

MINORITY RIGHTS GROUP INTERNATIONAL

Position Paper for the Council of Europe High-Level Meeting on Roma and Travellers

20 October 2010

1. In October 2010, Minority Rights Group International (MRG) was invited to submit a position paper for the High-Level Meeting on Roma and Travellers, an initiative of the Secretary-General of the Council of Europe (CoE), organised in close cooperation with the European Union (EU).

Process

2. MRG welcomes the fact that the event brings together so many important actors in the European Roma policy-making field, such as governments, the EU, the CoE and other international organisations. We also see as positive the fact that the CoE is bringing together ministers, other senior politicians and decision-makers, and thus placing the situation of Roma high on the European agenda.
3. We also welcome the CoE's commitment to substantial and meaningful participation by Roma and Travellers in the preparation of the meeting, as well as in the process which it is expected to put in place. Nevertheless, we would have liked to see a greater level of involvement by Roma representatives, including from Roma women's

organisations, at the event and at the Task Force expected to draft the final declaration of the conference.

4. As provided by international human rights law, minorities are entitled to take part in all decisions which affect their lives.¹ Therefore, we believe it is necessary to ensure participation by national and international Roma rights organisations in the follow-up to the event, not least given its stated aim of being a catalyst for future action.
5. We support the idea of a pan-European Roma policy, something which MRG and our partners have long been promoting. Recent events related to the expulsion of hundreds of Roma families from France have confirmed the fact that the situation of Roma crosses European borders and calls for pan-European initiatives.² We believe that increased co-operation between European governments, the CoE, the EU and the Organisation for Security and Cooperation in Europe (OSCE) will help Roma communities as well as local and national authorities to develop and implement common projects.

Affirming and Strengthening International Standards

6. European human rights standards provide a solid basis for the protection and promotion of Roma rights in the region. At the same time, a pan-European approach to Roma rights necessitates a common understanding and commitment to minority rights. However, the only legally binding comprehensive minority rights instrument in Europe, the Framework Convention for the Protection of National Minorities (FCNM), has not been ratified by Belgium, Greece, Iceland and Luxembourg. France, Turkey, Andorra and Monaco have so far even refused to sign it. In these countries, Roma and other minority groups remain outside the protection offered by the convention. Four of these eight states are members of the EU (for which minority rights form a core value); one is a candidate for membership and is therefore bound by the EU Copenhagen criteria to ensure respect for and protection of minorities.

¹ Framework Convention for the Protection of National Minorities (Article 15); Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,, Article 2(2) and 2 (3); Document of the Copenhagen Meeting of the Conference for Security and Co-operation in Europe, 29 June 1990, Article 35.

² *European Union: Brussels Assumes Bigger Role on Roma*, Oxford Analytica Brief, Oxford, 4 October 2010.

7. Disappointingly, even more European countries have failed to ratify Protocol 12 to the European Convention on Human Rights (ECHR), which secures the enjoyment of any right set forth without discrimination on any ground such as sex, race, colour, language, association with a national minority and so forth. The EU institutions, the CoE as well as the respective member-states should endeavour to put an end to this discrepancy in minority rights standards in Europe.³
8. A pan-European approach to Roma rights also requires horizontal coordination on existing minority rights standards between the CoE, EU and other international agencies. For example, the European Court of Justice, the European Court of Human Rights (ECtHR), and the United Nations treaty bodies rarely make references to such human rights instruments as the EU Racial Equality Directive or the FCNM, in their recommendations and judgments. The landmark Roma rights decision of *D.H. and Others v. the Czech Republic*⁴, in which the ECtHR made detailed references to the EU Racial Equality Directive as well as European Commission against Racism and Intolerance (ECRI) and FCNM reports, is one of the few positive examples in this regard.
9. Such horizontal coordination by monitoring mechanism drawing on existing standards is bound to be mutually beneficial and strengthen Roma rights protection, particularly in the area of positive action measures. Numerous human rights reports and European Parliament resolutions have called for policies and programmes focussing on Roma communities, in order to alleviate their continued poverty and marginalisation. Still, the EU anti-discrimination *acquis* does not require governments to adopt positive action measures. This is in sharp contrast to international human rights law, including the CoE's own standards (e.g. Article 4 of the FCNM).⁵

³See: "NGO declaration on the Framework Convention for the Protection of National Minorities: On the occasion of the Conference Enhancing the Impact of the Framework Convention: Past Experience, Present Achievements and Future Challenges", Strasbourg, 9-10 October 2008, available at: <http://www.minorityrights.org/7419/minorities-in-the-news/ngo-declaration-on-the-framework-convention-for-the-protection-of-national-minorities.html>

⁴*D.H. and Others v. the Czech Republic* [GC], no. 57325/00, 13 November 2007.

⁵Galina Kostadinova, *Substantive Equality, Positive Action and Roma. Rights in the European Union*, MRG, London, 2006.

10. Similarly, EU enlargement policy could be much improved with regard to Roma if it drew consistently on the work, expertise and methodologies of the United Nations (UN), OSCE and CoE human rights bodies. The office of European Commission (DG Enlargement), which is responsible for monitoring the rights of Roma in the enlargement countries, does not always address Roma issues from a rights perspective. For example, important rights related to Roma identity are consistently being ignored in EU progress reports.⁶

Policies

11. Any policy, programme or project launched at the European level should be based on fundamental rights and take into consideration the 10 Common Basic Principles for Roma Inclusion, namely:

1. Constructive, pragmatic and non-discriminatory policies;
2. Explicit but not exclusive targeting;
3. Inter-cultural approach;
4. Aiming for the mainstream;
5. Awareness of the gender dimension;
6. Transfer of evidence-based policies;
7. Use of Community instruments;
8. Involvement of regional and local authorities;
9. Involvement of civil society; and

⁶ Snjezana Bokulic and Galina Kostadinova, *Pushing for Change? South-East Europe's Minorities in the EU Progress Reports*, MRG, London, 2008.

10. Active participation of the Roma.

12. There are inherent difficulties in tackling the complex human rights and development issues involved. Therefore, the predicament confronting many Roma communities requires a comprehensive approach, involving simultaneously a broad scope of activities in the areas of housing, education, health, employment, discrimination and gender issues. Any new initiatives need to build upon existing national Roma strategies, which should contain benchmarks, indicators, and data collection and monitoring mechanisms.

13. With extreme right-wing parties and groups on the rise in many European countries, there may be a popular backlash against Roma empowerment, especially when positive action measures are involved. Therefore, there is a need for Roma initiatives to go hand-in-hand with measures addressing deeply rooted discrimination, prejudices and stereotypes against the Roma throughout the continent. Moreover, European leaders must do more to defend, explain and publicly encourage policies supporting Roma communities.

Recommendations:

CoE/EU/OSCE

1. Ensure substantial and meaningful participation by Roma, including Roma women, in the drafting of any legal or policy document concerning Roma communities, as well as in its implementation, monitoring and evaluation.
2. Support through guidance and funding the establishment of a forum for dialogue between governments on the one hand, and Roma groups and civil society, including Roma women's groups, on the other.
3. Take into consideration minority rights when developing measures which contribute to the protection and promotion of the rights of Roma.
4. For the EU - adopt a minority rights approach when monitoring and assessing the situation of Roma.

5. Coordinate efforts to design, implement and monitor Roma rights policies.
6. Establish stronger cooperation between the various relevant Council of Europe, EU and OSCE bodies so that they work together and inspire each other in the assessment of national non-discrimination legislation, Roma policies and social inclusion policies.
7. Support, through training and legal assistance schemes, the practical implementation of minority rights and anti-discrimination standards.

Governments

1. At the national level, ensure substantial and meaningful participation of Roma, including Roma women, in the drafting of any legal or policy document concerning Roma communities; as well as in its implementation, monitoring and evaluation.
2. Support the development of and participate in a forum for dialogue with Roma groups and civil society, including Roma women's groups.
3. For those governments which have not yet done so – sign and ratify the FCNM and Protocol 12 to the ECHR.
4. Take into consideration minority rights when developing measures at the national level which contribute to the protection and promotion of the rights of Roma. This applies in particular to the adoption of positive action measures.
5. Provide leadership in explaining the need for policies and measures supporting Roma communities.
6. Mainstream Roma rights by assessing whether existing laws, policies and practices – especially with regard to education, employment, social protection, health care and housing – negatively affect Roma communities.
7. Ensure fully disaggregated ethnic and gender data collection in order to gain a better understanding of the predicament confronting many Roma communities and adopt adequate measures to overcome it.