

Monitoring the EU Accession Process: Minority Protection

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1. INTRODUCTION

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

This Overview and the accompanying country reports prepared by the EU Accession Monitoring Program (EUMAP) assess the state of minority protection in ten Central and Eastern European States seeking full membership in the European Union² and in five current member States.³

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

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

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

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

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

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

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

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

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

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

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

Minority protection as a continuing condition of EU membership

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

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

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

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

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

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

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

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

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

Second, although the EU Race Equality and Employment Directives¹⁴ provide clear benchmarks against which States' performance in the area of non-discrimination can be measured, they give primacy to race and ethnicity as indicators, with the result that religion has largely been missing from the discourse on minority protection. Discrimination on grounds of religious belief is covered only under the Employment Directive.

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

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

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

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

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

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

The role of monitoring in defining standards

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

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

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

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

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

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

EU monitoring mechanisms provide for little between silence and sanctions.¹⁶ Regular evaluation – with participation from representatives of minority communities¹⁷ – is vital to ensure that the standards are themselves subject to regular review, and that public policies are operating in fact to protect minorities from disadvantage and exclusion (see Section 4).¹⁸

Organisation of this Overview and the reports

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.1 Programme Content

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

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

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

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

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

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

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

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

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

2.2 Programme Implementation – Problems of Coordination and Capacity

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.3 Decentralisation: the Role of Local Government

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

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

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

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

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

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

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

2.4 Evaluation and Assessment

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

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

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

demonstrated an early commitment to monitoring its own performance in implementation of its “Strategy to Improve the Situation for Roma” with the publication of an internal evaluation report in April 2002.²⁷ However, the comprehensiveness of the report is limited by a lack of available information on implementation – the report itself was released late due to difficulties gathering data from the relevant ministries.

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

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

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

2.5 EU Funding to Support Implementation

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

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

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

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

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

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

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

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

2.6 Minority Participation

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

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

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

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

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

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

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

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

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

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

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

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

2.7 Minority Representation

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

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

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

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

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

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

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

2.8 Public Support

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

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

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

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

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

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

³⁰ Interview with S. Ličen Tesari, Semič, 30 March 2002.

³¹ OSI Roundtable Meeting, Sofia, May 2002.

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

³³ OSI Roundtable Meeting, Prague, June 2002.

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

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

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

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

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

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

³⁴ OSI Roundtable Meeting, Budapest, June 2002.

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

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

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

3.1 Public Attitudes

Although there is great diversity within the population of Sinti and Roma in Germany and Roma/gitanos³⁸ in Spain, they are viewed as a single group by the majority society. Similarly, though “the Muslim community” is in fact composed of different national, ethnic and linguistic communities, Muslims are nonetheless often viewed as a monolithic group.³⁹

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

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

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

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

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

Both Roma and Muslims are often perceived as foreigners in the countries in which they live⁴⁰ – even when they have resided there as citizens for generations, or even centuries, as is the case with Roma in Germany and Spain. As a result, minority policy is sometimes conflated with policies to fight xenophobia or provide social assistance to immigrants or foreigners. In Germany, for example, issues related to discrimination or violence against minorities⁴¹ are referred to the “Commissions for Foreigners’ Affairs;” there is no specialised body competent to deal with discrimination and violence against minority citizens or the promotion of minority identity at the Federal level.⁴²

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

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

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

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

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

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

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

⁴⁵ Interview with organisation G, London, 6 June 2002.

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

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

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

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

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

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

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

⁵⁰ Interview with the director of *Institut Formation Avenir*, 17 May 2002.

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

3.2 Protection Against Discrimination

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.2.1 Lack of data

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.2.2 Discrimination against Roma

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

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

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

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

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

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

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

⁶⁸ OSI Roundtable Meeting, Hamburg, April 2002.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.2.3 Discrimination against Muslims

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

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

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

Patterns of segregation of Muslim children in **education** have been noted in some towns and cities in the UK, and are considered to have been one of the key contributing factors to serious rioting in Bradford, Burnley, and Oldham in the Summer of 2001.⁷⁴ The European Commission against Racism and Intolerance (ECRI) has raised concerns regarding the separation of foreign children or children of immigrant background in specialised education courses and certain districts and schools in France as well.⁷⁵

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

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

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

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

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

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

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

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

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

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

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

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

⁸¹ EU Framework Employment Directive, Arts. 12–14.

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

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

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

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

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

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

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

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

reported unfair treatment from social services staff and from practices in social services departments.⁸⁷

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

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

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

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

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

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

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

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

3.3 Minority Rights

3.3.1 Recognition

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

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

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

⁹⁴ See recent ECRI recommendation against attacks against Muslims in Europe after September 11 at http://www.coe.int/T/E/Communication_and_Research/Press/Themes_files/Combating_racism/e_ECRI_Rec5.asp#TopOfPage, (accessed 18 September 2002).

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

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

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

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

3.3.2 Citizenship issues

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

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

⁹⁷ OSI Roundtable Meeting, Paris, July 2002.

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

that protection against discrimination and violence is included among these basic rights and protections.⁹⁹

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

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

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

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

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

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

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

3.3.3 Minority rights issues for Roma

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

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

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

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

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

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

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

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

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

Competence for most educational and cultural issues rests with individual German states. With the exception of Hamburg, no German state presently provides for instruction in Romanes within the public school system, on the grounds that such instruction is “not wanted by German Sinti parents.”¹⁰⁹ The Government has also asserted that the majority of Sinti and Roma¹¹⁰ oppose the development of a written

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

¹⁰⁶ German State FCNM Report, p. 79.

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

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

¹⁰⁹ German State FCNM Report, p. 112.

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

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

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

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

3.3.4 Minority rights issues for Muslims

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

¹¹¹ German State FCNM Report, p. 86.

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

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

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

There are significant differences in the relationship of all three States with different faiths. The Church of England is the Established Church in England¹¹⁵ and a Concordat regulates relations between the State and the majority religion (Roman-Catholicism) in Italy.¹¹⁶ Only religions represented by an officially-recognised church institution are legally entitled to certain benefits (such as tax exemptions on religious buildings) in France¹¹⁷ and Italy, producing inequalities in treatment among different forms of worship;¹¹⁸ in neither country have Muslims succeeded in concluding an agreement with the State, and thus their exercise of religious rights is limited in practice.

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

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

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

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

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

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

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

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

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

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

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

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

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

4. THE IMPORTANCE OF MONITORING AND EVALUATION

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

4.1 Monitoring by International Organisations

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

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

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

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

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

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

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

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

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

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

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

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

¹²⁴ ECRI Country by Country Approach: Second Report on Germany, 2000, p. 27.

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

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

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

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

4.2 Governmental Monitoring

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

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

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

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

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

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

4.3 Civil Society

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

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

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

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

5. RECOMMENDATIONS

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

To candidate and member States

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

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

To the European Union

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

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

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