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Vagabonds, Tinkers, and Travelers: Statelessness Among the East European Roma

ADAM M. WARNKE

“Citizenship is man’s basic right, for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen.”

INTRODUCTION

Human migration has always been and remains a vital way of overcoming hardship and deprivation. Since prehistory humans have chosen or have been forced into transiency. Among those who have chosen a mobile and flexible lifestyle and who maintain a distinct ethnic identity are the Roma—better known as “gypsies.” The shifting of the political landscapes artificially superimposed on the static geography of our world—notably recent changes in Eastern Europe and Africa—has led to suffering by groups dependent on freedom of movement. Chief among the sufferers are the Roma. The law of the States within which the Roma have lived, or systematic discrimination

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2. A note on terminology: The term “gypsy” and its equivalents in other languages have been used instead of or interchangeably with the more preferred terms, Roma (the group generally populating Eastern Europe), and Sinti (the group more prevalent in Western Europe and Germany). Who Were the “Gypsies”? (visited Sept. 1, 1999) <http://www.holocaust-trc.org/thegypsies.htm>. This is somewhat misleading. The term “gypsy” has been applied not only to the distinct ethnic group studied here, but also to those others who travel with them or in a similar manner—travelers in general. “Gypsy” is thus a generic term, the use of which is disfavored as it is offensive and loaded with negative connotations such as the term “to gyp,” meaning to swindle. It also tends to perpetuate the misconception that the people have their origins in Egypt. The people collectively refer to themselves as Roma; Rom refers to a member of the group. The adjectival form is Romani or Roman, which also refers to their spoken language. This term leads to further confusion, giving the false impression that they are from Romania. The same applies to common terms of other languages, such as gitans and bohemien in French, and gitano in Spanish. Zigeuner in German, Tzigane, Cigant, and its other forms derived from the misconception that the Roma were Athinganoi, “the untouchables” in Greek, a term describing a “heretical” sect of “magicians” from Asia Minor. The Roma refer to non-Roma as gaje, gajikane being the adjectival. This Note will use the term “gypsy” when referring to itinerant groups in general, rather than to the specific ethnic populations of the Roma and the Sinti.
inherent in the cultures and societies they struggle to operate within, have rendered them stateless.

Because of a well-founded distrust of the gaje, or non-Romany culture, Roma society keeps mainly to itself. Traditional Romany concepts of marime, or pollution and separation, have reinforced this isolation. The Roma have historically contributed rather than detracted from society by supplying much-needed labor and services others have been unable or unwilling to provide. However, they remain largely without rights in lands they have occupied for years or even centuries. This lack of rights—a status of statelessness—is primarily due to cultural or societal discrimination based on the Roma’s real or perceived migratory nature, and their subsequent lack of citizenship.

The cyclical nature of the trap in which the Roma find themselves is remarkable in its gravity. The purported or real migratory nature of the Roma is a consequence of the historical conjunction of labor market realities and long-held prejudices. Discrimination based upon perceptions of them as “dirty” or criminal in nature has led to a dearth of employment opportunities for those Roma who pursue employment within and seek to integrate into the sedentary culture. Unable to secure or maintain employment in factories, shops, and the professions due to such discrimination, the Roma frequently return to “traditional” Romany occupations: tinkering, dealing scrap metal, farm labor, bear training, and circus entertainment. This, in turn, prevents the Romany family from settling or integrating into the surrounding sedentary society and defeats outside efforts to provide them with education and training. Without education and training, a new generation of Roma are left unable to pursue the original opportunities denied their parents, thus continuing an endless cycle. Perceptions and racism reinforce a necessitated transience, which in turn strengthens the stereotypes that cyclically mark the

4. Id.
5. For a thorough treatment of the internal legal workings of Romany laws and society, see generally Weyrauch & Bell, supra note 3. See also infra notes 33-43 and accompanying text.
6. See generally infra notes 33-43 and accompanying text.
7. The long held belief that the Roma are thieves is not wholly without merit, though not a fair depiction. Among the disparate Romany cultures, theft and fraud are only criminal when perpetrated against other Roma. This concept, combined with the fact that the Roma were viewed as cultural outsiders—or “ultimate aliens”—makes them perfect scapegoats and threats to society, marked among other European populations as thieves. Weyrauch & Bell, supra note 3, at 363. See also Angus Fraser, Juridical Autonomy Among Fifteenth and Sixteenth Century Gypsies, 45 Am. J. Comp. L. 291.
Roma as outcasts lacking in opportunity, rights, and citizenship. The denial of citizenship and its concomitant civil and human rights has rendered these people \textit{de jure} or \textit{de facto} stateless, threatening their culture in deep and intrinsic ways.

This Note will examine the historical setting of "gypsies" and their itinerant culture, how immigration and citizenship laws have rendered them stateless, the implications of this statelessness, and the resultant threat to their traditional ways of life. Part I will examine the history of the Roma and how dominant cultures have treated them, exploring the historical background of Romany culture and past limitations placed on their mobility. Part II will discuss the limited extent to which the Roma are afforded civil and human rights, emphasizing the abuses which have rendered many of them stateless in the wake of recent political changes, especially in the former Eastern Bloc nations. Part III will discuss legal stateless status and its ramifications in a global context, analyzing the position of the Roma. Finally, Part IV will address potential solutions to the Romany dilemma, focusing on those results mandated by human rights laws and the standards of the international community.

1. THE ROMA

The opportunity to study global transient populations has increased in the past few decades, largely because of wholesale changes in the political structures of the territories where the Roma and others make their homes. Although they have been treated in the literature for centuries as "the ultimate aliens" and scapegoats, recent accessibility has led to deeper, more sympathetic treatment of these groups in a human rights setting.\textsuperscript{8} In Eastern Europe, former Communist Bloc countries have become more accessible to the West since the introduction of capitalism and democracy. This accessibility is reflected in the recent bloom of literature which discusses the Roma and the hardships they have suffered under communist regimes, less stable transitional governments, and currently established administrations. At the same time, a loss of stability caused by the fall of the old regimes has placed the Roma in situations where they have increasingly become victims; as the borders fall, walls go up to restrict the Roma.

\textsuperscript{8} LEO LUCASSEN ET AL., GYPSIES AND OTHER ITINERANT GROUPS vii-viii (1998).
A. Origins and Early History of the Roma

Different groups of Romany people originated in India, left periodically sometime before the twelfth century, and eventually arrived in most parts of Europe by the Middle Ages. Linguistic research indicates that these groups comprise descendants of north-central Indians of diverse ethnic and caste origins who emigrated from the region as early as 250 B.C.\(^9\) After periods of inhabiting Persia, Armenia, and Byzantium,\(^{10}\) the Roma eventually migrated further into Europe between 1000 and 1025 A.D.\(^{11}\) Why these people left their homeland is unclear; it is possible that they did so as prisoners of war, traveling entertainers, or other marginals buoyed along by a succession of wars.\(^{12}\) Increasing separation from the original Indian homeland blurred the lines of ethnic and caste heritage, melding the Roma into a more homogeneous, distinct ethnic group.\(^{13}\)

B. Early Stigma and Variety of Official Reactions: Fourteenth Through the Nineteenth Century

Upon arriving in Europe, the Roma encountered a variety of treatment. At points in their travels through Europe, the Roma were granted varying degrees of juridical autonomy.\(^{14}\) Heads of State delivered letters of recommendation—essentially *cartes blanches*—to Roma leaders, which allowed the Roma to apply justice to their own people, and provided them freedom from interference from local authorities.\(^{15}\) In Hungary, Poland, and Germany, east to the Balkans, and as far west as Scotland, the dispensations granted to the Roma allowed them a great degree of autonomy.\(^{16}\) These freedoms were granted for two primary reasons, both tied heavily to economics. First, the Roma provided indispensable services to the sedentary societies that were not

\(^{9}\) See IAN HANCOCK, LAND OF PAIN: FIVE CENTURIES OF GYPSY SLAVERY (1982). The Roma probably descended from the Dravidians, inhabitants of the area of Northern India before the Indo-European peoples arrived. Their exodus was likely precipitated by a period of frequent invasions of the Sind and Punjab regions by Islamic armies. Weyrauch & Bell, *supra* note 3, at 341.

\(^{10}\) Weyrauch & Bell, *supra* note 3, at 341.

\(^{11}\) Id.

\(^{12}\) Id. at 291.

\(^{13}\) See id. at 291-92.

\(^{14}\) Id.
available from local artisans and shops. Preservation of the "valuable services" and goods made available by their presence was of prime interest to the authorities.

Second, as feudalism was dying and Western Europe shifted toward mercantilist economies, a labor shortage developed, leading to the institution of the Statute of Labourers in England in 1351, and a similar law in France in 1356. These laws required all landless "able-bodied" men and women under the age of sixty to serve any master who "so shall him require" at pre-plague wages or be jailed. In order to further control the labor market, authorities restricted travel and migration. Both were allowed only for very specific purposes, such as seasonal labor and religious pilgrimages. To avoid these restrictions, some early Romany groups in Western Europe claimed to be Christians on religious pilgrimages. This led to confusion as to the Roma's origins, especially the common misconception of the time that they were migratory Egyptians.

However, these freedoms were short-lived and far from universal. Interpretations of the letters of recommendation varied greatly, and rumors spread that these letters granted the Roma privileges not afforded to local inhabitants. Some chroniclers of the time claimed that the Roma possessed "letters, by which they might steal from anyone who gave them no alms," and that "none could punish them save themselves." Suspicion grew that the Roma were spies for the Turks, and thus these freedoms ended shortly after they were given.

Suspicion also grew that typical Romany occupations and the religious pilgrimages that exempted the Roma from travel restrictions were merely

17. See notes 33-43 infra and accompanying text.
18. See text accompanying notes 33-43 infra discussing the economic value of the "services" provided by a mobile society.
20. Statute of Labourers, 1394, 23 Edw. III (Eng.). This locked in place the conditions from a prior period of abundant of labor and low wages, advantageous to the aristocracy and abusive to the working class.
21. Id.
22. Id.
23. Id. Many Roma groups claimed to have been Egyptians who had formerly followed, then rejected, Christianity. Their claimed purpose for wandering Europe was to complete penance for the sin of rejecting their god. Fraser, supra note 7, at 292.
24. LUCASSEN ET AL., supra note 8, at 292 (describing the accounts of unnamed chroniclers of Augsburg and Tourmal).
25. Id.
26. Lucassen, supra note 19, at 57.
covers for thievery. A stigma of thievery and privilege thus attached, grew quickly in the fourteenth century, and spread throughout most of Europe. However, this stigma generally waned in the sixteenth century—a period of economic expansion in western Europe. As the markets shifted, populations grew and replenished the previously meager labor supply. Western economies developed a need for seasonal laborers and peddlers—a role the Roma filled perfectly. This was the general rule in Western Europe; the major exception was England, where the landless and masterless were viewed as threats to the aristocracy. Thus, English law of the sixteenth and seventeenth centuries required the expulsion or execution of any Roma found in England.

C. The Economic Contributions of a Mobile Society: Traditional Roma Occupations

The perpetual paradox of society’s relationship with the gypsy is that he is always needed, yet viewed with suspicion and distrust. Economically, the Roma have filled a gap in centuries old mercantilist system by spreading goods and services which could not be offered as cheaply by a sedentary professional class. Demand for these services is typically too low or sporadic in any one location to support permanent inhabitants and allow them to make a living in such a capacity. Through frequent migrations to areas in occasional need of these goods and services, the Roma could afford to offer them at lower prices by dealing in higher volume in shorter periods of time. However, local professionals and shopkeepers, who saw the Roma as competition, created problems for the Roma by generating unsubstantiated rumors and by claiming that the Roma were thieves.

27. See id.
28. Id. This expansion, and population growth, caused labor shortages to disappear. Thus, the stigmatization of labor migration, so prominent in the former period, faded.
29. Id.
30. Id. at 57.
31. Id. at 58.
32. England in the period of 1560-1640 has been described as “the peak of state activity against vagabonds.” See Lucasson, supra note 19, at 58 (quoting A.L. BIER, MASTERLESS MEN: THE VAGRANCY PROBLEM IN ENGLAND 1560-1640, xix (1985)). See also HANCOCK, supra note 9, at 18. These laws were carried on to the New World in colonial law, vestiges of which remained until well into the 20th century. See e.g., Pennsylvania Statutes §11801, repealed 1986 (“After the passage of this act, it shall be unlawful for any gypsies . . . to . . . settle within the limits of any county of this state.”); New Jersey Statutes §40:51-52, repealed (“The Governing body may make, amend, repeal and enforce ordinances to license and regulate Gypsies.”).
33. See generally Lucasson, supra note 19.
34. Leo Lucassen, The Clink of the Hammer was Heard From Daybreak till Dawn: Gypsy
The primary Romany occupations are united by three unifying cultural traits—the defining cultural traits of the Roma. First, Roma culture adheres to a close family unit, manifested in many typical occupations, wherein the entire family may function as a work unit. Second, mobility is a common feature of Roma occupations, allowing families or groups to evade the pressures occasionally brought to bear by the sedentary societies. Finally, self-employment is an important feature, as it is both a practical and cultural necessity.

The Roma groups of these periods, and even today, traditionally favor four main categories of "professions:" trading, crafts, entertainment, and seasonal wage labor. Trading served the economic needs of the surrounding sedentary groups—especially the working class—by selling less expensive goods to those who could not afford better, and because of the Roma’s mobility, performing functions others could not, such as collecting animal hair and scrap metal, or trading horses. Crafts included knife grinding, pot mending, and production of wooden utensils (such as spoons and baskets), which were services economically infeasible for the sedentary laborers to perform. Entertainers included musicians and performers, as well as circus entertainers, such as bear trainers and acrobats. Seasonal wage labor is an activity in which the Roma have engaged to supplement their income between periods of activity in their other occupations.

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35. This is a common traditional method of labor division, especially among immigrant families. Id. at 154.
36. Id.
37. Id. As few non-Roma will hire a Roma, considering them "lazy," practical considerations require the Roma to provide their own opportunities. In addition, this also helps the Roma to maintain a boundary between the Roma and goje cultures, required by the concept of marime, or pollution.
38. Groups of Roma have long been categorized by group professions. Among the most prominent are the Rudari, or gold washers, the Ursari, bear trainers, and the Lingurari, wooden utensil makers. Oxymoronically, Roma have a reputation for sloth but are well known for excellence in the artisan trades, which require high degrees of training and practice. See generally Lucassen, supra note 34.
39. Id. at 158-59.
40. Id.
41. Id. at 167.
42. Id. at 165. An account from 1923-1924 documents the story of Giovanni Nedilk, an ursari, who had performed 229 times in the Netherlands within one and one half years. Nevertheless, he was expelled by the Dutch authorities for having "no means of existence." Id. at 166.
43. Id. at 169. Research indicates that Roma laborers exhibit higher standards of living and better health than other seasonal laborers. Id. at 170.
D. Slavery and the Roma

Contrary to the popular image and widely held belief that Roma are "a kind of definition of rootlessness and freedom," for years the Roma were enslaved and otherwise forced into labor in most of Europe. Documentation of the chattelage of the Roma in Europe dates at least to the late fourteenth century, and indicates an active practice of holding the Roma as slaves in Moldavia and Wallachia. The origins of the practice seem to have been either a matter of economic convenience to the slave-holders, or a continuation of a practice started by others, from whom the enslaved Roma were captured. "Gypsies and other vagrants" were forced to serve as slave rowers in merchant galleys of Southern Europe and as conscripted soldiers for the Germans in the late seventeenth century.

In addition to the debasement of capture and conscription or enslavement, many Roma faced the further degradation of being bought and sold in the marketplace like livestock, as well as other inhuman treatments associated with slavery. An active market for trade in Romany slaves existed as early as 1348. From Romania and Hungary to France, Romany slaves were owned by large estate owners (boyars), churches, and monasteries alike. This history of slavery, debasement, and abuse has left the Roma stigmatized as inferiors, and has instilled within their culture a distrust and "enemy hatred" of their former holders. Even so, many Roma today feel that slavery—like their fate under the Nazis, who exterminated more than 500,000 gypsies in the

45. HANCOCK, supra note 9, at 2, 4. Moldavia and Wallachia are parts of present-day Romania. FONSECA, supra note 44, at 177.
46. HANCOCK, supra note 9, at 2-3, 5.
47. See FONSECA, supra note 44, at 174. A 1445 account describes the capture, by Vlad II Dracul of Transylvania, of 12,000 “Egyptians” from Bulgaria as slaves. Though spared the painful fate favored by Vlad Dracul and his son Vlad Tepes (The Impaler) for their enemies, these Roma were enslaved and forced to fight in Transylvanian armies. See id.
48. Lucassen, supra note 19, at 62.
49. HANCOCK, supra note 9, at 2. Documents from a monastery in modern Romania from the fourteenth century describe a gift of forty gypsy families and a sale of three gypsies for forty horseshoes. Id.
50. Id. Landowners in the Balkans reportedly subjected their Roma slaves to a special penal code, under which the feet of runaways were beaten “until the flesh hung in shreds,” and the necks of slaves were placed in restrictive iron collars lined with sharpened spikes. Though the owners were not privileged to kill their slaves, “nothing was said about slowly torturing them to death.” Still, of the slave holders of this period, the churches and monasteries had a reputation for treating their slaves most cruelly. Id. at 4-5 (internal citation omitted). See also FONSECA, supra note 44 at 171.
51. FONSECA, supra note 44, at 173-86.
Holocaust—is more or less another episode in a continuous narrative of persecution.52

E. Present Day Dispersion

Today, the Roma are a widely scattered group of small, closely-knit communities, living in nearly every part of the world, bound together by a common ethnic, linguistic, and social heritage. An estimated three to fifteen million gypsies live in forty countries.53 In North America, the Romany population in the United States alone is between 750,000 and one million.54 The population in Canada is likely higher and growing—a growth caused by a recent wave of emigration from Eastern Bloc countries.55 The densest populations of Roma remain primarily located in Eastern Europe. The Czech Republic is home to approximately 300,000 Roma,56 and Slovakia is home to 500,000,57 all facing serious employment and citizenship problems.58 Hungary lays claim to another 450,000 to 500,000 Roma facing similar employment and cultural difficulties. The six to eight thousand Roma living in Finland comprise the country’s largest ethnic minority.59 In Sweden, roving groups known as tattare,60 or resande,61 consist of groups of Romany clans and partly itinerant ethnic Swedes.62 Populations are also found in South America and

52. Id. at 186.
53. Weyrauch & Bell, supra note 3, at 340. This estimate and others have an unusually wide range. For political reasons governments under- or over-estimate the numbers. Similarly, individual Roma may deny their identities for safety reasons. Id. n.52.
54. Id.
55. Nomi Morris & Randi Druzin, Gypsy Dreams, McLEAN’S, Aug. 1997, at 24. This emigration wave is discussed more fully at text accompanying notes 108-10 infra.
59. Saga Weckman, Researching Finnish Gypsies: Advice from a Gypsy, in GYPSIES: AN INTERDISCIPLINARY READER 3 (Diane Tong ed., 1998). The author distinguishes between this ethnic minority and the larger group of Swedes, a linguistic minority. Id.
60. ADAM HEYMOWSKI, SWEDISH “TRAVELLERS” AND THEIR ANCESTRY: A SOCIAL ISOLATE OR AN ETHNIC MINORITY? 15 (1969). This is a disfavored term derived from the German Tatar—describing a group of Islamic invaders of Germany and Scandinavia.
61. Id. The term resande means ‘traveller.’
62. Id. at 15, 19.
II. THE ROMA OF MODERN EASTERN EUROPE

The Roma have always been a marginal people— to some degree needed, yet unwanted. This marginality has led them historically to be a traveling people, which in turn has caused them difficulties in the citizenship context. In the majority of Eastern European countries, Roma have been historically ineligible for citizenship. This difficulty continues today; it deprives the Roma of basic rights, and is especially relevant in the context of public services and assistance. In one way or another, Roma are legally prohibited from becoming citizens in many countries. Even in “enlightened” countries where citizenship and rights are theoretically available to them, discriminatory realities have often prevented the Roma from taking advantage of these entitlements. Throughout Eastern Europe, both during and after communism, official policies have differed, yet the effective results and impacts on the Roma have largely been the same.

This Part describes the plight of the Eastern European Roma during communism and today. The Czech Republic, Slovakia, and Hungary highlight the discussion. Official treatment of the Roma became somewhat standardized during the Communist Era, and an air of stability, falling short of equality, permeates the accounts of the period. The Hungarian government was particularly adept at controlling official action toward the Roma, whereas Czechoslovakia was less successful, as I will discuss later. Developments arising since the lifting of the “iron curtain” have left much to be desired in the realm of citizenship, human rights, and violence or physical security.

A. The Roma Under Communism

The post-World War II communist regimes brought mixed blessings for the Roma. The communist administrations brought an end to an era of genocide and provided not only increased physical safety, but also access to education and employment. Central and Eastern European communist governments disapproved of exclusionary policies and attempts at elimination, insisting on full citizenship and civil rights for all members of society. These

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63. HANCOCK, supra note 9, at 18.
advantages, however, were partially offset by the disadvantages of forced "mainstreaming" of the Roma culture. The only real benefits to the Roma under communism, such as safety, education, and employment, arose through this governmental insistence on nominal rights for all citizens.

1. Czechoslovakia

In communist Czechoslovakia, a program of forced assimilation arising from an effort to produce a productive citizenry sacrificed Roma cultural and linguistic rights. Enforced abandonment of a Romany cultural identity, which was not recognized as a nationality, led to a loss of the rich cultural and linguistic heritage in today's younger generations of Roma. Through enforced education programs, illiteracy dropped markedly among the Roma; however, Roma were not recognized as a "national minority," and were thus not allowed to establish "national schools" where the Roma could be trained in their native languages. When Romany children fell behind in programs not taught in the Romany dialect, they were forced into remedial schools and were subsequently denied many career opportunities.

Housing and employment policies also simultaneously elevated and subjugated the Roma. Romany communities were uprooted by government initiatives to decentralize and assimilate them. The result was a shift to upgraded modern housing, but also a destruction of the Romany cultural centers. By instituting forced collectivization programs, the Czech

64. STATE OF THE WORLD'S REFUGEES, supra note 57, at 242-43. Official governmental policies of the era focused on forced integration of "social misfits" via forced settlement and employment. Some countries, however, particularly Poland and Bulgaria, attempted to eliminate the lifestyle and cultures of the Roma by prohibiting the use of the Romany dialect and mandating name changes. Id. at 243.

65. See id.


67. Id. at 37.

68. Id. Other groups in Czechoslovakia, such as the Hungarians and Poles, were granted national minority status, and could establish such "national schools." See id. n.2. National minority status carried a guarantee of cultural and linguistic development, a participatory voice in matters which affected minorities, and the right to school systems with instruction in their own language.

69. Id. at 38-39.

70. Id. at 53-58. At the time, less than 5% of the Roma led a nomadic, caravan based existence, while the majority were concentrated in smaller, segregated neighborhoods, rural villages, and ghettos. Id. at 53.

71. Id. at 54.

72. See generally id. at 53-58.
government gave the Roma a choice to “enter farm collectives or go to jail.” These programs thus supplied employment alternatives, which resulted in higher incomes and employment levels for the Roma. However, the positions available were primarily in unskilled labor, and because of the still relatively low wages, a low standard of living persisted.

Human rights abuses were also present, though they were not the norm. Harassment by the police—including overly frequent identity checks, unauthorized searches of homes, and random drunken beatings—were regular occurrences. Official police policies were largely ambivalent, and many Romany cultural norms were criminalized. In 1972, the Czech government issued a Public Decree on Sterilization (Decree), which outlined requirements for women to be granted permission to undergo sterilization and receive financial incentives. The Decree and attendant program were aimed at reducing the birth rate of the Romany population. As a result of the Decree, hundreds, maybe even thousands of Romany women were sterilized without their consent; others were lured into the procedure by monetary incentives.

2. Hungary

Educational and workplace policies in Hungary were generally similar to the Czechoslovakian policies. Literacy among the Roma increased through mandatory schooling, as the Hungarian government sought to train a “productive” mainstream workforce. In the 1970's and 1980's, as a result of

73. Id. at 75. The collective system represented the hallmark of the communist directive. Collective farms and factories benefited the whole of the society, providing jobs, food, and consumer products. Failing to join the collective would have been a violation of the Law against Parasitism. This joining of a collective resulted in many Roma abandoning their traditional professions to become farm workers and miners, rather than craftsmen and musicians. Id.

74. Id.

75. Id.

76. Id. at 91-92. The judicial system held little remedy for the Roma. Officials generally assumed that the Roma were all “either criminals or potential criminals,” so that they were often arrested for crimes based simply on ethnicity. They were regularly convicted contrary to evidence and sentenced more harshly than their ethnic majority counterparts.

77. Id. at 92. Since many women in the Romany culture are considered mature and can be married as early as age fourteen, many Romany men were jailed for becoming sexually involved with underage girls.

78. Id. at 19. An unofficial translation of the text of the 1972 Decree on Sterilization may be found in id. at app. A.

79. Id. at 19-20. Though the Decree does not explicitly refer to the Roma, other governmental documents make it clear that it was, in fact, created for this purpose.

80. Id. at 19-32. Although the incentives were offered to all women in an effort to reduce overall population growth, especially among the poor, these were aggressively offered to Roma. Nearly 25% of these grants were given to Romany women, while they comprised only 2-3% of the population. Id.
the government’s enactment of programs to incorporate Roma into the principal workforce, school attendance and graduation rates significantly improved among the Roma. As elsewhere in the communist world, the Roma were denied “national minority” status, and thus had little opportunity to establish schools tailored to encourage the success of Romany children. The workplace was slow to assimilate the Roma but appeared to approach governmentally mandated full-employment by the mid-1970s to the early 1980s. One positive aspect of the policy was that discrimination was not officially allowed, though most of the opportunities available to Roma consisted of low-wage, physical labor jobs. Not only were the Roma relegated to jobs that paid a wage barely sufficient to support their families, but these wages were lower than non-Romany men earned for the same work. When the Hungarian economy fell into disrepair, and construction slowed, the job opportunities for the Roma disappeared.

Communist housing policies benefitted the Roma in many ways, although they also served to destroy the itinerant lifestyle favored by some Roma. In the 1940s, the Communist Party outlawed the traditional nomadic existence favored by some groups of Roma at the time. Many of these groups settled into existing remote Romany villages, remaining isolated from ethnic Hungarians. Housing allowances and loans allowed many Roma to upgrade to modern housing, although the housing was largely not culturally appropriate. Governmental attempts to desegregate the population by mixing Roma homes with Hungarians failed when services such as health facilities began to be centralized for economic reasons, and the wealthier Hungarians migrated to larger towns where such services were available. In the end, the programs were not truly assimilation efforts: the government only succeeded

82. Id.; see also supra note 68 (describing the advantages of such national minority status).
83. Id. at 76. The author cites a 1976 Hungarian report on the Roma which, lauding the improvement of their situation, stated that “where men are concerned, the Roma population has come close to full employment.” Id.
84. Id. at 77. Since the upper management of companies could benefit from higher wages by hiring an increased number of workers at minimum wage, large numbers of unskilled Romany workers were hired into manual labor jobs.
85. Id.
86. Id.
87. Id. at 88.
88. Id.
89. Id. at 89. Though the Roma seem to have enjoyed an increased level of material comfort from the relocations, the small apartments, which often lacked plumbing and utilities, provided cramped quarters for the traditional extended family living unit.
90. Id. at 89-90.
in uprooting and destroying the existing Romany culture in Hungary; the Roma have not been allowed into the mainstream of Hungarian society.  

Violence was strongly discouraged in communist Hungary and was relatively uncommon until the mid-1980s, when nationalistic demonstrations became more common.  

As in Czechoslovakia, however, police harassment was an issue, as Roma were subjected to identity checks and arrests at a rate disproportionate to the rest of society.  

Reports of police commando squads and special “gypsy crime” units indicate that the police commonly used a policy of intimidation to control the Roma population.  

Still, the communist government appears to have kept a tight reign on racist action by the citizenry during the period, holding ethnic violence perpetrated by individuals in check.  

B. Post-Communist Eastern and East-Central Europe

Former Communist Bloc nations have taken many different approaches to dealing with difficulties surrounding the Roma since the 1989 fall of communism. As one observer has said: “If there was a positive aspect to the assimilation policies (under communism), it was to be found in the insistence of all the communist regimes that all citizens, including the Roma and other ethnic minority groups, should enjoy full citizenship status and civil rights.”  

This insistence is no longer the universal policy and, although a common legal pattern in the establishment of constitutional rights for Roma is difficult to discern, the results of the disparate approaches are largely the same.  

I. Post-Communist Czech Republic and Slovakia

The freedoms gained in Eastern Europe in the post-communist era frequently find expression as discrimination and hate crimes against Roma.  

This is particularly true in the Czech Republic, where a tradition of Roma
persecution persists—during World War II nearly ninety-five percent of the Romany residents of the region were murdered in concentration camps and elsewhere. 99 From 1989 to 1998, the number of Romany deaths arising from hate crimes grew, 100 and attacks by skinhead groups remained a constant threat. 101 The courts offered (and still offer) virtually no relief. 102 Still, the Czech government takes the position that the public, including Human Rights Watch/Helsinki, is overreacting to the violent incidents, which account for 0.4 percent of overall crime in the Czech Republic. 103

In Slovakia, the situation is much the same. Slovakia’s first attempt at joining the European Union (EU) was rejected, partially because of a poor history in the area of minority rights. 104 In response, Slovakia formed a new government in October 1998 with the goal of redirecting the country toward achieving EU membership. 105 A stated priority for the new government is Romany relations, 106 but the governmental power structure will remain, in many ways, intrinsically prejudiced against the Roma. This prejudice is evidenced by the fact that the leader of the Slovak National Party, who is in charge of the education ministry, has openly advocated that the best method

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99. *Slovaks v Czechs on Gypsies*, ECONOMIST, Nov. 7-13, 1998, at 52. In October 1999, the municipal authorities in Usti nad Labem constructed a wall to separate 37 Roma families from their non-Romany neighbors, after the non-Romanies complained of noise from the apartment buildings where the Roma lived—on the site of a Nazi-era Potemkin Jewish Ghetto. Faced with international criticism from human rights groups and pressure from the central government in Prague—fearing such a wall would prevent the Czech Republic from gaining entry into the European Union—the town council tore down the wall a month later. *Wall Segregating Gypsies in Czech Town to be Torn Down*, (visited Sep. 19, 1999) <http://abcnews.com/wire.world/reuters19991123_2830.html>.

100. *Sad Gypsies*, ECONOMIST, APR. 11-17, 1998, at 39. Discussing the discrimination and physical attacks on Roma, including the February beating and drowning death of Helena Birhariova, perpetrated by skinheads shouting slogans such as “gypsies to the gas!” It was the 29th such murder of a Roma in the post-communist era.

101. Morris & Druzin, supra note 55. In 1996 alone, as many as 20 skinhead attacks occurred per month.

102. James A. Goldston, *Claiming Civil Rights for Roma*, CHRISTIAN SCI. MONITOR, Sept. 3, 1997, at 20. In November 1996 a Czech court ruled on an incident involving white youths assaulting and threatening four Romany boys because they were on a train “for whites only.” *Id.* Since, the judge reasoned, the Roma are “of the Indo-European race,” he ruled that the attack could not have been racially motivated. *Id.*

103. *Sad Gypsies*, supra note 100.


105. *Id.*

106. *Id.* One of the first acts of the government formed in 1998 was to appoint Pal Csaky, an ethnic Hungarian, as minister for “minorities and human rights.” *Id.* Mr. Csaky stated that a particular priority of his administration would be to establish better relations with the Roma. *Id.*
of dealing with the Romany population is "with a big whip and a small yard."  

The conditions in the combined region of the two countries have been sufficiently oppressive that several thousand Roma began to flee the Czech Republic and Slovakia to Canada and Great Britain in 1997. This sudden exodus was prompted by a 1997 television documentary on Czech television depicting the "carefree life" of Romany communities in Canada, free from frequent, random attacks and beatings by skinheads. The implication that they were unwanted was not lost on the Roma, who sought asylum in Canada and Great Britain grounded on ethnicity-based persecution at home in the former Czechoslovakia. This massive influx overloaded the immigration offices charged with handling such claims, and prompted both Great Britain and Canada to reinstate visa requirements on Czech and Slovak travelers in 1998 in an effort to slow the deluge.

2. Hungary

The right to citizenship has not guaranteed satisfactory living conditions and escape from discrimination for the Roma in other countries. Although the Czech Republic is widely recognized as providing the worst conditions for the Roma, Hungary leaves much to be desired. Hungary offers automatic citizenship rights to its Roma population. Despite a constitutional guarantee of equal civil rights and a legal acceptance of the Roma as citizens, Roma face a systematic discrimination, much the same as in the Czech Republic. The Romany, whose population comprises five to six percent of the overall population of Hungary, face unemployment levels greater than sixty percent, while the level for the country as a whole is thirteen percent. The issue here is less a lack of jobs, than restricted access to education and the effects of "everyday racism" against the Roma.

Manifesting this everyday racism, violence and harassment are perpetrated by the authorities, racist fringe groups, and community groups. Skinhead

109. Id.
110. Philp, supra note 107.
111. See FONSECA, supra note 44, at 14. See also HUMAN RIGHTS WATCH, supra note 81.
112. See HUMAN RIGHTS WATCH, supra note 81.
113. Id. at 1.
demonstrations and violent incidents, increasingly accompanied by community protests, face a total lack of condemnation by the authorities.\textsuperscript{114} Some accuse the police of completely ignoring the activities, if not actually participating.\textsuperscript{115} Observers find an atmosphere which "tolerate[s] and tacitly encourage[s]" violence against the Roma and predict its perpetuation.\textsuperscript{116}

As the discrimination escalates, police participation in it seems to grow as well. Roma face arbitrary and repeated identification checks by the police, conducted in a selective and harassing manner.\textsuperscript{117} Stories of police brutality in the identity checks are common; such identity-check brutality is even encouraged by government officials, who describe the actions as "appropriate."\textsuperscript{118} In the rare occasions when the police respond to violent public attacks, they appear hours too late, and charges are seldom filed.\textsuperscript{119} The Citizen's Guards, described as "a kind of police auxiliary," also engage in the same harassment and violent beatings of the Roma as do the skinheads, often with authorities in tow.\textsuperscript{120}

III. STATELESSNESS

The Universal Declaration of Human Rights (Universal Declaration) declares that "everyone has a right to a nationality," and that "no-one shall be deprived of his nationality."\textsuperscript{121} The right to citizenship is thus established as a basic human right, and as such, is a fundamental element of human security.\textsuperscript{122} Despite this guarantee, people in all parts of the world face the prospect of living without the rights accompanying citizenship.

\begin{enumerate}
\item\textsuperscript{114} Id. at 12-14.
\item\textsuperscript{115} Id.
\item\textsuperscript{116} Id. at 13.
\item\textsuperscript{117} Id. at 32.
\item\textsuperscript{118} Id.
\item\textsuperscript{119} A May Day 1995 incident involved skinheads beating and provoking a group of Roma in a public park while shouting racist slogans. Seventeen Roma, including a pregnant woman, were beaten. Though the police were notified within thirty minutes of the attack, they appeared two and one half hours later. Skinheads were permitted to beat Roma handcuffed by the police. Though the events were videotaped and televised, and many other witnesses came forward, no charges were filed under the Hungarian hate crime statutes. Id. at 15-18.
\item\textsuperscript{120} Id. at 38-39. The author recounts a story from April 1995 involving the Citizen's Guard of Pápatetser, who beat and threatened a Roma family while searching for a family member. The mayor and members of the town council were among the "raiding party."
\item\textsuperscript{121} Universal Declaration of Human Rights, art. 15, Dec. 10, 1948, G.A. Res. 217(III)A, U.N. Doc. A/810 (1948) (Universal Declaration). This Note uses the terms "nationality" and "citizenship" interchangeably.
\item\textsuperscript{122} See id. See also STATE OF THE WORLD'S REFUGEES, supra note 57, at 225.
\end{enumerate}
described as stateless when one does not have nationality in any State, or has disputed citizenship in one or more States. Globally, the prospect of statelessness affects people as far apart as Bedoons of Kuwait, Vietnamese seeking asylum in Hong Kong, Kurds in northern Iraq, Saami in Scandinavia, and, perhaps the most familiar example, Palestinians.

This status of "belonging," or "not belonging," has not only a psychological impact but also a deeply practical one. National identity ensures the personal protection of one's State and the civil and political rights this protection guarantees. It also forms the link between an individual and international law. Thus, citizenship provides an individual with the attachment point for rights at a local and global level. Former United States Supreme Court Chief Justice Warren described citizenship as "nothing less than the right to have rights." This protection and the usual accompanying access to a judicial system and other protective mechanisms are lost to the Roma when they are denied the basic right of citizenship.

Statelessness comes about in two basic forms: de jure and de facto. A person's inability to establish citizenship, or to be considered a national by any State under operation of law, creates de jure statelessness. De jure statelessness may result when a person fails, according to the law of a State, to acquire nationality at birth; this is known as "original" or "absolute" statelessness. Alternatively, a person may suffer "subsequent" or "relative" statelessness by losing a nationality without acquiring another. The majority of Roma in the Czech Republic face the prospect of de jure statelessness: those born into Czech residence face original statelessness while those who have lost citizenship since the fall of communism face subsequent statelessness.

One who is unable to establish nationality, or who is of disputed nationality, may lack "effective nationality" by virtue of an inability to enjoy


125. Perez, 356 U.S. at 64.

126. PAUL WEIS, NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW 161-65 (2d ed. 1979).

127. STATE OF THE WORLD'S REFUGEES, supra note 57, at 226.

128. WEIS, supra note 126, at 161-62.

129. Id.
the rights of citizenship. The State in which a person resides may refuse to recognize the citizenship of that person, or may refuse—based on some minority status—to confer upon that person rights which are available to other citizens of that country. These people are *de facto* stateless, and because of a profound absence of safety nets available to them, they must be of deeper concern to the global community. Hungarian and Slovak Roma face the prospect of *de facto* statelessness.

*A. Development of the Current Statelessness Regime*

Statelessness was not a recognized issue until the early twentieth century. The traditional feudal concept of nationality, whereby people transferred as an attachment to land rather than as self-governing entities, resolved most questions regarding the State to which a person or subject belonged. Thus, before the First World War, these basic assumptions precluded the occurrence of statelessness. As these assumptions have become questioned in the past sixty years, the relevance of statelessness as a concept has grown. Groups such as the Roma have progressively been excluded from a hypothetical list of “desirable” citizens and have fallen into statelessness, further necessitating its discussion.

After the First World War, however, these feudal assumptions were largely abandoned, and it became necessary to deal with statelessness in the context of wars and the resultant territorial transfers. Ethnicity, language, and race became more relevant, and the attachment concept was less well-suited to provide for the residents of transferred territories, as groups were excluded from acquiring citizenship following these transfers. Treaties were concluded which provided for specific instances of refugees, incorporating the stateless as a particular class of asylum seekers. These initial treaties...

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131. The position of the *de facto* stateless differs from that of the *de jure* person may claim refugee status, thereby achieving the protection of the international community. However, *de facto* stateless are trapped. Since the operation of domestic law grants them nominal citizenship, but legal or social conditions prevent them from enjoying these rights, rather than being “in reality” stateless, they are left without the option of seeking protection as refugees.
133. *Id.*
134. *Id.*
135. *Id.*
136. *Id.*
implicitly defined the stateless as those without "the protection of the
Government . . . and who [have] not yet acquired another nationality."137

It became increasingly evident, particularly in Europe, that questions of
nationality would continue to arise in the context of post-war territory
transfers. The International Conference for the Codification of International
Law, at The Hague in 1930, addressed many of these questions and resulted
in the acceptance of the first modern agreements regulating nationality
issues.138 The essential provisions of these agreements mandated that
nationality is a matter of the operation of domestic law,139 and that a mother's
nationality would transfer to her children in the absence of laws automatically
conferring nationality.140 The stateless, however, were left to be treated as a
subset of refugees.141

Addressing issues of "[n]ationality, including statelessness," the United
Nations (UN) produced the Convention relating to the Status of Stateless
Convention defines a stateless person as "a person who is not considered as
a national by any state under the operation of its law."143 The primary purpose
of this Convention, as stated in the Preamble, was the regulation of the
treatment of those de jure stateless persons not protected by the 1951 UN
Refugee Convention.144

Article 1 of the 1954 Convention is an important building block or
foundation point in the identification of statelessness. However, its definition
is frequently viewed as too restrictive, as it encompasses primarily the de jure
stateless and does not explicitly address those who have been rendered de

137. Id. at 240 (quoting P. MUTHARIKA, THE REGULATION OF STATELESSNESS UNDER INTERNATIONAL
    AND NATIONAL LAW 7 (1989)).
138. Among these, the two most important documents are the Convention on Certain Questions
    Relating to the Conflict of Nationality Laws and the Protocol Relating to a Certain Case of Statelessness.
    WEIS, supra note 126, at 26.
139. For a more complete treatment of the history of the modern statelessness regime in international
    law, and for the specific provisions of the agreements made in the development, see WEIS, supra note 126,
    and P. MUTHARIKA, THE REGULATION OF STATELESSNESS UNDER INTERNATIONAL AND NATIONAL LAW
    (1997). This Note addresses only the developments relevant to the Roma discussion.
140. See WEIS, supra note 126, at 166.
    explicitly provides for the de jure stateless. See Batchelor, supra note 132, at 240 (quoting MUTHARIKA,
    supra note 139).
142. WEIS, supra note 126, at 28.
143. Batchelor, supra note 132, at 232.
144. STATE OF THE WORLD'S REFUGEES, supra note 57, at 253.
VAGABONDS, TINKERS, AND TRAVELERS

facto stateless. The definition is one of "technical legal problems," and does not address the "quality and attributes" of citizenship.

De facto statelessness was first addressed in 1949 after the international community realized the difficulties in dealing with such instances as the "stateless" Jews of Germany during the Second World War. The UN broadened the scope of statelessness to include this de facto status, for those who "having left the country of which they were nationals, no longer enjoy the protection and assistance of their national authorities." In 1995, the United Nations High Commissioner for Refugees (UNHCR) Executive Committee restated this dual definition of statelessness:

[Statelessness]... includes de jure stateless, which according to the 1954 Convention Relating to the Status of Stateless Persons refers to 'a person who is not considered as a national by any state under the operation of its laws;' also includes de facto stateless which refers to those persons with an ineffective nationality or those who cannot establish their nationality.

This de facto status is essentially the situation faced by the Roma in Hungary, Slovakia, and Romania.

In an effort to strengthen international commitment to the provisions of the 1954 Convention and to reduce and prevent statelessness, the UN adopted the Convention on the Reduction of Statelessness in 1961. This Convention incorporates the 1954 Convention definition of statelessness and has, as its primary purpose, the goal of reducing future cases of statelessness.

In addition to the Article 15 provision of a right to nationality, Article 13(2) of the Universal Declaration provides that "[e]veryone has the right to

145. Id. at 226.
146. Batchelor, supra note 132, at 232.
147. Although, under the Reich laws, Jews were German nationals, they were non-citizens and displayed a marked lack of adequate protection. See id. at 232-33.
150. WEIS, supra note 126, at 166.
151. See generally STATE OF THE WORLD'S REFUGEES, supra note 57, at 253. The original goal of the drafters was more ambitious, and the "reduction" treaty grew out of compromises. The title of the forum established to draft the treaty was the "Un Conference on the Elimination or Reduction of Future Statelessness." Id.
leave any country, including his own and return to his country.”

Though it is not a legally binding covenant, the Universal Declaration carries considerable weight. The near-unanimous adoption of the Universal Declaration by the United Nations General Assembly, and subsequent recognition by the international community, have elevated its status nearly to that of customary international law.

B. Statelessness and the Roma

The most common context in which statelessness issues arise is in conflicts between the nationality laws of multiple States with which a displaced person has connections. The office of the UNHCR has identified two other troubling contexts in which the majority of statelessness arises today. The first involves “ethnic or minority groups which do not enjoy full or undisputed citizenship of the countries where they live.” The second arises from the “dissolution of multinational or multiethnic federal states and the formation of new political entities.” This second category is associated with more developed regions, especially the ex-Communist Bloc, where States are undergoing an “unmixing of peoples,” bringing with it levels of insecurity and uncertain citizenship status to substantial numbers of people. Both of these trends apply to the subjugating effects on the Roma.

1. De Jure Statelessness in the Czech Republic

The Roma of the Czech Republic face a systemic legal and social discrimination cycle that renders them ineligible for Czech citizenship—de jure stateless. The Czech government instituted statutory requirements to establish eligibility for citizenship shortly after the 1992 separation of Czechoslovakia into the Czech and Slovak Republics. The Czech citizenship law of 1993,

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152. The International Covenant on Civil and Political Rights (ICCPR) confers on all signatory States a duty to provide this right. WEIS, supra note 126, at 46.
153. Id. at 46.
154. See Batchelor, supra note 132, at 237. Similarly, the Status of the 1954 Convention and the 1961 Convention is unclear in relation to customary international law, as are the resultant protocols of the Hague Codification of 1930. Id.
155. STATE OF THE WORLD’S REFUGEE, supra note 57, at 226.
156. Id. at 229.
157. Id. at 233.
known as the Law on Acquisition and Loss of Citizenship,\textsuperscript{159} was designed to indirectly preclude Roma from becoming citizens, and mandates that an applicant establish three criteria before citizenship is granted: at least five previous years of permanent residence in the Czech Republic, a clean criminal record for those five years, and a command of the Czech language.\textsuperscript{160} In practice, establishing these criteria is an impossibility for most Roma, including those who are Czech-born.

The five-year permanent residence requirement is particularly problematic. Many Roma have been long-time residents of substandard housing, which is officially classified as “temporary” legal residence.\textsuperscript{161} Regardless of the time a Romany family has lived in one of these apartments, the individuals cannot qualify for citizenship under the five-year requirement. Further, in order to qualify and to provide proof, residency is required to be registered with the local authorities.\textsuperscript{162} This registration is something Roma understandably avoid, in light of the abuses they have faced at the hands of these same authorities through the years of communism and at present.\textsuperscript{163}

The criminal record requirement more obviously touches a group who is poverty-stricken and harassed by authorities, resulting in a marked lack of clean criminal records.\textsuperscript{164} Discrimination in the workplace has added to the problem, causing joblessness among the Romany community to soar to estimates of seventy-five percent in a country where the national average is under six percent.\textsuperscript{165} As a Romany former member of the Czech Parliament admitted, many are forced into petty thievery and pickpocketing—“subsistence stealing”—primarily as a result of the pressures of poverty.\textsuperscript{166} Joblessness and living in increasing poverty force many to steal field crops or fruits from orchards to keep large families fed.\textsuperscript{167}

In addition to crimes such as petty thievery, many laws have been implemented to prohibit acts and behaviors specific to the Roma. Many of the cultural norms of the Romany community have become criminalized.\textsuperscript{168} A

\begin{itemize}
\item \textsuperscript{159} See Neier, supra note 158; Osiatynski, supra note 97, at 134.
\item \textsuperscript{160} See Neier, supra note 158.
\item \textsuperscript{161} Neier, supra note 158. The housing to which the Roma have “upgraded” includes urban, low cost apartment buildings, which the government classifies as temporary.
\item \textsuperscript{162} Id.
\item \textsuperscript{163} See id.
\item \textsuperscript{164} Id.
\item \textsuperscript{165} Sad Gypsies, supra note 100, at 39.
\item \textsuperscript{166} See Id.; HUMAN RIGHTS WATCH, supra note 67, at 5.
\item \textsuperscript{167} Neier, supra note 158.
\item \textsuperscript{168} See notes 73-77 supra and accompanying text discussing these norms.
\end{itemize}
local decree issued in 1992 in the northern Bohemian town of Jirkow, aimed at “gypsies,” criminalizes and fines “actions endangering the morals, health and security of others.”169 This legislation has been copied by authorities in other towns, and serves the dual purpose of chasing away the Roma, and establishing an instant entry in Romany criminal records—further complicating the citizenship process.170

The third requirement, fluency in the Czech language, creates the final and perhaps most insidious barrier to establishing citizenship. Roma in the Czech Republic either speak only the Romany language or a dialect thereof, or are members of an ethnic Slovak minority who also typically speak no Czech.171 In general, Roma are not successful in the formal public school system, as most are not accepted in the schools, or are assigned to special schools for the handicapped.172 Those accepted are placed in designated remedial classes, where they lag further behind the general Czech children, and are taunted and harassed by others; eventually many leave school.173 Thus, the majority of the Roma in the Czech Republic do not speak the Czech language and are denied the opportunity to learn it.

Citizenship status and privileges have been denied to a full one-third of the Roma, one-half of whom can claim the Czech Republic as their place of birth.174 Essentially, at the stroke of midnight on December 31, 1992, more than 100,000 Roma became instantly stateless. Government officials admit that nearly all of those denied citizenship under the three-pronged policy are Roma.175 In effect, the law has disenfranchised the Roma of the Czech Republic, effectively accomplishing the goals behind its institution. The Czech government, using a policy “designed to disenfranchise, then evict gypsies,” has manipulated a forced migration of Roma from the Czech Republic to Slovakia.176

169. Osiatynski, supra note 97, at 134.
170. Id.
171. Id.
172. HUMAN RIGHTS WATCH, supra note 67 at 46-51.
173. Id.
174. Neier, supra note 158.
175. Smith, supra note 98.
176. FONSECA, supra note 44, at 236.
2. De Facto Statelessness in Hungary and Slovakia

Though the social conditions for Roma in Slovakia and Hungary are much the same as in the Czech Republic, their legal position differs. Slovak legislation at the inception of the new State provided for unrestricted citizenship for all former citizens of Czechoslovakia. However, Hungary offers automatic citizenship rights to its Roma and a constitutional guarantee of equal civil rights. However, the constitutional right to citizenship does not guarantee satisfactory living conditions or escape from discrimination. Despite a legal acceptance of the Roma as citizens in these countries, Roma face systemic discrimination, much the same as in the Czech Republic.

People are described as *de facto* stateless when, "without having been deprived of their nationality [they] no longer enjoy the protection and assistance of their national authorities." Hungarian Roma face a systematic program of discrimination which denies them the essential rights of citizenship. Judicial, educational, and employment discrimination combine with violence and discrimination by the police and the general public to disenfranchise the Roma and suppress the rights to which they are legally entitled.

The Hungarian National Assembly adopted a law guaranteeing the rights of National and Ethnic Minorities, and Article 68 of the Constitution of the Republic of Hungary provides for the equality of these minorities. In theory, these laws are designed to protect and prevent the assimilation of ethnic groups who have lived in Hungary for 100 or more years, who are a numerical minority, and who do not share the cultural heritage of the Hungarian majority. However, in practice, these advantages have not materialized in the case of the Roma.

The educational system has failed the Roma miserably, leading to increased joblessness. Funding for education in Hungary is nearly nonexistent, and without government subsidies, only the wealthy can afford effective education. Ethnic minority status entitles the Roma to economic

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178. See HUMAN RIGHTS WATCH, *supra* note 81, at 2, 139.
179. WEIS, *supra* note 126, at 164.
181. See HUNG. CONST. law xx/1949, § 68.
182. HUMAN RIGHTS WATCH, *supra* note 81, at 101-02.
183. Id. at 62, 69.
provisions for educational support. Such support is insufficient to allow them to afford the better schools; the result is a segregated school system.\textsuperscript{184} Inevitably, Romany children are relegated to a state-run, village Romany school which is vastly inferior to those attended by the gaje, or ethnic Hungarian, children.\textsuperscript{185} As a result, Romany children lag behind. This inequality in education causes the Roma to be less marketable in the workplace, which further exacerbates already high Roma unemployment.\textsuperscript{186} Romany workers have essentially been removed from the labor market due to discrimination by both employers and government employment offices.\textsuperscript{187} Though this discrimination is "illegal," it is tacitly accepted.

As the Hungarian central government's authority has weakened, violence and other expressions of hatred against the Roma have increased.\textsuperscript{188} Though racially or ethnically motivated hate crimes are specifically identified and carry stricter punishments, courts rarely find a "racial" element in the attacks. As a result, perpetrators of assaults on Roma rarely face more than minor charges and penalties, such as "hooliganism," even for the most vicious beatings.\textsuperscript{189} The police force often fails to adequately investigate assault cases, and frequently stalls any inquiry which does take place.\textsuperscript{190} In fact, the policemen charged with the responsibility of defending the rights of the Roma actually account for many of the physical attacks, whether in their official capacity or while off-duty.\textsuperscript{191}

In Slovakia, the issue of minority rights is one that is a major focus of the government. This focus arises, primarily, out of the perception that Slovakia has been kept out of the European Union (EU) based on its poor record in the area of minority rights. Progress has been evident since the "re-focusing" of the government after its first failure at EU entry, but not for all minorities. The position of the ethnic Hungarian minority in Slovakia is
improving—primarily brought about by its increased political representation; the Roma have no such political advantage.\textsuperscript{192}

Living and social conditions for Roma in Slovakia are deplorable. Romany settlements are relegated to the least desirable locations—Rudnany, for example, is a settlement built on an abandoned arsenic mine—and are little more than shanty towns.\textsuperscript{193} A mass flight of over 1000 Roma to Finland, similar to the flight to Canada and Britain caused by a 1997 television program, began in the summer of 1999, and was a response to the conditions and violence the Slovak Roma face.\textsuperscript{194} Violence perpetrated by citizens and authorities alike helped lead to this exodus.\textsuperscript{195}

The government of the Slovak Republic adopted a principle forbidding ethnic discrimination, particularly against the Roma, before the “Velvet Revolution” that continues to be in effect in Slovakia.\textsuperscript{196} However, discriminatory employment practices have abounded.\textsuperscript{197} Unemployment has affected Romany workers at an vastly disproportionate rate—Romanies account for eighty percent of the unemployed in some regions.\textsuperscript{198} The education system fails these Roma in Slovakia the same way that of Hungary fails its Roma. Romany children are over-represented in special schools for the handicapped—they are placed in these schools either by enforced segregation or by choice; the children prefer going to class with friends already assigned to such schools. The failure of the education does nothing to ameliorate their position in the workplace.

Thus, a systematic pattern of discrimination has caused the protections of a sovereign State to fail the Roma of both Hungary and Slovakia, much as the legal regime has erected barriers to citizenship for the Roma of the Czech Republic. In effect, they have been rendered de facto stateless. As one author noted: “Nowadays, statelessness brings guaranteed protection under the

\textsuperscript{192} Greg Niewsma, Lessons in Democracy: Slovakia, its minorities and the European Union, (last modified Nov 8, 1999) <http://www.ce-review.org/99/20/nieuwsma20.html>. The Hungarian government takes an interest in the affairs of ethnic Hungarians living in other States; the pressure brought to bear has aided the Hungarians in Slovakia to achieve political representation. \textit{Id.}

\textsuperscript{193} Id.

\textsuperscript{194} Id., supra note 192.

\textsuperscript{195} Id. Roma arriving in Finland reportedly carried videotapes of Roma being attacked by masked men with baseball bats. During the same time period, a young Romany man was shot to death by police in a police station in Poprad. \textit{Id.}

\textsuperscript{196} HUMAN RIGHTS WATCH, supra note 81, at 78.

\textsuperscript{197} Id. Many employment opportunities are listed with the requirement that “Romanies need not apply,” or disappear when a Romany worker arrives to apply. \textit{Id.} at 80-83. \textit{See also} Niewsma, supra note 192.

\textsuperscript{198} HUMAN RIGHTS WATCH, supra note 81, at 78; Niewsma, supra note 192.
Geneva Convention. And Gypsies no longer qualify: they are called Romanians, Bulgarians, etc., even though they are not recognized as such in those countries. \(^{199}\) Statelessness is an unenviable position. A stateless person has no definite status and completely lacks the "stabilizing factors" that derive from the rights and responsibilities that accompany nationality. \(^{200}\) With no "right to have rights," there is no foundation point to which the other aspects of status as an individual may attach. \(^{201}\)

The Roma have long provided services and lived a way of life dependant on mobility and freedom. Within the emerging new Eastern European system, the Roma face two realities: they are either allowed citizenship, or they are legally deprived of the right, and remain foreigners in their own lands. When allowed citizenship, as in Hungary and Slovakia, the Roma are often unable to take advantage of the consequent rights because of systematic oppression. In countries that do not afford them citizenship, no rights are guaranteed and oppression flourishes, as in the Czech Republic. Unable to move about and deprived of any right to return as non-citizens if they leave their home countries, they stay at home and are deprived protection.

The Roma are unable to live the customary transient lifestyle that in part identifies them; they are denied the opportunity to perform the transiency-dependent services they have traditionally performed. At the same time, legal and social discrimination at home has kept them from jobs available to other non-Romany persons in the country, prevented them access to education, blocked their traditional trades, allowed them to be harassed by the police, and eliminated or prevented the institution of social support or assistance. The Roma have become foreigners trapped within their own countries, facing poverty and despair. Therefore, solutions to establish relief must be found.

IV. DEFINING SOLUTIONS

The situation faced by the Roma in Eastern Europe is complex. The degrees of abuse to which the Roma are subjected, and the rights to which they are legally entitled, vary widely. Solutions for each region must be tailored to meet the specific challenges presented. Further complicating the search for solutions to their statelessness dilemma is the need for a broad directive or plan of action for potential conflicts of a similar nature, which

\(^{199}\) Fonseca, supra note 44, at 240.
\(^{200}\) See Batchelor, supra note 132, at 233.
\(^{201}\) Perez, 356 U.S. 44, 64.
may arise for other similarly situated ethnic groups in the future. Many solutions may be considered, yet rejected, by States and the stateless because of a perceived change in status for the Roma. This Part will address the validity and feasibility of some of these solutions.

The first, vital step toward achieving a sense of equality and protection for the stateless Roma is the establishment the political access and representation required to promote solutions to the plight of all Roma. Several Non-Governmental Organizations (NGOs) and Roma advocacy groups have formed for the purpose of promoting the discussion and advocacy of such alternative approaches. Among the Romany councils—groups comprising traditional Roma and Sinti leadership and intellectuals—the Roma National Congress, the International Romani Union (RIU), and the Zentralrat (an organization of German Sintis and Roma) are three of the most active and important. In 1994, the various Romany groups established the Standing Conference for Romani and Sinti Organizations (Standing Conference), a forum aimed at reaching a consensus on broad goals for the Roma and Sinti global leadership.

Though these groups often differ in opinion as to preferred approaches to the “gypsy dilemma,” the promotion of discussion will doubtless lead to consideration and public discourse on the issues to be addressed. Through the efforts of these organizations and others, the Roma plight has been increasingly prevalent in international discussion since 1991. As a result, a few States have already included constitutional provisions ensuring equality of the Roma. This said, it is important to note that the nature of statelessness deprives individuals access to the political process, as they lack legal or effective citizenship. For the benefits of these advocacy groups to be effective, effective citizenship rights must be established.

Initially, a satisfactory solution must be found to the problem of de jure statelessness in the Czech Republic. Article 15 of the Universal Declaration mandates that everyone be afforded citizenship. This is not a point to be negotiated. The Czech citizenship law has been described as “a problem with
a clear remedy," a remedy that Human Rights Watch has dubbed the "zero option."\textsuperscript{208} This solution mandates that all former citizens of Czechoslovakia, who were permanent residents of the Czech Republic at the time of dissolution of the Czechoslovak Federation, should automatically be granted citizenship.\textsuperscript{209}

The simplicity and effectiveness of establishing citizenship in this manner belie the political friction and deep discrimination which have prevented the implementation of this policy in the past. Still, as one observer noted: "This recommendation is not only eminently sensible, it is demanded by the Czech Republic's international human rights obligations. Half-steps are not enough."\textsuperscript{210}

Secondly, the international community and Eastern European nations must consider, in consultation with the Roma leadership, alternative approaches to the solution of \textit{de facto} statelessness in Hungary and Slovakia. Many viable options have been presented which have proven effective and non-prejudicial of the sovereign rights of these nations. Among the suggested solutions, the most viable include broad application of refugee status to the Roma, the establishment of a trans-European or trans-national legal ethnic identity, and the designation of a "Stateless Nation."

First, consideration must be given to a broad application of refugee status to the Roma who face \textit{de facto} statelessness. In the case of the Roma, as defined by the 1951 Geneva Convention, to be considered for refugee status a person must establish a "well-founded fear of persecution"—which is based on "race . . . membership of a particular social group"—and that he is outside his "country of nationality" and unwilling or unable to return.\textsuperscript{211} The establishment of the "well-founded fear of persecution" is, in itself, problematic; though there is ample evidence to support such a claim. However, greater difficulties arise in satisfying the requirement that they be "outside" their country of nationality. Economic considerations prevent many Roma from fleeing to countries in which this refugee status may be established, and those that can flee, face inconsistent reactions. Canada and Great Britain have determined in recent decisions that the Roma seeking asylum in these countries did qualify as refugees.\textsuperscript{212} Germany, however,
recently determined that Romanian Roma applying for asylum were “economic refugees,” and completed an agreement with the Romanian government providing for their return to Romania.213

A second possible solution lies in the establishment of a legal identity for Roma across Europe and throughout the world. Establishing such a status—affording Roma legal standing before courts based solely on membership in the legally established group—will eliminate the deprivation of protection before international law faced by stateless Roma. The 1991 Rome Conference of Romany leaders ended with a call for recognition of the Roma as a Trans-National Ethnic Minority.214 Such a status would allow enhanced protection under the International Covenant on Civil and Political Rights (ICCPR).215 Article 27 of the ICCPR guarantees to minorities the right “to enjoy their own culture, to profess and practice their own religion, [and] to use their own language.”216 Unfortunately, this is only a partial solution, as Roma are still denied a place to “belong.” A people are not truly protected without a home, as evidenced by the Roma experience in the Second World War.217 Citizenship rights must be established in conjunction with or as part of any solution.

Finally, the establishment of a “Stateless Nation,” a concept in place elsewhere in Europe, may serve to defuse this ethnic “powder keg.”218 This concept has been implemented in various European nations with diverse ethnic composition and fierce sentiments of ethnic nationalism.219 History illustrates that Democratic concepts are not feasible in societies whose populations are highly divided along linguistic and cultural lines.220 The emergence of independent Eritrea and Ethiopia, and the violence precipitating the break-up of the former Yugoslavia, serve as reminders of this reality.221

213. Id.
214. Id. at 66.
216. ICCPR, Art. 27, supra note 215, 6 I.L.M. at 375-76.
217. True Tormented Pan-Europeans, supra note 212, at 66.
218. See Stateless Nations, CAN. AND WORLD BACKGROUNDER, Jan. 1999, at 20. The concept of a “stateless nation” separates the concepts of “state” and “nation.” A nation consists of a group of people bound by cultural linguistic heritage, whereas States are geographically distinct areas and the contained people, over which a government may exert sovereignty. The “stateless nation” concept has been described as divorcing “sovereignty as power over people [from] sovereignty as power over territory.” GIDON GOTTLIEB, NATION AGAINST STATE 36-37 (1993).
220. Id.
221. Id.
Establishing a Stateless Nation for the Roma would not only allow for autonomy, but also for participation and contribution by the Roma to local societies. Other regions have successfully utilized this concept, which affords a measure of self-government to ethnic groups within a larger state—counteracting the tendency of minority groups to suspect, even in a functioning democracy, that their own representatives will be outvoted on matters of deep concern and impact to them.\textsuperscript{222} In addition to the existence of a Swedish sub-minority in Finland, the regions of Catalonia (Spain) and Alto Adige (Italy) contain ethnic or cultural minorities who have gained a degree of self-rule within a greater nation.\textsuperscript{223} This concept can be adapted to the Roma, and would create “soft-forms of union which cross international boundaries,” while avoiding overly segregating the groups.\textsuperscript{224} Yet many Roma reject this idea because of a basic distrust founded in centuries of abuse.\textsuperscript{225}

What is obvious from the escalating violence and deterioration of Roma rights is that the governments of the region must be made to face external pressure. Particularly, the United States and the European Union should exercise their “considerable leverage”\textsuperscript{226} to force these governments to adopt policies guaranteeing the Roma their rights. Still, some bright spots are appearing on the horizon.\textsuperscript{227} The Czech government has relieved some of the stress by passing legislation, in the works for three years, authorizing the Minister of the Interior to waive the clean criminal record requirement for citizenship upon appeal.\textsuperscript{228} Unfortunately, such appeals and the representation needed to accomplish them cost dearly, requiring resources many Roma simply do not have.\textsuperscript{229} There have been some efforts to establish Roma advocacy programs, but with limited success.\textsuperscript{230} However, despite the

\begin{thebibliography}{9}
\bibitem{222} Id.
\bibitem{223} Id.
\bibitem{224} Id.
\bibitem{225} FONSECA, supra note 44, at 173-86.
\bibitem{226} Neier, supra note 158. The moral foothold or authority some of these Member States may wield is dubious, as their records in the human rights arena are far from perfect.
\bibitem{227} Id. The author cites the “emergence of an increasing number of indigenous organizations in the region that defend the rights of the Roma, including the Tolerance Foundation in the Czech Republic... [and] the Human Rights Project in Bulgaria.” Id.
\bibitem{228} STATE OF THE WORLD’S REFUGEES, supra note 57, at 240.
\bibitem{229} The UNHCR, with local government, has established a legal assistance program to aid those affected by the laws.
\bibitem{230} Goldston, supra note 102.
\end{thebibliography}
recognition that this is a worthy cause, many fear the consequences of actively participating and working for Romany rights. 231

**CONCLUSION**

Primarily as a result of the dissolution of the communist regimes and formation of new States in Eastern Europe, Roma have been rendered stateless. Not every Roma has suffered this fate, but whether *de jure* or *de facto*, many thousands have encountered this result. The dilemma has reached near crisis dimensions in the Czech Republic and Hungary, where many Roma are deprived of basic human rights on a daily basis. This crisis threatens to eliminate the Romany culture or the individuals’ ability to sustain themselves in their home nations.

It is imperative that minority rights are constitutionally established for the Roma in all States. This can be best accomplished through multilateral recognition of the Roma as a “trans-national ethnic minority,” and recognition of this status within the constitutions of individual signatory States. Policing and support for these rights must then flow from this recognition, including deterrence of racial attacks on the Roma and their property. Cultural understanding and education should be supported; a universal policy on transnational transient peoples must be established to provide a mechanism allowing the Roma, and other similarly-situated peoples, to serve an important economic function—benefitting themselves and the States involved—and enjoy the civil and human rights to which they are entitled.

231. *Id.* A Ukrainian law professor, when asked to participate in Romany advocacy programs, replied, “You don’t need a lawyer, you need a kamikaze pilot.” *Id.*