovakia	Only reference regards translation of sterilization consent form into Romani language	Question on strategy to promote rights of Roma with disabilities	Reference is given to Strategy of the Slovak Republic for Integration of Roma up to 2020, and action plan on non-discrimination	Will be reviewed during 15 th session of CRPD Committee, 29 March – 21 April 2016
Spain	No mention of Roma	No mention of Roma	Not reviewed – available in Spanish only	No mention of Roma
Ukraine	No mention of Roma	No mention of Roma	Not reviewed - Available in Russian only	No mention of Roma

The Czech Republic

The Czech State Report makes no mention of Roma. The Committee's list of issues to the Czech Republic asked about the government's strategy for Roma with disabilities.²⁶⁰ The Czech government responded, "Promotion and protection of the rights of Roma people with disabilities will be laid down in the Roma Integration Strategy until 2020."²⁶¹ The revised strategy was approved less than a month later, i.e. in February 2015.²⁶² A copy of that strategy is not available online and so has not been reviewed.

²⁶⁰ CRPD/C/CZE/Q/1 (2015), para. 3.

²⁶¹ *Ibid*, para. 9.

²⁶² "Czech Roma integration strategy until 2020 approved", Prague Daily Monitor (24 February 2015), at <<http://praguemonitor.com/2015/02/24/czech-roma-integration-strategy-until-2020-approved>> (Accessed: 1 January, 2016)



Hungary

The State report submitted by Hungary mentioned Roma with disabilities just once, in reference to awareness raising concerts that provided support for “Roma children in disadvantageous positions and for supporting children’s homes in Transylvania.”²⁶³ The report does not clarify the exact nature or amount of the support provided.

The list of issues asks for information on the development of programs for persons with disabilities amongst the Romani population.²⁶⁴ The reply to that request refers to the National Inclusion Strategy (which “handles social problems ensuing from poverty and deep poverty affecting both the Roma and non-Roma population”) and the development of “local equal opportunity programmes.”²⁶⁵ The reply stated that local governments should “compile local equal opportunity plans focusing on 5 equal opportunity target groups (individuals living in deep poverty and Roma, children, women, persons with disabilities and elderly people).”²⁶⁶ The target groups, it is worth noting, treat persons with disabilities and Roma as separate categories, and in fact treat people living in poverty and Roma as distinct categories. Thus, it would be permissible for local governments to develop action plans with no reference to Roma with disabilities.

The CRPD Committee expressed concern about the “lack of social programmes aimed at ensuring the access of Roma children with disabilities to mainstream education and by the lack of adequate consultation with them and their parents with a view to deciding what kind of support is needed to satisfy their right to education.”²⁶⁷ The Committee thus recommended the development of programs “to ensure that Roma children with disabilities are included in mainstream education programmes, without disregarding the provision of reasonable accommodation that might be needed.”²⁶⁸

The Committee also expressed concern “about the lack of information regarding Roma children with disabilities. It is further concerned by the understanding of the State party of the way in which confidentiality and privacy towards children with disabilities should be considered.”²⁶⁹ The Committee thus recommended the development of “an appropriate data-collection system to understand the nature and characteristics of Roma persons with disabilities in general and children in particular.”²⁷⁰

Serbia

The Initial report of Serbia contains two references to Roma. The first is with respect to a national strategy to prevent violence, and notes “The strategy pays special attention to groups of women that are or may be exposed to multiple discrimination, as well as to vulnerable groups of women which include: women with disabilities, Roma women, mothers of children with disabilities, developmental disabilities or chronic illnesses, rural women, elderly women, refugees and internally displaced women, etc.”²⁷¹ The second notes the development of social services at the community level that target in particular the “most vulnerable groups of citizens.” The list of most vulnerable comprises “children, women, persons with disabilities, children with developmental disabilities, victims of violence, members of Roma and other communities, and other groups).”²⁷² In each case, “Roma” and “person with disability” are considered as distinct and non-overlapping groups.

²⁶³ CRPD/C/HUN/1/2011, para. 46.

²⁶⁴ CRPD/C/HUN/Q/1/2012, para. 3.

²⁶⁵ CRPD/C/HUN/Q/1/Add.1/2012, paras. 24-25.

²⁶⁶ *Ibid.*, para. 26.

²⁶⁷ CRPD/C/HUN/CO/1, para. 40.

²⁶⁸ *Ibid.*, para. 42.

²⁶⁹ *Ibid.*, para. 48.

²⁷⁰ *Ibid.*, para. 50.

²⁷¹ CRPD/C/SRB/1/2014, para. 212.

²⁷² *Ibid.*, para. 231.

Slovakia

The only reference of substance to Roma in Slovakia's state report concerns the translation into Romani language of consent forms for sterilization of Romani women:

In 2011 the Ministry of Health distributed to all health care facilities in Slovakia a form in Roma language to be used when obtaining informed consent for sterilisation in the case of Roma women with a view to ensuring the consistent application of assistance for people with disabilities under the act on health care.²⁷³

The CRPD Committee's first question to Slovakia (and unfortunately the Committee's only question on Roma specifically) asked for "information on the development of a strategy to promote the rights and social inclusion of persons with disabilities among Roma."²⁷⁴ The Slovak government's response refers to the Strategy of the Slovak Republic for Integration of Roma up to 2020.²⁷⁵ The Slovak government indicated:

Concrete measures and activities to promote social inclusion and rights of persons with disabilities among Roma citizens will be addressed in the draw-up of the action plan in the field of non-discrimination.²⁷⁶

The revised national action plan doesn't outline any strategy to promote the rights and social inclusion of Roma with disabilities.²⁷⁷

H. Concluding remarks on using an intersectional lens for Roma with disabilities

States Parties can and should institute temporary measures and allocate funds to ensure that Roma with disabilities are afforded equal access to all services and equal opportunities as the non-disabled, and non-Roma populations. States Parties need to collect better data (that can be disaggregated), set benchmarks, indicators, and timelines that are inclusive of Roma with disabilities. State Parties need to undertake efforts to raise awareness in Romani and non-Romani communities alike, and endeavor to end practices that are harmful for Romani women and girls with disabilities. Furthermore, States Parties need to ensure that Roma with disabilities receive information in formats that are accessible to them, and that they have access to and can participate in the mainstream educational system, have access to health care services on an equal basis with others, can exercise their right to work, and can secure adequate and accessible housing.

²⁷³ CRPD/C/SVK/1/2014, para. 254.

²⁷⁴ CRPD/C/SLV/Q/1/2015, para. 1.

²⁷⁵ Government of Slovakia (undated), Replies to the List of Issues in relation to the initial report of the Slovak Republic on the implementation of the Convention on the Rights of Persons with Disabilities.

²⁷⁶ Government of Slovakia (undated), at supra note 123, response to question 1.

²⁷⁷ The strategy includes their revised national action plan, which includes just two mentions of disability. There is a reference to "psychological diagnostics" of children 5-6 (page 4 of revised national action plan), "re-diagnosis" of some with "light mental disability" after their first year of schooling (page 15 of revised national action plan). There are no other references to disability in the action plan.

VI. Conclusions

An intersectional reading of international treaties shows how they reinforce one another, directly and indirectly. Direct reinforcement can be seen when the treaties and treaty body committees express similar concerns and recommendations, such as on the issue of sterilization, which is covered by five committee bodies.²⁷⁸ Other violations referred to by multiple treaty bodies include the denial of right to education, placement of minorities and/or persons with disabilities in institutions, violence and abuse experienced by women and girls, employment discrimination, housing discrimination, discrimination in healthcare, and the denial of legal capacity.

Direct reinforcement, for example, can be seen in cases where a treaty body reaffirms the CRPD's prohibition of discrimination on the basis of disability (which had appeared previously only in the CRC). Based on that prohibition, State Parties to the CRPD should also ensure non-discrimination on the basis of disability in their reports to all other treaty bodies and through the Universal Periodic Review mechanism.

Indirect reinforcement can be seen where a particular concept, such as reasonable accommodation, is mentioned in one treaty (CRPD), but could be applicable in concepts and issues covered by other treaties. For example, reasonable accommodation for persons of different ethnicities (flexible work schedules) and gender identities (clothing choices) may be needed.

In his book on disability and culture, Michael Davidson references efforts in the 19th and 20th centuries to associate race and gender with different illnesses, impairments, and cognitive and mental "deficiencies."²⁷⁹ The international community has long recognized that such associations are fallacious and represent attempts to justify paternalism, discrimination, and the denial of rights.

The social model of disability, and the acceptance of the rights of persons with disabilities on an equal basis is a relatively new concept, brought to the forefront only with the entry into force of CRPD. It demands that impairment not be looked at just as a medical matter of fact, but also as a social construct that reveals how our communities understand and behave toward people who are different in any aspect. If a national or a local entity permits discrimination on grounds of disability, an environment is fostered that makes it easier to discriminate on other grounds, either directly or indirectly.

The international treaties have looked at an intersection of two identity markers (gender and race, disability and gender, children and indigenous, etc.) but have only begun to consider more complex intersectional discrimination (three or more factors or layers of discrimination). It has been recognized that Romani women and children are disadvantaged. It has also been recognized that persons with disabilities generally, and women and children with disabilities in particular are disadvantaged. But there does not seem to be sufficient recognition that a disproportionate number of Roma are also persons with disabilities, that they face additional barriers, and that they are entitled to exercise their rights on an equal basis with others.

While it has been recognized that Romani children are incorrectly diagnosed and placed in segregated and inferior educational institutions that serve children with disabilities, EU member states implementing the

²⁷⁸ The fact that five committee bodies have addressed sterilization lends credence to the argument for the need to apply an intersectional approach and to avoid fragmentation. See supra footnote 236 for comments from CERD and CRPD. In addition, see ICCPR General Comment 28/2000, para.11, CEDAW General Recommendation 19/1992, paras. 22 and 24, CEDAW General Recommendation 21/1994, para 22, CEDAW General Recommendation 24 (1999), para 22, CEDAW General Recommendation 32/2014 para. 15, and CRC, General Comment 9, para. 60. Read in sum, those writings bring to the forefront that female ethnic minorities with disabilities in particular are vulnerable to that practice, and thus that States Parties need to be particularly vigilant in prevention, and must be held accountable if and when forced sterilization occurs.

²⁷⁹ Davidson, Michael, *Concerto for the Left Hand: Disability and the Defamiliar Body* (University of Michigan Press, 2008), at 10.



Roma Decade and EU Framework have failed to question the placement of children with disabilities in such “special” schools.

Efforts to raise awareness about the injustice of the practice of inappropriate placement of Romani children in segregated schools thus overlook the bigger issue that persons with disabilities (Roma and non-Roma alike) have a right to inclusive education. In other words, no one should be educated in segregated institutions. Failing to apply an intersectional lens leads to declarations (such as the one mentioned on pages 9-10 above) in which the merits of inclusive education (for Roma without disabilities) are celebrated while the segregated education of children with disabilities is seen as perfectly acceptable despite CRPD Article 24. For precisely such a reason, an intersectional reading of the different treaties is needed.

The Roma Decade and the EU Framework have not shown many positive returns for Roma, let alone for Roma with disabilities, who have been rendered invisible despite considerable efforts over the past ten years. Rather than repeat those criticisms, which this study does not dispute, this study instead notes the need to ensure that Roma with disabilities are not forgotten. In fact, as long as there is no consideration of Roma with disabilities or recognition of the support they need, it is unlikely that the goals of the Roma Decade and EU Framework will be realized.

VII. Recommendations

This study presents recommendations to address issues: project implementation, cross-cutting issues, and the four themes.

Implementation (strategies, data, monitoring and enforcement, and participation)

Strategies: The European Union needs to recognize and address the difficult living conditions faced by Roma with disabilities, and to be more intentional in linking Romani rights strategies with strategies to promote the rights of persons with disabilities. Since the Roma Decade and EU Framework have not adequately considered the needs and rights of Roma with disabilities, it would be worth trying to protect and promote rights of Roma with disabilities through another approach, namely through governmental policies on disability. While the CRPD did not sufficiently address the rights of ethnic minorities with disabilities, a reading of all the treaties in concert shows the need to enforce the rights and reduce disparities that exist for ethnic minorities. At the national level governmental bodies responsible for implementation of the CRPD and disability activists within civil society need to find the space to ensure Roma are included. Support should be given to increase the capacity of governments to develop inclusive and comprehensive policy development strategies (acknowledging the links between housing, education, healthcare, water, sanitation, transportation, and employment) and expand access for population groups that have been excluded (such as Roma with disabilities).

The CERD Committee noted the need to develop “a more systematic and consistent approach to evaluating and monitoring racial discrimination against women, as well as the disadvantages, obstacles and difficulties women face in the full exercise and enjoyment of their civil, political, economic, social and cultural rights on grounds of race, colour, descent, or national or ethnic origin.”²⁸⁰ Similarly, there is a need for a more systematic and consistent approach for understanding the factors affecting Roma with disabilities, the difficulties they experience, and the support they need to be able to exercise their rights on an equal basis with others.

²⁸⁰ ICERD Committee, General Recommendation 25, para. 3.



Data, monitoring and enforcement: There is a need for better data collection, improved monitoring, and sanctions for non-compliance. Degener has noted the scarcity of data on race, gender and disability.²⁸¹ The EU Framework relies on averages of Roma population estimates from governments and civil society organizations. In some cases the gaps are several hundred thousand people. The CRPD Committee has noted the lack of information about Roma with disabilities specifically. Without data, Roma (*including Roma with disabilities*) will continue to be marginalized.

The Decade Intelligence report (see page 8) highlighted some of the shortcomings of monitoring during the Roma Decade. Roma with disabilities need to be included in efforts to evaluate and monitor discrimination, and any and all development efforts. Finally, funding needs to be set aside for independent monitoring, and sanctions need to be put in place if authorities at any level obstruct implementation of plans and activities.

Participation: Roma of both genders need to be involved in disability discussions and strategies, and Roma with disabilities need to be involved in development of plans, priorities, when it comes to inclusion of Roma). Governments (at national and local levels) should ensure “active participation of Roma in planning, implementation, and review of housing policies at all levels. Their participation should reflect the heterogeneous nature of these groups and address the concerns of particular groups within them, for example, women, children, the elderly, and persons with disabilities.”²⁸²

It is important for the leading DPOs in Europe, and the leading Romani rights organizations to share more information with one another and to explore opportunities for working together. It is critical for human rights organizations working on Roma to learn about disability, and for DPOs to learn about the experience of Roma with disabilities. Given national implementation bodies set up through the EU Framework, Roma Decade, and CRPD Article 33, it should be possible to have facilitated conversations leading to greater awareness, understanding, and opportunities for collaboration.

The Roma Decade projects did not sufficiently engage communities at the local level. Many Roma were not in fact aware that they had “had” their decade. It is also evident from reporting that Roma, regardless of disability status, experienced negative repercussions at the community level despite the Decade. A community in Bulgaria built a wall to segregate the Roma community, and in one town in Hungary Roma tenants were paid to move outside city limits (leaving them nowhere to go).²⁸³ Precisely because some of the Roma Decade’s largest failures can be seen at the local level, more of an effort needs to be expended at that level.

Cross-cutting issues (nondiscrimination, gender, and poverty reduction)

Nondiscrimination: It is of utmost importance to ensure sufficient protections are in place to ensure Roma with disabilities are not discriminated against, and that they are afforded access to all services and programs on an equal basis with others. This includes the provision of reasonable accommodation, when needed, to ensure access and participation. This also includes the need for measures to ensure that persons get the support they need to bring forth complaints, and that sanctions are levied and compensation is provided when courts determine that Roma with disabilities have experienced discrimination.

Gender: The findings from the Roma Decade and EU Framework have shown that governments at all levels have not given sufficient attention to women and girls, let alone women and girls with disabilities.

²⁸¹ Degener, *ibid*, 29.

²⁸² Open Society Foundations - Roma Initiatives, *ibid*, 134.

²⁸³ Rorke, Matache, and Friedman, *ibid*, 49 and 51.



In line with the problems identified by ERRC, MDAC and Platform for Social Housing (see page 17), it is important for States Parties to ensure that Roma with disabilities are not sterilized, that they retain their legal standing, are not placed under guardianship, are provided information about their rights, and are given appropriate support to exercise their rights.

Poverty alleviation: Poverty reduction requires a coordinated approach that looks at families not just individuals with disabilities, as illustrated by this observation from the CERD Committee:

Moreover, reducing aid dependency affects many Roma families who have disabled people in their care, resulting in serious situations of poverty and instability in these families as the costs of health care and daily life are high and the care of people is incompatible with employment. This in turn is reported as having long-term effects on carers because it is limiting their educational and employment promotion.²⁸⁴

Since the Roma Decade failed to bring considerable numbers of Roma out of poverty, it is important to identify reasons why Roma Decade strategies failed in that regard. Given that those living in deep poverty are denied the enjoyment of other rights,²⁸⁵ it is especially critical to focus on poverty alleviation. It would be important to identify if there are any poverty alleviation programs that have worked in any of the Roma Decade countries, and to understand the factors that led to those successes.

Persons with disabilities tend to be more impoverished than non-disabled persons, often have additional costs associated with their disability, and face additional disability-specific barriers that inhibit their enjoyment of their rights. Thus, the design of any poverty alleviation strategies and programs must be inclusive of persons with disabilities and their families.

Poverty alleviation needs to be broader than just access to employment, but must factor in housing, education, health care and other inequalities experienced by persons with disabilities. Persons with disabilities should have access to training programs, employers should be required to ensure their businesses are accessible, public and private sector alike should be given incentives to employ persons with disabilities and to provide reasonable accommodation, if needed.

Four themes (education, employment, healthcare and housing)

Education: Open Society Foundations made valuable recommendations (see page 14-15) to ensure that Roma with disabilities are afforded access to education on an equal basis with others. The Special Rapporteur has also called on States Parties to ensure inclusive education (see page 18).

Employment: Governments should be required to ensure employment legislation and policies provide sufficient protection to ensure non-discrimination in all phases of employment (recruitment, hiring, retention, promotion). This would include provision of reasonable accommodation. Governments may want to consider quota schemes, employment support measures, and other actions to reduce the gap in employment between Roma with disabilities and non-Roma without disabilities.

Healthcare: Governments should be required to increase access to health care for Roma with disabilities and their families. This would include: a) “extending coverage and effective access in social health protection;” and b) “reducing poverty and social exclusion through the social protection floor

²⁸⁴ European Union, Report on the health status of the Roma population in the EU and monitoring data collection in the area of Roma health in the Member States, 2014, 65.

²⁸⁵ O'Reilly, Arthur, “The right to decent work of persons with disabilities”, International Labor Organization, 2007, 4.



approach.”²⁸⁶ Given poverty levels, governments could introduce “fair burden sharing based on capacity to pay” and ensure the “availability of the health workforce in rural areas.”²⁸⁷ In addition, the capacity of health providers to work with Roma generally, and specifically with Roma with disabilities will also need to be strengthened.

Housing: With regard to the provision of adequate housing, measures to strengthen non-discrimination legislation and policies are needed to ensure that Roma with disabilities are able to exercise their housing rights on an equal basis with others. Efforts will also be needed to develop, implement and enforce universal design standards, and to support the development of accessibility plans in settlements where there are large numbers of Roma. In addition, it will be important to create or strengthen mechanisms that allow for the participation of Roma (and in particular Roma with disabilities) in all urban planning and development processes.

²⁸⁶ Scheil-Adlung and Kuhl, *ibid*, 35.

²⁸⁷ *Ibid*, 36.



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